Queensland

Heavy Vehicle National Law Bill 2011

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2011

A Bill

for

An Act providing for the adoption of a national law regulating the use of heavy vehicles

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Heavy Vehicle National Law Act 2011*.

2 Commencement

(1) This Act commences on a day to be fixed by proclamation.

(2) The *Acts Interpretation Act 1954*, section 15DA applies to the provisions of this Act as if—

(a) the references in subsections (2) and (3) of that section to 1 year were a reference to 2 years; and

(b) the reference in subsection (3) of that section to 2 years were a reference to 3 years.

3 Definitions

(1) For the purposes of this Act, the ***local application provisions of this Act*** are the provisions of this Act other than the Heavy Vehicle National Law set out in the Schedule.

(2) In the local application provisions of this Act—

Heavy Vehicle National Law (Queensland) means the provisions applying in this jurisdiction because of section 4.

(3) Terms used in the local application provisions of this Act and also in the Heavy Vehicle National Law set out in the Schedule have the same meanings in those provisions as they have in that Law.

Part 2 Adoption of Heavy Vehicle National Law

Division 1 General

4 Application of Heavy Vehicle National Law

The Heavy Vehicle National Law set out in the Schedule—

(a) applies as a law of this jurisdiction; and

(b) as so applying, may be referred to as the Heavy Vehicle National Law (Queensland); and

(c) so applies as if it were part of this Act.

5 Exclusion of legislation of this jurisdiction

(1) The following Acts of this jurisdiction do not apply to the Heavy Vehicle National Law (Queensland) or to the instruments made under that Law—

(a) the *Acts Interpretation Act 1954*, other than to the extent provided for in subsection (3);

(b) the *Auditor-General Act 2009*, other than to the extent that functions are being exercised under the Law by a State entity;

(c) the *Financial Accountability Act 2009*, other than to the extent that functions are being exercised under the Law by a State entity;

(d) the *Information Privacy Act 2009*, other than to the extent that functions are being exercised under the Law by a State entity;

(e) the *Ombudsman Act 2001*, other than to the extent that functions are being exercised under the Law by a State entity;

(f) the *Public Records Act 2002*, other than to the extent that functions are being exercised under the Law by a State entity;

(g) the *Public Sector Ethics Act 1994*, other than to the extent that functions are being exercised under the Law by a State entity;

(h) the *Public Service Act 2008*, other than to the extent that functions are being exercised under the Law by a State entity;

(i) the *Right to Information Act 2009*, other than to the extent that functions are being exercised under the Law by a State entity;

(j) the *Statutory Bodies Financial Arrangements Act 1982*, other than to the extent that functions are being exercised under the Law by a State entity;

(k) the *Statutory Instruments Act 1992*, other than to the extent provided for in section 17.

(2) Also, the *Legislative Standards Act 1992* does not apply to a regulation made under the Heavy Vehicle National Law (Queensland), other than to the extent provided in section 17.

(3) The *Acts Interpretation Act 1954*, section 20C applies to the Heavy Vehicle National Law (Queensland) and instruments made under that Law.

(4) To remove any doubt, it is declared that—

(a) subsection (1)(a) does not limit the application of the *Acts Interpretation Act 1954* to the local application provisions of this Act; and

Example—

The terms 'magistrate' in section 14 and 'QCAT' in sections 10 and 19 take their meaning from the *Acts Interpretation Act 1954*, section 36.

(b) subsection (1)(k) does not limit the application of the *Statutory Instruments Act 1992* to a regulation made under the local application provisions of this Act.

Division 2 Meaning of particular terms for Heavy Vehicle National Law (Queensland)

6 Purpose of div 2

This division defines particular terms, and makes particular declarations, for the purposes of the Heavy Vehicle National Law (Queensland).

7 Definitions of generic terms and terms having meaning provided by this Act

In the Heavy Vehicle National Law (Queensland)—

Magistrates Court means a Magistrates Court established under the *Justices Act 1886*.

police officer means a police officer within the meaning of the *Police Service Administration Act 1990*.

this jurisdiction means Queensland.

8 Particular laws

For the purposes of the Heavy Vehicle National Law (Queensland)—

(a) the *State Penalties Enforcement Act 1999* is declared to be the Infringement Notice Offences Law for this jurisdiction; and

(b) the *Workplace Health and Safety Act 1995* is declared to be the primary WHS Law for this jurisdiction; and

(c) the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* is declared to be the Road Rules for this jurisdiction.

9 Local government authority

Each of the following is declared to be a local government authority for this jurisdiction for the purposes of the Heavy Vehicle National Law (Queensland)—

(a) the Brisbane City Council;

(b) a local government under the *Local Government Act 2009*.

10 Relevant tribunal or court

QCAT is declared to be the relevant tribunal or court for this jurisdiction for the purposes of the Heavy Vehicle National Law (Queensland).

11 Road authority

The chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered is declared to be the road authority for this jurisdiction for the purposes of the Heavy Vehicle National Law (Queensland).

12 Road manager for a road

(1) The following entity is declared to be the road manager for a road in this jurisdiction for the purposes of the Heavy Vehicle National Law (Queensland)—

(a) for a State-controlled road—the chief executive of the department in which the *Transport Infrastructure Act 1994*, chapter 6 is administered;

(b) for a road controlled by a local government authority—the local government authority;

(c) for the Airport Link franchised road—a franchisee for the road;

(d) for a franchised road other than the Airport Link franchised road—the chief executive of the department

in which the *Transport Infrastructure Act 1994*, chapter 6 is administered;

(e) for a local government franchised road—a local government franchisee of the road;

(f) for another road—an owner of the road.

(2) In this section—

Airport Link franchised road means the franchised road known as the 'Airport Link' the subject of the gazette notice under the *Transport Infrastructure Act 1994*, section 93 made on 18 July 2008.

franchised road see the *Transport Infrastructure Act 1994*, schedule 6.

franchisee, for the Airport Link franchised road, means a person who, under the *Transport Infrastructure Act 1994*, is a franchisee for the road franchise agreement for the road.

local government franchised road see the *Transport Infrastructure Act 1994*, section 105B.

local government franchisee, for a local government franchised road, means a person who, under the *Transport Infrastructure Act 1994*, chapter 6, part 8, is a local government franchisee for the local government tollway franchise agreement for the road.

local government tollway franchise agreement see the *Transport Infrastructure Act 1994*, section 105Y.

road franchise agreement see the *Transport Infrastructure Act 1994*, section 85.

State-controlled road see the *Transport Infrastructure Act 1994*, schedule 6.

13 Police officers who are authorised officers

Every police officer is declared to be an authorised officer for the purposes of the Heavy Vehicle National Law (Queensland).

Note—

See also section 18.

14 Authorised warrant official

Each magistrate is declared to be an authorised warrant official for the purposes of the Heavy Vehicle National Law (Queensland).

15 Areas that are roads

A busway within the meaning given by the *Transport Infrastructure Act 1994* is declared to be a road for the purposes of the Heavy Vehicle National Law (Queensland).

16 Offences for which the persons charged do not have the benefit of the mistake of fact defence

(1) This section declares the effect of a provision of the Heavy Vehicle National Law (Queensland) that states that a person charged with an offence does not have the benefit of the mistake of fact defence for the offence.

(2) The excuse set out in section 24 of the Criminal Code does not apply to the person in relation to the offence.

Note—

Section 24 of the Code deals with a person's criminal responsibility for an act or omission done under an honest and reasonable, but mistaken, belief in the state of things.

Part 3 National regulations

17 Parliamentary scrutiny of national regulations

(1) The *Statutory Instruments Act 1992*, sections 49 to 51 apply to a national regulation as if—

(a) a reference in the sections to subordinate legislation were a reference to a national regulation; and

(b) the reference to notified in the gazette in section 49 of that Act were a reference to published as mentioned in section 670(1) of the Heavy Vehicle National Law (Queensland).

Note—

Generally speaking, the *Statutory Instruments Act 1992*, sections 49 to 51 deal with the tabling and disallowance of subordinate legislation and the limited saving of operation of subordinate legislation that ceases to have effect.

(2) The *Legislative Standards Act 1992*, part 4 applies to a national regulation as if—

(a) a reference in the part to subordinate legislation were a reference to a national regulation; and

(b) the reference to the responsible Minister in section 22(2) of that Act were a reference to the Minister who administers the Heavy Vehicle National Law (Queensland).

Note—

Generally speaking, the *Legislative Standards Act 1992*, part 4 deals with the tabling and content of explanatory notes for Bills and subordinate legislation.

(3) A committee of the Legislative Assembly may deal with a national regulation, under the *Parliament of Queensland Act 2001*, as if a reference in the Act to subordinate legislation, or an item of subordinate legislation, were a reference to a national regulation.

(4) For subsection (3), the *Legislative Standards Act 1992*, section 4 applies to a national regulation as if a reference in the section to subordinate legislation were a reference to a national regulation.

Note—

Generally speaking, the *Legislative Standards Act 1992*, section 4 deals with the application of fundamental legislative principles to Bills and subordinate legislation.

(5) If a national regulation ceases to have effect because of the operation of subsection (1), the national regulation ceases to have effect for the purposes of the Heavy Vehicle National Law (Queensland), but the cessation does not affect the application of the regulation in any other jurisdiction.

(6) In this section—

national regulation means a regulation, or a provision of a regulation, made under the Heavy Vehicle National Law set out in the Schedule.

Part 4 Provisions specific to this jurisdiction

18 Application of particular provisions to police officers

A provision of Chapter 9 of the Heavy Vehicle National Law (Queensland) that corresponds to a provision of the *Police Powers and Responsibilities Act 2000* does not apply to an authorised officer who is a police officer.

19 Review of decision by QCAT as relevant tribunal or court

A reference in the Heavy Vehicle National Law (Queensland) to an appeal against a decision is, for an appeal to QCAT as the relevant tribunal or court, a reference to a review of the decision as provided under the QCAT Act.

Schedule Heavy Vehicle National Law

section 4

Chapter 1 Preliminary

Part 1.1 Introductory matters

1 Short title

This Law may be cited as the Heavy Vehicle National Law.

2 Commencement

This Law commences in a participating jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

3 Object of Law

The object of this Law is to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that—

(a) promotes public safety; and

(b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and

(c) provides for efficient road transport of goods and passengers by heavy vehicles; and

(d) encourages and promotes efficient, innovative, productive and safe business practices.

4 Regulatory framework to achieve object

The object of this Law is to be achieved by a regulatory framework that—

(a) establishes an entity (the National Heavy Vehicle Regulator) with functions directed at ensuring the object is achieved; and

(b) provides for the national registration of heavy vehicles; and

(c) prescribes requirements about the following—

(i) the standards heavy vehicles must meet before they can be used on roads;

(ii) the maximum permissible mass and dimensions of heavy vehicles used on roads;

(iii) securing and restraining loads on heavy vehicles used on roads;

(iv) preventing drivers of heavy vehicles exceeding speed limits;

(v) preventing drivers of heavy vehicles from driving while fatigued; and

(d) imposes duties and obligations directed at ensuring heavy vehicles and drivers of heavy vehicles comply with requirements mentioned in paragraph (c)(i) to (v) on persons whose activities may influence whether the vehicles or drivers comply with the requirements; and

(e) includes measures directed at the matters mentioned in section 3(c) and (d) by allowing improved access to roads in certain circumstances, including by—

(i) allowing heavy vehicles, that would otherwise be prevented from being used on roads, access to the roads through exemptions or authorisations granted in circumstances in which the matters mentioned in section 3(a) and (b) will not be compromised; and

(ii) providing for accreditation schemes allowing operators of heavy vehicles who adopt best practices directed at the matters mentioned in section 3 to be subject to alternative requirements more suited to the operators' business operations.

Part 1.2 Interpretation

5 Definitions

In this Law—

100km work, for Chapter 6, has the meaning given by section 258(1).

100+km work, for Chapter 6, has the meaning given by section 258(2).

accreditation certificate means—

(a) for a heavy vehicle accreditation granted under this Law—the accreditation certificate given for the accreditation under section 416; or

(b) for a heavy vehicle accreditation granted under another law of a participating jurisdiction—the certificate of accreditation (however called) issued for the accreditation under that law.

ADR, for Chapter 6, has the meaning given by section 191.

AFM accreditation means—

(a) accreditation under this Law of a kind mentioned in section 410(d); or

(b) accreditation of a similar kind under another law of a participating jurisdiction.

AFM fatigue management system, for Chapters 6 and 8, has the meaning given by section 409.

AFM hours, for Chapters 6 and 8, has the meaning given by section 227.

AFM standards and business rules, for Chapter 8, has the meaning given by section 409.

agricultural implement means a vehicle without its own automotive power, built to perform agricultural tasks.

Examples—

- auger
- conveyor
- field bin
- harvester front
- irrigating equipment or machinery

agricultural machine means a vehicle with its own automotive power, built to perform agricultural tasks.

Examples—

harvester, tractor

agricultural task means a task carried out in agriculture.

Examples of an agricultural task—

- cultivating land
- growing and harvesting crops
- rearing livestock

agricultural vehicle means an agricultural implement or agricultural machine.

appropriately qualified, for a function, includes having the qualifications, experience or standing appropriate to exercise the function.

Example of standing—

a person's classification level or position in the public service or a government agency of a participating jurisdiction

approved, by the responsible Ministers, for Chapter 8, has the meaning given by section 409.

approved auditor, for Chapter 8, has the meaning given by section 409.

approved electronic recording system has the meaning given by section 191.

approved form means a form approved by the Regulator under section 671.

approved guidelines means guidelines approved by the responsible Ministers under section 594.

approved intelligent transport system has the meaning given by section 354.

approved sleeper berth, for Chapter 6, has the meaning given by section 191.

articulated bus means a bus with 2 or more rigid sections connected to one another in a way that allows—

(a) passenger access between the sections; and

(b) rotary movement between the sections.

AS means an Australian standard made or published by Standards Australia.

associate, of a person, means—

(a) if the person is an individual—

(i) the individual's spouse or de facto partner; or

(ii) a relative of the individual, whether by blood, spousal relationship or adoption; or

(iii) an employee of the individual; or

(iv) an employee of a corporation of which the individual is an executive officer; or

(v) a partner of the individual; or

(vi) a corporation of which the individual is an executive officer; or

(vii) a corporation in which the individual holds a controlling interest; or

(viii) a person who is a trustee of a trust of which the individual is a trustee or beneficiary; or

(ix) a person who is a beneficiary of a trust of which the individual is a trustee or beneficiary; or

(x) a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the individual; or

(xi) a person who is an associate of someone who is an associate of the individual; or

(b) if the person is a corporation—

(i) an executive officer of the corporation; or

(ii) an associate of an executive officer of the corporation; or

(iii) an employee of the corporation; or

(iv) a person who holds a controlling interest in the corporation; or

(v) a related body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, of the corporation; or

(vi) a person who is an associate of someone who is an associate of the corporation.

Australian Accounting Standards means Accounting Standards issued by the Australian Accounting Standards Board.

Australian road law means—

(a) this Law; or

(b) another law of a State or Territory that regulates the use of vehicles on roads.

authorised officer means—

(a) a police officer declared by a law of a participating jurisdiction to be an authorised officer for the purposes of this Law; or

(b) a person who holds office under this Law as an authorised officer.

authorised use, for Part 13.4, has the meaning given by section 666.

authorised warrant official, for a participating jurisdiction, means an entity that is declared by a law of that jurisdiction to be an authorised warrant official for that jurisdiction for the purposes of this Law.

axle means 1 or more shafts positioned in a line across a vehicle, on which 1 or more wheels intended to support the vehicle turn.

axle group means a single axle group, tandem axle group, twinsteer axle group, tri-axle group or quad-axle group.

base, of the driver of a fatigue-regulated heavy vehicle, has the meaning given by section 259.

base, of the driver of a heavy vehicle other than a fatigue-regulated heavy vehicle, means—

(a) generally—

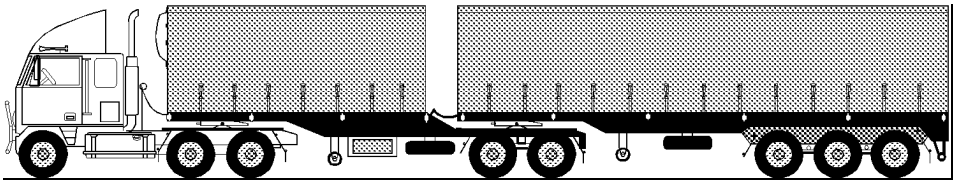
(i) if the driver's work diary states that the driver works or receives instructions from a place other than the vehicle's relevant garage address stated in the vehicle's registration certificate or the work diary—the stated place; or

(ii) if subparagraph (i) does not apply—the vehicle's relevant garage address stated in the vehicle's registration certificate or the driver's work diary; or

(iii) if neither subparagraph (i) nor (ii) applies—the place from which the driver normally works or receives instructions for the use of the vehicle; and

(b) for a driver who is, at different times, self-employed or employed, each base worked out under paragraph (a) in relation to the employment.

B-double means a combination consisting of a prime mover towing 2 semitrailers, with the first semitrailer being attached directly to the prime mover and the second semitrailer being mounted on the rear of the first semitrailer by a fifth wheel coupling on the first semitrailer.



Typical B-double

BFM accreditation means—

(a) accreditation under this Law of a kind mentioned in section 410(c); or

(b) accreditation of a similar kind under another law of a participating jurisdiction.

BFM fatigue management system, for Chapter 8, has the meaning given by section 409.

BFM hours, for Chapters 6 and 8, has the meaning given by section 223.

BFM standards and business rules, for Chapter 8, has the meaning given by section 409.

Board means the National Heavy Vehicle Regulator Board established under section 603.

body of fatigue knowledge means any accreditation scheme, scientific knowledge, expert opinion, guidelines, standards or other knowledge about preventing or managing exposure to risks to safety either on a road or in a workplace, arising from fatigue.

bus means a motor vehicle built or fitted to carry more than 9 adults (including the driver).

cancel, for Chapter 6 in relation to an unused daily sheet in a written work diary, has the meaning given by section 191.

cause, a thing, includes—

(a) contribute to causing the thing; and

(b) encourage the thing.

cause of fatigue, for Chapter 6, has the meaning given by section 191.

centre-line, of an axle, means—

(a) for an axle consisting of 1 shaft—a line parallel to the length of the axle and passing through its centre; and

(b) for an axle consisting of 2 shafts—a line in the vertical plane passing through—

(i) the centre of both shafts; and

(ii) the centres of the wheels on the shafts.

class 1 heavy vehicle has the meaning given by section 97(1).

class 2 heavy vehicle has the meaning given by section 117.

class 2 heavy vehicle authorisation means—

(a) a class 2 heavy vehicle authorisation (notice); or

(b) a class 2 heavy vehicle authorisation (permit).

class 2 heavy vehicle authorisation (notice) has the meaning given by section 119(2).

class 2 heavy vehicle authorisation (permit) has the meaning given by section 124(2).

class 3 heavy vehicle has the meaning given by section 97(2).

combination means a group of vehicles consisting of a motor vehicle towing 1 or more other vehicles.

commercial consignor, for Divisions 4 and 5 of Part 5.2, has the meaning given by section 180.

Commonwealth Gazette means the Commonwealth of Australia Gazette.

Commonwealth Gazette notice means notice published in the Commonwealth Gazette.

compensation order has the meaning given by section 553(1).

compliance purposes means—

(a) monitoring purposes; or

(b) investigation purposes.

complying container weight declaration has the meaning given by section 160.

component, of a heavy vehicle that is a combination, means—

(a) a component vehicle of the combination; or

(b) a component of any component vehicle of the combination.

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

conditionally registered, for a heavy vehicle, means the vehicle is registered under this Law subject to conditions.

consign and ***consignor***—

A person *consigns* goods, and is a *consignor* of goods, for transport by a heavy vehicle, if—

(a) the person has consented to being, and is, named or otherwise identified as a consignor of the goods in the transport documentation for the consignment; or

(b) there is no person as described in paragraph (a) and—

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

(ii) there is no person as described in subparagraph (i) and the person has possession of, or control over,

the goods immediately before the goods are transported by road; or

(iii) there is no person as described in subparagraph (i) or (ii) and the person loads a vehicle with the goods, for road transport, at a place—

(A) where goods in bulk are stored, temporarily held or otherwise held waiting collection; and

(B) that is unattended, other than by the vehicle's driver or someone else necessary for the normal use of the vehicle, during loading; or

(c) there is no person as described in paragraph (a) or (b) and the goods are imported into Australia and the person is the importer of the goods; or

(d) the person owns or controls the vehicle and arranges for the transport of the goods in the vehicle (whether or not the person is also a person described in paragraph (a), (b) or (c)).

consignee, of goods—

(a) means a person who—

(i) has consented to being, and is, named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the road transport of the goods; or

(ii) actually receives the goods after completion of their road transport; but

(b) does not include a person who merely unloads the goods.

container weight declaration—

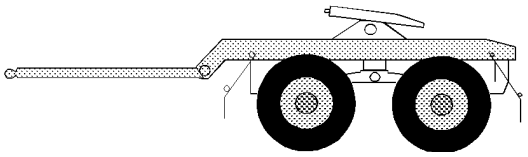
(a) means a written declaration, whether contained in 1 or more documents, stating or purporting to state the weight of a freight container and its contents; and

Examples—

an email, a placard fixed to the container

(b) includes a copy of a declaration mentioned in paragraph (a).

converter dolly means a trailer with 1 axle group or a single axle and a fifth wheel coupling designed to support a semitrailer for hauling purposes.



Typical converter dolly

convict, a person of an offence, has the meaning given by section 9(1).

convicted, of an offence, has the meaning given by section 9(2) and (3).

convicted person—

(a) for Division 5 of Part 10.3, has the meaning given by section 541(a); or

(b) for Division 6 of Part 10.3, has the meaning given by section 548(a).

corporation includes a body politic or corporate.

corresponding fatigue law, for Chapter 6, has the meaning given by section 191.

critical risk breach, for a maximum work requirement or minimum rest requirement, has the meaning given by section 192(4).

daily sheet, for a written work diary, for Chapter 6, has the meaning given by section 309(2)(b).

daytime means the period of a day between sunrise and sunset.

de facto partner, of a person, means a person (whether of the same gender or a different gender) who is in a de facto

relationship, within the meaning given by section 2F of the *Acts Interpretation Act 1901* of the Commonwealth, with the person.

defective heavy vehicle, for Division 6 of Part 9.3, has the meaning given by section 473.

defective vehicle label, for Division 6 of Part 9.3, has the meaning given by section 473.

defendant, for a proceeding for an offence, means the person charged with the offence (whether called the defendant or the accused).

deficiency, for Division 3 of Part 10.4, has the meaning given by section 569.

dimension requirements has the meaning given by section 83.

drive, a vehicle or combination, includes—

(a) be in control of the steering, movement or propulsion of the vehicle or combination; and

(b) for a trailer—drive a vehicle towing the trailer.

driver, of a vehicle or combination—

(a) means the person driving the vehicle or combination; and

(b) includes—

(i) a person accompanying the person driving the vehicle or combination on a journey or part of a journey, who has been, is or will be sharing the task of driving the vehicle or combination during the journey or part; and

(ii) a person who is driving the vehicle or combination as a driver under instruction or under an appropriate learner licence or learner permit; and

(iii) where the driver is a driver under instruction, the holder of a driver licence occupying the seat in the vehicle or combination next to the driver.

driver licence means—

(a) a driver licence issued under a law of a State or Territory that regulates the use of vehicles on roads; or

(b) a licence or permit to drive a motor vehicle issued under a law of another country if a law mentioned in paragraph (a) exempts the holder of the licence or permit from the requirement to hold a driver licence under that law to drive a motor vehicle.

electronic recording system has the meaning given by section 191.

electronic recording system approval means an approval of an electronic recording system under Division 7 of Part 6.4.

electronic work diary has the meaning given by section 191.

electronic work diary label has the meaning given by section 191.

embargoed thing means a thing the subject of an embargo notice.

embargo notice has the meaning given by section 503(2).

employed driver, of a heavy vehicle, means a person who is employed by someone else to drive the vehicle under a contract of employment, apprenticeship or training.

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

employer means a person who employs someone else under a contract of employment, apprenticeship or training.

engage, for Chapter 6, has the meaning given by section 191.

entity includes a person and an unincorporated body.

entry, in a work record, for Chapter 6, has the meaning given by section 191.

equipment, in relation to a heavy vehicle, includes tools, devices and accessories in the vehicle.

escort vehicle means a pilot vehicle that is driven by a police officer or another person authorised to direct traffic under an Australian road law.

examine includes analyse, test, account, measure, weigh, grade, gauge or identify.

executive officer, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

exemption hours, for Chapter 6, has the meaning given by section 229.

exercise, for a function, includes perform.

extract, of a document, device or other thing, means a copy of any information contained in the document, device or other thing.

fatigue has the meaning given by section 193.

fatigue-regulated bus means a motor vehicle built or fitted to carry more than 12 adults (including the driver).

fatigue-regulated heavy vehicle has the meaning given by section 7.

fifth wheel coupling means a device (other than the rotating element and kingpin on a semitrailer, which are parts of a semitrailer) used on a prime mover or trailer to permit quick coupling and uncoupling and to provide for articulation.

film, a thing, includes—

(a) photograph or videotape the thing; and

(b) record an image of the thing in another way.

fit, to drive a heavy vehicle, or to start or stop its engine, for a person, means the person—

(a) is apparently physically and mentally fit to drive the vehicle, or start or stop its engine; and

(b) is not apparently affected by either or both of the following—

(i) alcohol;

(ii) a drug that affects a person's ability to drive a vehicle; and

(c) is not found to have an alcohol concentration in the person's blood or breath exceeding the amount permitted, under an Australian road law of this jurisdiction, for the driver of a heavy vehicle; and

(d) is not found to be under the influence of a drug or to have present in the person's blood or saliva a drug that the driver of a heavy vehicle is not permitted to have present in the driver's blood or saliva under an Australian road law of this jurisdiction.

freight container means—

(a) a re-usable container of the kind mentioned in AS 3711.1 that is designed for repeated use for transporting goods; or

Note—

AS 3711.1 may be purchased from Standards Australia at <www.standards.org.au>.

(b) a re-usable container of the same or a similar design and construction to a container mentioned in paragraph (a) though of different dimensions.

Fund means the National Heavy Vehicle Regulator Fund established under section 628.

garage address, of a heavy vehicle, means—

(a) for a heavy vehicle normally kept at a depot when not in use—the principal depot of the vehicle; or

(b) for a heavy vehicle not normally kept at a depot when not in use—the registered operator's home address.

GCM (gross combination mass), of a motor vehicle, means the total maximum loaded mass for the motor vehicle and any vehicles it may lawfully tow at any given time—

(a) if the Regulator has, under section 43, specified the total maximum loaded mass for the motor vehicle and any vehicles it may lawfully tow at any given time—specified by the Regulator under that section; or

(b) otherwise—stated by the motor vehicle's manufacturer on the vehicle's identification plate or another place on the vehicle.

goods—

(a) includes—

(i) animals (whether alive or dead); and

(ii) a container (whether empty or not); but

(b) does not include—

(i) people; or

(ii) fuel, water, lubricants and readily removable equipment required for the normal use of the vehicle or combination in which they are carried; or

(iii) personal items used by the driver of the vehicle or combination, or someone else necessary for the normal use of the vehicle, in which they are carried.

GVM (gross vehicle mass), of a vehicle, means the maximum loaded mass of the vehicle—

(a) if the Regulator has specified the vehicle's maximum loaded mass under section 44—specified by the Regulator under that section; or

(b) otherwise—stated on the vehicle's identification plate.

heavy combination means a combination that is a heavy vehicle.

heavy motor vehicle means a motor vehicle that is a heavy vehicle.

heavy vehicle has the meaning given by section 6.

heavy vehicle accreditation means—

(a) AFM accreditation; or

(b) BFM accreditation; or

(c) maintenance management accreditation; or

(d) mass management accreditation.

heavy vehicle standards has the meaning given by section 46.

higher mass limits, for Chapter 7, has the meaning given by section 354.

HML authority, for Chapter 7, has the meaning given by section 354.

home address means—

(a) for an individual—the individual's residential address in Australia; or

(b) for a body corporate with a registered office in Australia—the address of the registered office; or

(c) for another person—the address of the person's principal or only place of business in Australia.

identification details, for Division 6 of Part 9.3, has the meaning given by section 473.

identification plate means a plate authorised to be placed on a vehicle, or taken to have been placed on a vehicle, under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

impaired by fatigue has the meaning given by section 195.

improvement notice has the meaning given by section 516(2).

in, a vehicle, includes on the vehicle.

information notice, for a decision, means a notice stating the following—

(a) the decision;

(b) the reasons for the decision;

(c) the review and appeal information for the decision.

infringement notice means an infringement notice, expiation notice, penalty notice or similar notice under the Infringement Notice Offences Law.

Infringement Notice Offences Law, for a participating jurisdiction, means the law that is declared by a law of that jurisdiction to be the Infringement Notice Offences Law for the purposes of this Law.

inspect, a thing, includes open the thing and examine its contents.

insurer, for Part 2.5, has the meaning given by section 41.

intelligent access agreement, for Chapter 7, has the meaning given by section 354.

intelligent access audit, for Chapter 7, has the meaning given by section 354.

intelligent access auditor means a person engaged by TCA for auditing activities conducted by intelligent access service providers.

intelligent access conditions has the meaning given by section 353.

intelligent access information, for Chapter 7, has the meaning given by section 354.

intelligent access reporting entity, for Chapter 6, has the meaning given by section 191.

intelligent access service provider has the meaning given by section 354.

intelligent access vehicle, for Chapter 7, has the meaning given by section 354.

intelligent transport system means a system involving the use of electronic or other technology, whether located in a heavy

vehicle or on or near a road or elsewhere, that is able to monitor, generate, record, store, display, analyse, transmit or report information about—

(a) any or all of the following—

(i) a heavy vehicle, its equipment or load;

(ii) the driver of a heavy vehicle;

(iii) an operator of a heavy vehicle;

(iv) anyone else involved in road transport using a heavy vehicle; and

(b) without limiting paragraph (a), the compliance or noncompliance with this Law of the use of a heavy vehicle on a road.

investigation purposes means investigating a contravention or suspected contravention of this Law.

journey documentation—

(a) means a document, other than transport documentation, in any form—

(i) directly or indirectly associated with—

(A) a transaction for the actual or proposed road transport of goods using a heavy vehicle, or for a previous transport of the goods by any transport method; or

(B) goods, to the extent the document is relevant to a transaction for their actual or proposed road transport; and

(ii) whether relating to a particular journey or to journeys generally; and

(b) includes, for example, any or all of the following—

(i) a document kept, used or obtained by a responsible person for a heavy vehicle in connection with the transport of goods;

(ii) a workshop, maintenance or repair record relating to a heavy vehicle used, or claimed to be used, for transporting goods;

(iii) a subcontractor's payment advice relating to goods or their transport;

(iv) records kept, used or obtained by the driver of a heavy vehicle used, or claimed to be used, for transporting goods;

Examples—

- driver's run sheet
- logbook entry
- fuel docket or receipt
- food receipt
- tollway receipt
- pay record
- mobile or other telephone record

(v) information reported through the use of an intelligent transport system;

(vi) a driver manual or instruction sheet;

(vii) an advice resulting from check weighing of a heavy vehicle's mass or load performed before, during or after a journey.

law enforcement agency means an agency that has functions or activities directed at the prevention, detection, investigation, prosecution or punishment of offences and other contraventions of a law for which penalties or sanctions may be imposed.

law enforcement purposes, for Chapter 7, has the meaning given by section 354.

load, of a heavy vehicle or in a heavy vehicle, means—

(a) all the goods, passengers, drivers and other persons in the vehicle; and

(b) all fuel, water, lubricants and readily removable equipment carried in the vehicle and required for its normal use; and

(c) personal items used by the vehicle's driver or someone else necessary for the normal use of the vehicle; and

(d) anything that is normally removed from the vehicle when not in use.

load, when used as a verb, and ***loader***—

A person *loads* goods in a heavy vehicle, and is a *loader* of goods in a heavy vehicle, if the person is a person who—

(a) loads the vehicle with the goods for road transport; or

(b) loads a bulk container, freight container, or tank that is part of the vehicle, with the goods for road transport; or

(c) loads the vehicle with a freight container, whether or not it contains goods, for road transport.

loaded mass, of a vehicle, means the vehicle's mass together with the mass of the vehicle's load that is transmitted to the ground.

loading manager—

A person is a *loading manager* of goods in a heavy vehicle if—

(a) other than for Chapter 4—

(i) the goods are loaded onto or unloaded from the vehicle at regular loading or unloading premises for heavy vehicles; and

(ii) the person—

(A) manages, or is responsible for the operation of, the premises; or

(B) has been assigned by a person mentioned in subparagraph (i) as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of the goods; or

(b) for Chapter 4—

(i) the goods are loaded onto the vehicle at regular loading or unloading premises for heavy vehicles; and

(ii) the person—

(A) manages, or is responsible for the operation of, the premises; or

(B) has been assigned by a person mentioned in subparagraph (i) as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader of the goods.

loading requirements has the meaning given by section 91.

local government authority, for a participating jurisdiction, means an entity that is declared by a law of that jurisdiction to be a local government authority for that jurisdiction for the purposes of this Law.

maintenance management accreditation means—

(a) accreditation under this Law of a kind mentioned in section 410(a); or

(b) accreditation of a similar kind under another law of a participating jurisdiction.

maintenance management standards and business rules, for Chapter 8, has the meaning given by section 409.

maintenance management system, for Chapter 8, has the meaning given by section 409.

major defect notice, for Division 6 of Part 9.3, has the meaning given by section 474(2)(a).

major rest break, for Chapter 6, has the meaning given by section 191.

malfunction—

(a) for Chapter 6, has the meaning given by section 191; and

(b) for Chapter 7, has the meaning given by section 354.

mass, dimension or loading requirement means a mass requirement, dimension requirement or loading requirement.

mass management accreditation means—

(a) accreditation under this Law of a kind mentioned in section 410(b); or

(b) accreditation of a similar kind under another law of a participating jurisdiction.

mass management standards and business rules, for Chapter 8, has the meaning given by section 409.

mass management system, for Chapter 8, has the meaning given by section 409.

mass or dimension authority means—

(a) a mass or dimension exemption; or

(b) a class 2 heavy vehicle authorisation.

mass or dimension exemption means—

(a) a mass or dimension exemption (notice); or

(b) a mass or dimension exemption (permit).

mass or dimension exemption (notice) has the meaning given by section 98(2).

mass or dimension exemption (permit) has the meaning given by section 103(3).

mass requirements has the meaning given by section 77.

maximum work requirement means a requirement of Chapter 6 relating to a maximum work time for the driver of a fatigue-regulated heavy vehicle.

maximum work time means the maximum time the driver of a fatigue-regulated heavy vehicle may drive a fatigue-regulated heavy vehicle, or otherwise work, without taking a rest.

minimum rest requirement means a requirement of Chapter 6 relating to the minimum rest time for the driver of a fatigue-regulated heavy vehicle.

minimum rest time means the minimum time the driver of a fatigue-regulated heavy vehicle must rest in order to break up the period of time the driver drives a fatigue-regulated heavy vehicle or otherwise works.

minor defect notice, for Division 6 of Part 9.3, has the meaning given by section 474(2)(b).

minor risk breach—

(a) for a mass requirement—has the meaning given by section 80; or

(b) for a dimension requirement—has the meaning given by section 86; or

(c) for a loading requirement—has the meaning given by section 93; or

(d) for a maximum work requirement or minimum rest requirement—has the meaning given by section 192(1).

mistake of fact defence see section 14.

monitoring purposes means finding out whether this Law is being complied with.

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

national regulations means the regulations made under section 669.

National Transport Commission means the National Transport Commission established by the *National Transport Commission Act 2003* of the Commonwealth.

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

night rest break means—

(a) 7 continuous hours stationary rest time between 10p.m. on a day and 8a.m. on the next day; or

Note—

Under sections 218 and 273, the time must be based on the time zone of the driver's base for drivers on a journey in a different time zone to the driver's base.

(b) 24 continuous hours stationary rest time.

night work time, for Chapter 6, has the meaning given by section 191.

noncompliance report, for Chapter 7, has the meaning given by section 354.

non-participating jurisdiction, for Chapter 6, has the meaning given by section 191.

notice means written notice.

occupier, of a place, includes the following—

(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

(c) if no-one apparently occupies the place—any person who is an owner of the place.

offence warning, for a direction or requirement under this Law, means a warning that it is an offence for a person to whom the direction is given, or of whom the requirement is made, not to comply with the direction or requirement unless the person has a reasonable excuse.

official means any of the following persons exercising a function under this Law—

(a) the Regulator;

(b) a road authority;

(c) a road manager (for a road) that is a public authority;

(d) an authorised officer.

operate and ***operator***—

A person *operates* a vehicle or combination, and is an *operator* of the vehicle or combination, if the person is responsible for controlling or directing the use of—

(a) for a vehicle (including a vehicle in a combination)—the vehicle; or

(b) for a combination—the towing vehicle in the combination.

oversize vehicle means a heavy vehicle that does not comply with a dimension requirement applying to it.

owner—

(a) of a vehicle means—

(i) each person who is an owner, joint owner or part owner of the vehicle; or

(ii) a person who has the use or control of the vehicle under a credit agreement, hiring agreement, hire-purchase agreement or leasing arrangement; or

(b) of a combination means—

(i) each person who is an owner, joint owner or part owner of the towing vehicle in the combination; or

(ii) a person who has the use or control of the towing vehicle in the combination under a credit agreement, hiring agreement, hire-purchase agreement or leasing arrangement; or

(c) of a sample means an owner of the sample or the thing from which it was taken.

pack and ***packer***—

A person *packs* goods, and is a *packer* of goods, if the person—

(a) puts the goods in packaging, even if that packaging is already on a vehicle; or

Example for paragraph (a)—

A person who uses a hose to fill the tank of a tank vehicle with petrol packs the petrol for transport.

(b) assembles the goods as packaged goods in an outer packaging, even if that packaging is already on a vehicle; or

(c) supervises an activity mentioned in paragraph (a) or (b); or

(d) manages or controls an activity mentioned in paragraph (a), (b) or (c).

packaging, in relation to goods, means anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport, or to be transported.

Note—

It may be that a container constitutes the whole of the packaging of goods, as in the case of a drum in which goods are directly placed.

participating jurisdiction—

(a) for this Law other than Chapter 6—means a State or Territory in which—

(i) this Law applies as a law of the State or Territory; or

(ii) a law that substantially corresponds to the provisions of this Law has been enacted; or

(iii) a law prescribed by the national regulations for the purposes of this subparagraph has been enacted; or

(b) for Chapter 6—has the meaning given by section 191.

participation day, for a participating jurisdiction, means the day the jurisdiction became a participating jurisdiction.

party in the chain of responsibility—

(a) for a heavy vehicle, for Division 5 of Part 5.2, has the meaning given by section 184; or

(b) for a fatigue-regulated heavy vehicle, for Chapter 6, has the meaning given by section 197.

passenger, of a vehicle, means any person carried in the vehicle other than the vehicle's driver or any other person necessary for the normal use of the vehicle.

personal information—

(a) generally, means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be found out, from the information or opinion; and

(b) for Chapter 7, has the meaning given by section 354.

pilot vehicle means a motor vehicle that accompanies an oversize vehicle to warn other road users of the oversize vehicle's presence.

place of business, for Part 9.2, has the meaning given by section 443.

pole-type trailer means a trailer that—

(a) is attached to a towing vehicle by a pole or an attachment fitted to a pole; and

(b) is ordinarily used for transporting loads, such as logs, pipes, structural members, or other long objects, that can generally support themselves like beams between supports.

Pole-type trailer

police commissioner means the head of the police force or police service (however called) of a participating jurisdiction.

premises—

(a) means a building or other structure, a vessel, or another place (whether built on or not)—

(i) from which a business is carried out; or

(ii) at or from which goods are loaded onto or unloaded from vehicles; and

(b) includes a part of a building, structure, vessel or place mentioned in paragraph (a).

prescribed fee means a fee prescribed by the national regulations under section 675(1).

previous corresponding law—

1 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 provisions of this Law.

2 A *previous corresponding law* for a provision of this Law is a provision of a previous corresponding law within the meaning of paragraph 1 that corresponds, or substantially corresponds, to the provision of this Law.

3 For paragraph 1, it is irrelevant whether the law of the participating jurisdiction—

(a) is in 1 instrument or 2 or more instruments; or

(b) is part of an instrument; or

(c) is part of an instrument and the whole or part of 1 or more other instruments.

prime contractor, of the driver of a heavy vehicle, means a person who engages the driver to drive the vehicle under a contract for services.

Example—

a logistics business that engages a subcontractor to transport goods

prime mover means a motor vehicle designed to tow a semitrailer.

prohibition order has the meaning given by section 549(1).

protected information, for Part 13.4, has the meaning given by section 666.

public authority means—

(a) a State or Territory or the Commonwealth, in any capacity; or

(b) a body established under a law, or the holder of an office established under a law, for a public purpose, including a local government authority.

public place means a place or part of a place—

(a) that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

(b) the occupier of which allows members of the public to enter, whether or not on payment of money.

public safety means the safety of persons or property, including the safety of—

(a) the drivers of, and passengers and other persons in, vehicles and combinations; and

(b) persons or property in or in the vicinity of, or likely to be in or in the vicinity of, road infrastructure and public places; and

(c) vehicles and combinations and any loads in them.

public safety ground, for a reviewable decision, has the meaning given by section 581.

quad-axle group means a group of 4 axles, in which the horizontal distance between the centre-lines of the outermost axles is more than 3.2m but not more than 4.9m.

qualified, to drive a heavy vehicle, or to start or stop its engine, for a person, means the person—

(a) holds a driver licence of the appropriate class to drive the vehicle that is not suspended; and

(b) is not prevented under a law, including, for example, by the conditions of the driver licence, from driving the vehicle at the relevant time.

Queensland Minister means the responsible Minister for Queensland.

reasonable steps defence means the defence mentioned in section 560.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably satisfied means satisfied on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

record keeper, for Chapter 6, has the meaning given by section 287.

record location, of the driver of a fatigue-regulated heavy vehicle, for Chapter 6, has the meaning given by section 260.

registered industry code of practice means an industry code of practice registered under section 646.

registered operator means—

(a) for a heavy vehicle other than a heavy combination—the person recorded on the vehicle register as the person responsible for the vehicle; or

(b) for a heavy combination—the person recorded on the vehicle register as the person responsible for the towing vehicle in the combination.

registration, of a heavy vehicle, means registration of the vehicle under this Law.

registration certificate, for a heavy vehicle, means the certificate of registration issued under the national regulations for the vehicle's registration.

registration exemption means an exemption under Division 4 of Part 2.2 from the requirement for a heavy vehicle to be registered.

registration item means a document, number plate, label or other thing relating to—

(a) the registration or purported registration of a heavy vehicle; or

(b) an unregistered heavy vehicle permit for a heavy vehicle.

registration number means—

(a) for a heavy vehicle other than a combination—the registration number shown on the number plates of the vehicle; or

(b) for a heavy vehicle that is a combination—the registration number shown on the number plates of the towing vehicle in the combination.

regular loading or unloading premises—

1 *Regular loading or unloading premises*, for heavy vehicles, means premises at or from which an average of at least 5 heavy vehicles are loaded or unloaded on each day the premises are operated for loading or unloading heavy vehicles.

2 For paragraph 1, an average of at least 5 heavy vehicles are loaded or unloaded at or from premises on each day the premises are operated for loading or unloading heavy vehicles if—

(a) for premises operated for loading or unloading heavy vehicles for 12 months or more—during the previous 12 months, an average of at least 5 heavy vehicles were loaded or unloaded at or from the premises on each day the premises were operated for loading or unloading heavy vehicles; or

(b) for premises operated for loading or unloading heavy vehicles for less than 12 months—during the period the premises have been in operation for loading or unloading heavy vehicles, an average of at least 5 heavy vehicles were loaded or unloaded at or from the premises on each day the premises were operated for loading or unloading heavy vehicles.

Regulator means the National Heavy Vehicle Regulator established under section 597.

Regulator's website means the website of the Regulator on the internet.

relevant appeal body, for Chapter 11, has the meaning given by section 581.

relevant contravention, for Chapter 7, has the meaning given by section 354.

relevant garage address, of a heavy vehicle, means—

(a) the heavy vehicle's garage address; or

(b) if the heavy vehicle is a combination—the garage address of the towing vehicle in the combination.

relevant jurisdiction, for Chapter 11, has the meaning given by section 581.

relevant management system, for Chapter 8, has the meaning given by section 409.

relevant monitoring matters, for Chapter 7, has the meaning given by section 354.

relevant place, for Part 9.2, has the meaning given by section 443.

relevant police commissioner, in relation to a police officer, means the police commissioner for the police force or police service (however called) of which the police officer is a member.

relevant road manager, for a mass or dimension authority, means a road manager for a road in the area, or on the route, to which the authority applies.

relevant standards and business rules, for Chapter 8, has the meaning given by section 409.

relevant tribunal or court, 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.

responsible entity, for a freight container, means—

(a) the person who, in Australia, consigned the container for road transport using a heavy vehicle; or

(b) if there is no person as described in paragraph (a)—the person who, in Australia, for a consignor, arranged for the container's road transport using a heavy vehicle; or

(c) if there is no person as described in paragraph (a) or (b)—the person who, in Australia, physically offered the container for road transport using a heavy vehicle.

responsible Minister, for a participating jurisdiction, means the Minister of that jurisdiction nominated by it as its responsible Minister for the purposes of this Law.

responsible Ministers means a group of Ministers consisting of—

(a) the responsible Minister for each participating jurisdiction; and

(b) a Commonwealth Minister nominated by the Commonwealth as the responsible Minister for the Commonwealth for the purposes of this Law.

responsible person, for a heavy vehicle, means a person having, at a relevant time, a role or responsibility associated with road transport using the vehicle, and includes any of the following—

(a) an owner of the vehicle or, if it is a combination, an owner of a heavy vehicle forming part of the combination;

(b) the vehicle's driver;

(c) an operator or registered operator of the vehicle or, if it is a combination, an operator or registered operator of a heavy vehicle forming part of the combination;

(d) a person in charge or apparently in charge of—

(i) the vehicle; or

(ii) the vehicle's garage address or, if it is a combination, the garage address of a heavy vehicle forming part of the combination; or

(iii) a base of the vehicle's driver;

(e) a person appointed under a heavy vehicle accreditation to have monitoring or other responsibilities under the accreditation, including, for example, responsibilities

for certifying, monitoring or approving the use of heavy vehicles under the accreditation;

(f) a person who provides to an owner or registered operator of the vehicle or, if it is a combination, an owner or registered operator of a heavy vehicle forming part of the combination, an intelligent transport system for the vehicle;

(g) a person in charge of a place entered by an authorised officer under this Law for exercising a power under this Law in relation to the vehicle;

(h) a consignor of goods for road transport using the vehicle;

(i) a packer of goods in a freight container or other container or in a package or on a pallet for road transport using the vehicle;

(j) a person who loads goods or a container on the vehicle for road transport;

(k) a person who unloads goods or a container containing goods consigned for road transport using the vehicle;

(l) a person to whom goods are consigned for road transport using the vehicle;

(m) a person who receives goods packed outside Australia in a freight container or other container or on a pallet for road transport in Australia using the vehicle;

(n) an owner or operator of a weighbridge or weighing facility used to weigh the vehicle, or an occupier of the place where the weighbridge or weighing facility is located;

(o) a responsible entity for a freight container on the vehicle;

(p) a loading manager of goods for road transport using the vehicle or another person who controls or directly influences the loading of the vehicle;

(q) a scheduler for the vehicle;

(r) an employer, employee, agent or subcontractor of a person mentioned in any of paragraphs (a) to (q).

rest, in relation to a fatigue-regulated heavy vehicle, has the meaning given by section 191.

rest time, for Chapter 6, has the meaning given by section 191.

reviewable decision has the meaning given by section 581.

review and appeal information—

(a) for a decision made by the Regulator or an authorised officer who is not a police officer, means the following information—

(i) that, under section 582, a dissatisfied person for the decision may ask for the decision to be reviewed by the Regulator;

(ii) that, under section 583, the person may apply for the decision to be stayed by a relevant tribunal or court unless the decision was made by the Regulator on the basis of a public safety ground;

(iii) that, in relation to the Regulator's decision on the review, the person may—

(A) under section 588, appeal against the decision to a relevant tribunal or court; and

(B) under section 589, apply for the decision to be stayed by a relevant tribunal or court unless the reviewable decision to which the review decision relates was made by the Regulator on the basis of a public safety ground; and

(b) for a decision made by a road manager (for a road) that is a public authority, means the following information—

(i) that, under section 582, a dissatisfied person for the decision may apply to the Regulator to have the decision reviewed;

(ii) that, under section 584, the Regulator must refer the application to the road manager for review;

(iii) that the decision of the road manager on the review is not subject to further review or appeal under this Law; and

(c) for a decision made by an authorised officer who is a police officer, or a road manager (for a road) that is not a public authority, means that the decision is not subject to review or appeal under this Law.

review application, for Chapter 11, has the meaning given by section 581.

review decision, for Chapter 11, has the meaning given by section 581.

reviewer, for Chapter 11, has the meaning given by section 581.

rigid, other than in the definition *articulated bus*, means not articulated.

risk category—

(a) for a contravention of a mass, dimension or loading requirement, means 1 of the following categories—

(i) minor risk breach;

(ii) substantial risk breach;

(iii) severe risk breach; or

(b) for a contravention of a maximum work requirement or minimum rest requirement, means 1 of the following categories—

(i) minor risk breach;

(ii) substantial risk breach;

(iii) severe risk breach;

(iv) critical risk breach.

road has the meaning given by section 8.

Note—

See also section 13.

road authority, 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.

road condition has the meaning given by section 134.

road infrastructure includes—

(a) a road, including its surface or pavement; and

(b) anything under or supporting a road or its surface or pavement; and

(c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a road system or supporting a road; and

(d) any bridge or other work or structure located above, in or on a road; and

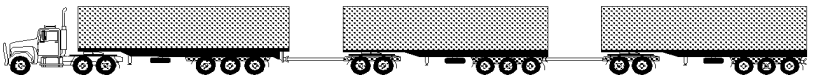
(e) any traffic control devices, railway equipment, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything mentioned in paragraphs (a) to (d).

road manager, 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.

road-related area has the meaning given by section 8.

Road Rules, 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.

road train means a combination, other than a B-double, consisting of a motor vehicle towing at least 2 trailers, excluding any converter dolly supporting a semitrailer.



Typical triple road train

road transport means transport by road.

route assessment, for Part 4.7, has the meaning given by section 134.

safety risk means a risk—

(a) to public safety; or

(b) of harm to the environment.

schedule, for the driver of a heavy vehicle, means—

(a) the schedule for the transport of any goods or passengers by the vehicle; or

(b) the schedule of the driver's work times and rest times.

scheduler, for a heavy vehicle, means a person who—

(a) schedules the transport of any goods or passengers by the vehicle; or

(b) schedules the work times and rest times of the vehicle's driver.

self-employed driver, of a heavy vehicle, means a driver of the vehicle who is not an employed driver of the vehicle.

semitrailer means a trailer that has—

(a) 1 axle group or a single axle towards the rear; and

(b) a means of attachment to a prime mover that results in some of the mass of the trailer's load being imposed on the prime mover.

severe risk breach—

(a) for a mass requirement—has the meaning given by section 82; or

(b) for a dimension requirement—has the meaning given by section 88; or

(c) for a loading requirement—has the meaning given by section 95; or

(d) for a maximum work requirement or minimum rest requirement—has the meaning given by section 192(3).

severe risk breach lower limit—

(a) for Division 2 of Part 4.2, has the meaning given by section 79; or

(b) for Division 2 of Part 4.3, has the meaning given by section 85.

sign of fatigue, for Chapter 6, has the meaning given by section 191.

single axle means an axle not forming part of an axle group.

single axle group means a group of at least 2 axles, in which the horizontal distance between the centre-lines of the outermost axles is less than 1m.

solo driver, for Chapter 6, has the meaning given by section 191.

speed limit, in relation to the driver of a heavy vehicle, means a speed limit applying to the driver under the Road Rules or another law.

standard hours, for Chapter 6, has the meaning given by section 219.

Standards Australia means Standards Australia Limited ACN 087 326 690, and includes a reference to the Standards Association of Australia as constituted before 1 July 1999.

stationary rest time has the meaning given by section 191.

substantial risk breach—

(a) for a mass requirement—has the meaning given by section 81; or

(b) for a dimension requirement—has the meaning given by section 87; or

(c) for a loading requirement—has the meaning given by section 94; or

(d) for a maximum work requirement or minimum rest requirement—has the meaning given by section 192(2).

substantial risk breach lower limit—

(a) for Division 2 of Part 4.2, has the meaning given by section 79; or

(b) for Division 2 of Part 4.3, has the meaning given by section 85.

suitable rest place, for fatigue-regulated heavy vehicles, means—

(a) a rest area designated for use, and able to be used, by fatigue-regulated heavy vehicles; or

(b) a place at which a fatigue-regulated heavy vehicle may be safely and lawfully parked.

supervisory intervention order has the meaning given by section 542(1).

supplementary record, for Chapter 6, has the meaning given by section 191.

tamper—

(a) with an approved electronic recording system, for Chapter 6, has the meaning given by section 305; or

(b) with an approved intelligent transport system, for Chapter 7, has the meaning given by section 354.

tandem axle group means a group of at least 2 axles, in which the horizontal distance between the centre-lines of the outermost axles is at least 1m but not more than 2m.

TCA means Transport Certification Australia Limited ACN 113 379 936.

Territory means the Australian Capital Territory or the Northern Territory.

the State means the Crown in right of this jurisdiction, and includes—

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

third party insurance legislation means legislation about—

(a) compensation for third parties who are injured or killed by the use of motor vehicles or trailers; or

(b) payment of contributions towards compensation of that kind.

this Law means—

(a) this Law as it applies as a law of a participating jurisdiction; or

(b) a law of a participating jurisdiction that—

(i) substantially corresponds to the provisions of this Law; or

(ii) is prescribed by the national regulations for the purposes of paragraph (a)(iii) of the definition *participating jurisdiction*.

Note—

See also section 11.

tow truck means a motor vehicle—

(a) equipped with a lifting or loading device capable of being used for the towing of a vehicle; and

(b) used mainly for carrying on a business of towing abandoned, disabled or damaged vehicles.

tractor means a motor vehicle used for towing purposes, other than—

(a) a motor vehicle designed to carry goods or passengers; or

(b) a tow truck.

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

trailer means a vehicle that is built to be towed, or is towed, by a motor vehicle, but does not include a motor vehicle being towed.

transport documentation means each of the following—

(a) each contractual document directly or indirectly associated with—

(i) a transaction for the actual or proposed road transport of goods or any previous transport of the goods by any transport method; or

(ii) goods, to the extent the document is relevant to the transaction for their actual or proposed road transport;

(b) each document—

(i) contemplated in a contractual document mentioned in paragraph (a); or

(ii) required by law, or customarily given, in connection with a contractual document or transaction mentioned in paragraph (a).

Examples—

- bill of lading
- consignment note
- container weight declaration
- contract of carriage
- delivery order
- export receival advice

- invoice
- load manifest
- sea carriage document
- vendor declaration

tri-axle group means a group of at least 3 axles, in which the horizontal distance between the centre-lines of the outermost axles is more than 2m but not more than 3.2m.

truck means a rigid motor vehicle built mainly as a load carrying vehicle.

twinsteer axle group means a group of 2 axles—

(a) with single tyres; and

(b) fitted to a motor vehicle; and

(c) connected to the same steering mechanism; and

(d) the horizontal distance between the centre-lines of which is at least 1m but not more than 2m.

two-up driving arrangement, for Chapter 6, has the meaning given by section 191.

unattended, for a heavy vehicle, for Division 3 of Part 9.3, has the meaning given by section 463.

under, for a law or a provision of a law, includes—

(a) by; and

(b) for the purposes of; and

(c) in accordance with; and

(d) within the meaning of.

unincorporated local government authority means a local government authority that is not a body corporate.

unload, for Chapter 6, has the meaning given by section 191.

unloader, for Chapter 6, has the meaning given by section 191.

unregistered heavy vehicle means a heavy vehicle that is not registered.

unregistered heavy vehicle permit means a permit issued under the national regulations authorising the use of an unregistered heavy vehicle on a road.

use, a heavy vehicle on a road, includes standing the vehicle on the road.

vehicle condition has the meaning given by section 134.

vehicle defect notice, for Division 6 of Part 9.3, has the meaning given by section 473.

vehicle register means the vehicle register kept under Part 2.3.

vehicle registration duty means duty (however called) payable under a law of a participating jurisdiction on an application for the registration of, or the transfer of the registration of, a vehicle.

vehicle standards exemption means—

(a) a vehicle standards exemption (notice); or

(b) a vehicle standards exemption (permit).

vehicle standards exemption (notice) has the meaning given by section 48(2).

vehicle standards exemption (permit) has the meaning given by section 54(2).

VIN (vehicle identification number), for a heavy vehicle, means—

(a) for a heavy vehicle built before 1 January 1989 with an identification plate, the number quoted on the vehicle's identification plate that—

(i) uniquely identifies the vehicle and sets it apart from similar vehicles; and

(ii) corresponds to the identification number of the vehicle that is permanently recorded elsewhere on the vehicle; or

(b) otherwise, the unique vehicle identification number assigned to the heavy vehicle under the *Motor Vehicles Standards Act 1989* of the Commonwealth.

work, in relation to a fatigue-regulated heavy vehicle, has the meaning given by section 191.

work and rest change, for Chapter 6, has the meaning given by section 191.

work and rest hours exemption means—

(a) a work and rest hours exemption (notice); or

(b) a work and rest hours exemption (permit).

work and rest hours exemption (notice) has the meaning given by section 236(2).

work and rest hours exemption (permit) has the meaning given by section 242(2).

work and rest hours option, for Chapter 6, has the meaning given by section 213.

work diary, for Chapter 6, has the meaning given by section 191.

work diary exemption means—

(a) a work diary exemption (notice); or

(b) a work diary exemption (permit).

work diary exemption (notice) has the meaning given by section 327(2).

work diary exemption (permit) has the meaning given by section 333(2).

work record, for Chapter 6, has the meaning given by section 191.

work time, for Chapter 6, has the meaning given by section 191.

wrecked, in relation to a heavy vehicle, for Part 2.5, has the meaning given by section 41.

written-off, in relation to a heavy vehicle, for Part 2.5, has the meaning given by section 41.

written work diary, for Chapter 6, has the meaning given by section 191.

6 Meaning of *heavy vehicle*

(1) For this Law, a vehicle is a ***heavy vehicle*** if it has a GVM of more than 4.5t.

(2) Also, for this Law other than in relation to registration under this Law, a combination that includes a vehicle with a GVM of more than 4.5t is a ***heavy vehicle***.

(3) However, rolling stock is not a ***heavy vehicle*** for this Law.

(4) In this section—

rolling stock—

1 *Rolling stock* is a vehicle designed to operate or move on a railway track and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, tram, light inspection vehicle, self-propelled infrastructure maintenance vehicle, trolley, wagon or monorail vehicle.

2 A vehicle designed to operate both on and off a railway track is *rolling stock* when the vehicle is being—

(a) operated or moved on a railway track; or

(b) maintained, repaired or modified in relation to the operation or movement of the vehicle on a railway track.

7 Meaning of *fatigue-regulated heavy vehicle*

(1) For this Law, a heavy vehicle is a ***fatigue-regulated heavy vehicle*** if it is any of the following—

(a) a motor vehicle with a GVM of more than 12t;

(b) a combination with a GVM of more than 12t;

(c) a fatigue-regulated bus.

(2) However, subject to subsection (3), a heavy vehicle is not a fatigue-regulated heavy vehicle for this Law if it is any of the following—

(a) a motor vehicle that—

(i) is built, or has been modified, to operate primarily as a machine or implement off-road, on a road-related area, or on an area of road that is under construction; and

(ii) is not capable of carrying goods or passengers by road;

Examples for paragraph (a)—

agricultural machine, backhoe, bulldozer, excavator, forklift, front-end loader, grader, motor vehicle registered under an Australian road law as a special purpose vehicle (type p)

(b) a motorhome.

(3) For this Law, a truck, or a combination including a truck, that has a machine or implement attached to it is a ***fatigue-regulated heavy vehicle***—

(a) if the GVM of the truck or combination with the attached machine or implement is more than 12t; and

(b) whether or not the truck or combination has been built or modified primarily to operate as a machine or implement off-road, on a road-related area, or on an area of road that is under construction.

Example for subsection (3)—

a truck to which a crane or drilling rig is attached

(4) For subsection (2)(b), a ***motorhome***—

(a) is a rigid or articulated motor vehicle or combination that is built, or has been modified, primarily for residential purposes; and

(b) does not include a motor vehicle that is merely a motor vehicle constructed with a sleeper berth.

(5) For this section, the GVM of a combination is the total of the GVMs of the vehicles in the combination.

8 Meaning of *road* and *road-related area*

(1) For this Law, a ***road*** is an area that is open to or used by the public and is developed for, or has as 1 of its uses, the driving or riding of motor vehicles.

Examples of areas that are roads—

bridges, cattle grids, culverts, ferries, fords, railway crossings, tunnels or viaducts

(2) For this Law, a ***road-related area*** is—

(a) an area that divides a road; or

(b) a footpath, shared path or nature strip adjacent to a road; or

(c) a shoulder of a road; or

(d) a bicycle path or another area that is not a road and that is open to the public and designated for use by cyclists or animals; or

(e) an area that is not a road and that is open to, or used by, the public for driving, riding or parking motor vehicles.

(3) Also, an area is a ***road*** or ***road-related area*** for 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.

(4) In this section—

bicycle path means an area open to the public that is designated for, or has as 1 of its main uses, use by riders of bicycles.

footpath means an area open to the public that is designated for, or has as 1 of its main uses, use by pedestrians.

shared path means an area open to the public that is designated for, or has as 1 of its main uses, use by both the riders of bicycles and pedestrians.

shoulder, of a road—

(a) includes any part of the road that is not designed to be used by motor vehicles in travelling along the road; and

(b) includes—

(i) for a kerbed road—any part of the kerb; and

(ii) for a sealed road—any unsealed part of the road, and any sealed part of the road outside an edge line on the road; but

(c) does not include a bicycle path, footpath or shared path.

9 Meaning of *convicts* and *convicted* of an offence

(1) For this Law, a court ***convicts*** a person of an offence if the court finds the person guilty, or accepts the person's plea of guilty, for the offence whether or not a conviction is recorded.

(2) For this Law, a person is ***convicted*** of an offence if a court convicts the person of the offence.

(3) For sections 154(1), 189(1), 231(1), 285(1), 349(4) and 576(3), a person is also ***convicted*** of an offence if the person pays a fine sought by an infringement notice for the offence.

10 Interpretation generally

Schedule 1 applies in relation to this Law.

11 References to laws includes references to instruments made under laws

(1) In this Law, a reference (either generally or specifically) to a law or a provision of a law (including this Law) includes a reference to—

(a) each instrument (including a regulation) made or in force under the law or provision; and

(b) each instrument made or in force under any such instrument.

(2) In this section—

law means a law of the Commonwealth or a State or Territory.

12 References to this Law as applied in a participating jurisdiction

In this Law, a reference to this Law as applied by an Act of a participating jurisdiction includes a reference to—

(a) a law that substantially corresponds to this Law enacted in a participating jurisdiction; and

(b) a law prescribed by the national regulations for the purposes of paragraph (a)(iii) of the definition *participating jurisdiction* in section 5, enacted in a participating jurisdiction.

13 References to road

A reference in this Law to a road includes a reference to a road-related area, unless a contrary intention appears in this Law.

14 References to mistake of fact defence

(1) This section applies if a provision of this Law states that a person charged with an offence does not have the benefit of the mistake of fact defence for the offence.

(2) The effect of the provision, for a participating jurisdiction, is the effect that is declared by a law of that jurisdiction to be the effect of the provision.

Part 1.3 Application and operation of Law

15 Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is, as far as possible, to include operation in relation to the following—

(a) things situated in or outside the territorial limits of this jurisdiction;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

16 Law binds the State

(1) This Law binds the State.

(2) No criminal liability attaches to the State itself (as distinct from its agents, instrumentalities, officers and employees) under this Law.

17 Relationship with primary work health and safety laws

(1) This Law does not limit the application of the primary WHS Law or any regulations made under that Law.

(2) Evidence of a relevant contravention of this Law is admissible in any proceeding for an offence against the primary WHS Law.

(3) Compliance with this Law, or with any requirement imposed under this Law, is not, in itself, evidence that a person has complied with the primary WHS Law or any regulations made under that Law or with a common law duty of care.

(4) In this section—

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.

Chapter 2 Registration

Part 2.1 Preliminary

18 Main purpose of Ch 2

The main purpose of this Chapter is to establish a scheme for the national registration of heavy vehicles that—

(a) allows for the registration of heavy vehicles of a standard and in a condition that prevents or minimises safety risks; and

(b) recognises that unregistered heavy vehicles may be used on roads in particular circumstances without posing significant safety risks; and

(c) provides for identifying heavy vehicles and the persons responsible for them; and

(d) ensures compliance with legislation about compensation of third parties injured or killed by, or in connection with, heavy vehicles.

Part 2.2 Registration scheme

Division 1 Preliminary

19 Scheme for registration of heavy vehicles

(1) The national regulations may prescribe procedures for the registration of heavy vehicles.

(2) Without limiting subsection (1), the national regulations may prescribe—

(a) the persons who are eligible to have heavy vehicles registered in their name; and

(b) the heavy vehicles that are eligible to be registered; and

(c) the circumstances in which heavy vehicles may be registered without conditions; and

(d) the circumstances in which heavy vehicles may be registered subject to conditions; and

(e) the period of not more than 1 year for which heavy vehicles may be registered; and

(f) the circumstances in which unregistered heavy vehicle permits may be issued for heavy vehicles, and conditions that may be imposed on the permits; and

(g) the charges payable for the registration of heavy vehicles, and refunds of part of the charges paid for a heavy vehicle's registration if the registration is surrendered before it expires; and

(h) requirements about the display of plates and labels on heavy vehicles to identify the vehicles' registration; and

(i) matters about—

(i) the renewal of the registration of heavy vehicles; and

(ii) the transfer or surrender of the registration of heavy vehicles; and

(iii) the amendment, suspension or cancellation of the registration of heavy vehicles or unregistered heavy vehicle permits for heavy vehicles; and

(j) matters about the provision of the Regulator's services to States and Territories, under agreements mentioned in section 599(2)(b), relating to—

(i) collecting vehicle registration duty; or

(ii) ensuring compliance with third party insurance legislation, including, for example, by collecting third party insurance premiums.

20 Registration not evidence of title

The registration of a heavy vehicle under this Law is not evidence of title to the heavy vehicle.

Division 2 Requirement for heavy vehicle to be registered

21 Registration requirement

(1) A person must not use, or permit to be used, on a road—

(a) an unregistered heavy vehicle; or

(b) a heavy vehicle whose registration is suspended under the national regulations.

Maximum penalty—$8000.

(2) Subsection (1) does not apply to the use of an unregistered heavy vehicle on a road if—

(a) the vehicle is being used under an unregistered heavy vehicle permit; or

(b) the use of the vehicle on the road is authorised under Division 3.

Division 3 Authorised use of unregistered heavy vehicle

22 Purpose of Div 3

The purpose of this Division is to state, for section 21(2)(b), the circumstances in which an unregistered heavy vehicle is authorised to be used on a road.

23 Unregistered heavy vehicle on journey for obtaining registration

(1) An unregistered heavy vehicle may be used on a road if—

(a) it is on a journey to a registration place and is travelling on the most direct or convenient route to that place from the place where the journey began; and

(b) it does not have any goods in it; and

(c) the requirements (if any) of third party insurance legislation applying to the vehicle are complied with.

(2) In this section—

registration place means a place where a heavy vehicle is required to be taken for the purpose of obtaining registration of the vehicle, including, for example—

(a) a place at which the vehicle may be inspected under this Law for checking the vehicle's compliance with the heavy vehicle standards; or

(b) a weighbridge at which the vehicle may be weighed for checking the vehicle is a heavy vehicle.

24 Unregistered heavy vehicle temporarily in Australia

(1) An unregistered heavy vehicle may be used on a road if—

(a) the vehicle—

(i) is temporarily in Australia; and

(ii) is registered in a foreign country; and

(b) the foreign number plates and labels for the vehicle are conspicuously displayed on the vehicle and in the way (if any) required by a law of the foreign country; and

(c) so far as is reasonably practicable, the vehicle is used in accordance with any conditions of the registration in the foreign country; and

(d) the requirements (if any) of third party insurance legislation applying to the vehicle are complied with.

(2) In this section—

foreign number plates and labels, for a heavy vehicle registered in a foreign country, means the number plates and labels required, under a law of the foreign country, to be displayed on the vehicle if it is used on a road in the foreign country.

25 Unregistered heavy vehicle used for short term only

(1) An unregistered heavy vehicle may be used on a road if—

(a) a road authority has, under a law of a participating jurisdiction, authorised the use of the vehicle on the road for short-term purposes; and

(b) the short-term number plates for the vehicle are conspicuously displayed on the vehicle in the way (if any) required under that law; and

(c) so far as is reasonably practicable, the vehicle is used in accordance with any conditions imposed by the road authority on the authorisation; and

(d) the requirements (if any) of third party insurance legislation applying to the vehicle are complied with.

(2) In this section—

short-term number plates, for a heavy vehicle authorised by a road authority to be used on a road as mentioned in subsection (1)(a), means the number plates (usually called 'trade plates') issued by the road authority and required under the law under which the authorisation is given to be displayed on the vehicle if it is used on a road under the authorisation.

26 Unregistered heavy vehicle used locally only

An unregistered heavy vehicle may be used on a road if—

(a) the vehicle is on a journey between 2 parcels of land used solely, or mainly, for primary production and is travelling by the most direct or convenient route between the places; and

(b) for any one use, the total distance travelled on a road is not more than 500m; and

(c) the requirements (if any) of third party insurance legislation applying to the vehicle are complied with.

27 Unregistered heavy vehicle that is an agricultural vehicle

An unregistered heavy vehicle may be used on a road if—

(a) it is—

(i) an agricultural implement being towed by—

(A) an agricultural machine that is suitably matched to the implement and is registered; or

(B) another registered heavy vehicle of a suitable size for towing the implement; or

(ii) a trailer being towed by—

(A) an agricultural machine that is being used to perform agricultural tasks for which it was built and is registered; or

(B) a conditionally registered heavy vehicle; and

(b) the requirements (if any) of third party insurance legislation applying to the vehicle are complied with.

28 Unregistered heavy vehicle to which exemption under Div 4 applies

An unregistered heavy vehicle may be used on a road if—

(a) it is of a category of heavy vehicles exempted from the requirement to be registered under Division 4; and

(b) the requirements (if any) of third party insurance legislation applying to the vehicle are complied with.

Division 4 Exemption from requirement to be registered

29 Regulator's power to exempt category of heavy vehicles from requirement to be registered

(1) The Regulator may, by Commonwealth Gazette notice complying with section 33, exempt a category of heavy vehicles from the requirement to be registered, for a period of not more than 1 year.

(2) An exemption under subsection (1) is a ***registration exemption***.

30 Restriction on granting registration exemption

(1) The Regulator may grant a registration exemption only if the Regulator is satisfied—

(a) it is not reasonable to require heavy vehicles of the category to be registered; and

(b) the use of heavy vehicles of the category on a road without being registered will not pose a significant safety risk.

(2) In deciding whether to grant a registration exemption, the Regulator must have regard to the approved guidelines for granting registration exemptions.

31 Conditions of registration exemption

A registration exemption may be subject to any conditions the Regulator considers appropriate, including, for example, 1 or more of the following conditions—

(a) that a heavy vehicle may be used on a road under the exemption only—

(i) on stated routes; or

(ii) during stated hours of stated days;

(b) that the driver of a heavy vehicle who is driving the vehicle on a road under the exemption must keep in the driver's possession—

(i) a copy of the Commonwealth Gazette notice for the exemption; or

(ii) an information sheet about the exemption published by the Regulator on the Regulator's website;

(c) that stated signs or other things must be displayed on a heavy vehicle being used on a road under the exemption.

32 Period for which registration exemption applies

A registration exemption—

(a) takes effect—

(i) when the Commonwealth Gazette notice for the exemption is published; or

(ii) if a later time is stated in the Commonwealth Gazette notice, at the later time; and

(b) applies for the period stated in the Commonwealth Gazette notice.

33 Requirements about Commonwealth Gazette notice

(1) A Commonwealth Gazette notice for a registration exemption must state the following—

(a) the category of heavy vehicles to which the exemption applies;

(b) the conditions of the exemption;

(c) the period for which the exemption applies.

(2) The Regulator must publish a copy of the Commonwealth Gazette notice on the Regulator's website.

34 Amendment or cancellation of registration exemption

(1) Each of the following is a ground for amending or cancelling a registration exemption—

(a) the use of heavy vehicles on a road under the exemption has caused, or is likely to cause, a significant safety risk;

(b) since the exemption was granted, there has been a change in the circumstances that were relevant to the Regulator's decision to grant the exemption and, had the changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption, or would have granted the exemption subject to conditions or different conditions.

(2) If the Regulator considers a ground exists to amend or cancel a registration exemption, the Regulator may amend or cancel the exemption by complying with subsections (3) to (5).

(3) The Regulator must publish a notice in the Commonwealth Gazette, in a newspaper circulating generally throughout each participating jurisdiction and on the Regulator's website—

(a) stating that the Regulator believes a ground mentioned in subsection (1)(a) or (b) for amending or cancelling the exemption exists; and

(b) outlining the facts and circumstances forming the basis for the belief; and

(c) stating the action the Regulator is proposing to take under this section (the ***proposed action***); and

(d) inviting persons who will be affected by the proposed action to make, within a stated time of at least 14 days after the Commonwealth Gazette notice is published, written representations about why the proposed action should not be taken.

(4) If, after considering all written representations made under subsection (3)(d), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the exemption—amend the exemption, including, for example, by imposing additional conditions on the exemption, in a way that is not substantially different from the proposed action; or

(b) if the proposed action was to cancel the exemption—

(i) amend the exemption, including, for example, by imposing additional conditions on the exemption; or

(ii) cancel the exemption.

(5) Notice of the amendment or cancellation must be published—

(a) in—

(i) the Commonwealth Gazette; and

(ii) a newspaper circulating generally throughout each participating jurisdiction; and

(b) on the Regulator's website.

(6) The amendment or cancellation takes effect—

(a) 28 days after the Commonwealth Gazette notice is published; or

(b) if a later time is stated in the Commonwealth Gazette notice, at the later time.

Part 2.3 Vehicle register

35 Vehicle register

(1) The Regulator must keep a register of heavy vehicles (the ***vehicle register***) that enables the identification of a heavy vehicle used on a road and of the person who is responsible for it.

(2) The vehicle register must—

(a) be kept in the way prescribed by the national regulations; and

(b) contain the particulars prescribed by the national regulations.

(3) The Regulator may include in the vehicle register other information the Regulator considers reasonable and relevant to the purposes of this Chapter.

Part 2.4 Other provisions relating to registration

36 Ownership of registration items

A registration item issued by the Regulator remains the property of the Regulator.

37 Obtaining registration or registration items by false statements etc.

(1) A person must not attempt to have a heavy vehicle registered, or the registration of a heavy vehicle renewed, under this Law—

(a) by making a statement or representation the person knows is false or misleading in a material particular; or

(b) in another dishonest way.

Maximum penalty—$10000.

(2) A person must not, without a reasonable excuse, possess a registration item obtained—

(a) by making a statement or representation the person knows is false or misleading in a material particular; or

(b) in another dishonest way.

Maximum penalty—$10000.

(3) A registration item obtained by a person making a statement or representation the person knows is false or misleading in a material particular, or in another dishonest way, is void.

38 Replacement and recovery of incorrect registration items

(1) This section applies if the Regulator becomes aware a registration item (the ***incorrect item***) issued by the Regulator for the purposes of this Law is incorrect.

(2) The Regulator may cancel the incorrect item and, if the Regulator considers it is appropriate—

(a) issue a replacement registration item to the registered operator of the heavy vehicle; or

(b) by notice, require the registered operator of the heavy vehicle to return the incorrect item to the Regulator.

(3) A person who is given a notice under subsection (2)(b) must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—$1600.

39 Verification of particular records

(1) This section applies in relation to a heavy vehicle—

(a) registered under this Law; or

(b) the subject of an unregistered heavy vehicle permit.

(2) The Regulator may, by notice, require an operator of the heavy vehicle—

(a) to produce documents about, or otherwise verify, a matter about the vehicle included in the vehicle register or other records kept by the Regulator for the purposes of this Law; or

(b) at a stated reasonable time and place, to—

(i) present the heavy vehicle for inspection by the Regulator; or

(ii) personally attend on the Regulator for identification purposes.

(3) Without limiting subsection (2)(a), the Regulator may require the production of documents or other verification relating to any of the following—

(a) the identity, description or condition of the heavy vehicle;

(b) the origin or history of the heavy vehicle;

(c) the identity and address of the operator of the heavy vehicle;

(d) the garage address of the heavy vehicle;

(e) the currency of any compulsory third party insurance required for the heavy vehicle under third party insurance legislation.

(4) A person given a notice under subsection (2) must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—$800.

Part 2.5 Written-off and wrecked heavy vehicles

40 Purpose of Pt 2.5

The purpose of this Part is to provide for the collection and recording of information about written-off or wrecked heavy vehicles to ensure a previously written-off or wrecked heavy vehicle is registered only if—

(a) the identity of the vehicle and its operator is certain; and

(b) the vehicle is safe.

41 Definitions for Pt 2.5

In this Part—

insurer means a body corporate authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business.

wrecked, for a heavy vehicle, means the vehicle is—

(a) demolished or dismantled; or

(b) in a state or condition prescribed by the national regulations.

written-off, for a heavy vehicle, means the vehicle can not reasonably be expected to be repaired, including because—

(a) an insurer has decided the vehicle should not be repaired; or

(b) the vehicle is in a state or condition prescribed by the national regulations.

42 Written-off and wrecked heavy vehicles register

(1) The Regulator must keep a register of written-off and wrecked heavy vehicles (the ***written-off and wrecked vehicles register***).

(2) The written-off and wrecked vehicles register must—

(a) be kept in the way prescribed by the national regulations; and

(b) contain the particulars prescribed by the national regulations, to the extent the particulars apply, for each heavy vehicle that is written-off or wrecked.

(3) The Regulator may include in the written-off and wrecked vehicles register other information the Regulator considers reasonable and relevant to the purpose of this Part.

(4) The national regulations may provide for—

(a) the written-off and wrecked vehicles register to be kept in a form allowing other entities to make entries in it, and the making of the entries; and

(b) access to the written-off and wrecked vehicles register by particular entities, with or without conditions; and

(c) the giving of information contained in the written-off and wrecked vehicles register to particular entities, with or without conditions.

Part 2.6 Other provisions

43 Regulator may specify GCM in particular circumstances

(1) This section applies if—

(a) under the national regulations, a person applies for—

(i) the registration or the renewal of the registration of a motor vehicle; or

(ii) an unregistered heavy vehicle permit for a motor vehicle; and

(b) the total maximum loaded mass of the motor vehicle and any vehicles it may lawfully tow at any given time—

(i) is not stated by the motor vehicle's manufacturer on the vehicle's identification plate or another place on the vehicle; or

(ii) is stated as mentioned in subparagraph (i) but is no longer appropriate because the vehicle has been modified since the total maximum loaded mass was stated as mentioned in subparagraph (i).

(2) The Regulator may specify the total maximum loaded mass for the motor vehicle and any vehicles it may lawfully tow at any given time for the purposes of this Law.

Note—

Under the national regulations—

(a) if the Regulator registers a heavy motor vehicle, the Regulator must give the registered operator a certificate of registration, and a registration label, for the vehicle stating the vehicle's GCM, and record the vehicle's GCM in the vehicle register; and

(b) if the Regulator issues an unregistered heavy vehicle permit for a heavy motor vehicle, the permit must state the vehicle's GCM, and the Regulator must record the vehicle's GCM in the vehicle register.

44 Regulator may specify GVM in particular circumstances

(1) This section applies if—

(a) under the national regulations, a person applies for—

(i) the registration or the renewal of the registration of a motor vehicle; or

(ii) an unregistered heavy vehicle permit for a motor vehicle; and

(b) either the vehicle does not have an identification plate or the vehicle's maximum loaded mass—

(i) is not stated on the vehicle's identification plate; or

(ii) is stated on the vehicle's identification plate but is no longer appropriate because the vehicle has been modified since the maximum loaded mass was stated on the vehicle's identification plate.

(2) The Regulator may specify the vehicle's maximum loaded mass for the purposes of this Law.

Note—

Under the national regulations—

(a) if the Regulator registers a heavy vehicle, the Regulator must give the registered operator a certificate of registration, and a registration label, for the vehicle stating the vehicle's GVM, and record the vehicle's GVM in the vehicle register; and

(b) if the Regulator issues an unregistered heavy vehicle permit for a heavy vehicle, the permit must state the vehicle's GVM, and the Regulator must record the vehicle's GVM in the vehicle register.

Chapter 3 Vehicle operations—standards and safety

Part 3.1 Preliminary

45 Main purpose of Ch 3

The main purpose of this Chapter is to ensure heavy vehicles used on roads are of a standard and in a condition that prevents or minimises safety risks.

Part 3.2 Compliance with heavy vehicle standards

Division 1 Requirements

46 Heavy vehicle standards

(1) The national regulations may prescribe vehicle standards (***heavy vehicle standards***) with which heavy vehicles must comply to use roads.

(2) Without limiting subsection (1), the heavy vehicle standards may include requirements applying to—

(a) heavy vehicles; or

(b) components of heavy vehicles, including component vehicles that are not heavy vehicles; or

(c) equipment of heavy vehicles.

47 Compliance with heavy vehicle standards

(1) A person must not use, or permit to be used, on a road a heavy vehicle that contravenes a heavy vehicle standard applying to the vehicle.

Maximum penalty—$2000.

(2) Subsection (1) does not apply to—

(a) a heavy vehicle that—

(i) is on a journey to a place for the repair of the vehicle, or any of its components or equipment, and is travelling on the most direct or convenient route to that place from the place where the journey began; and

(ii) does not have any goods in it; and

(iii) is used on a road in a way that does not pose a safety risk; or

(b) a heavy vehicle that—

(i) is on a road for testing or analysis of the vehicle, or any of its components or equipment, for the purpose of checking its compliance with the heavy vehicle standards; and

(ii) does not have any goods in it; and

(iii) is used on a road in a way that does not pose a safety risk.

(3) A person does not commit an offence against subsection (1) in relation to a heavy vehicle's noncompliance with a heavy vehicle standard if, and to the extent, the noncompliance relates to a noncompliance known to the Regulator when the vehicle was registered under the national regulations.

(4) For subsection (3), the Regulator is taken to know of a heavy vehicle's noncompliance with a heavy vehicle standard when the vehicle was registered under the national regulations if the noncompliance is mentioned in—

(a) an operations plate that was installed on the vehicle when it was registered; or

(b) a certificate of approved operations issued for the vehicle and in force when the vehicle was registered; or

(c) a document obtained by the Regulator under the national regulations in connection with the registration of the vehicle.

(5) Subsection (3) applies only if the heavy vehicle, and its use on a road, complies with the conditions of the registration.

Note—

See also section 66(4) to (6) for the effect of a vehicle standards exemption on compliance with subsection (1).

Division 2 Exemptions by Commonwealth Gazette notice

48 Regulator's power to exempt category of heavy vehicles from compliance with heavy vehicle standard

(1) The Regulator may, by Commonwealth Gazette notice complying with section 52, exempt, for a period of not more than 5 years, a category of heavy vehicles from the requirement to comply with a heavy vehicle standard.

(2) An exemption under subsection (1) is a ***vehicle standards exemption (notice)***.

49 Restriction on grant of vehicle standards exemption (notice)

(1) The Regulator may grant a vehicle standards exemption (notice) for a category of heavy vehicles only if—

(a) 1 of the following applies—

(i) the Regulator is satisfied complying with the heavy vehicle standard to which the exemption is to apply

would prevent heavy vehicles of that category from operating in the way in which, or for the purpose for which, the vehicles were built or modified;

(ii) the Regulator is satisfied heavy vehicles of that category are experimental vehicles, prototypes or similar vehicles that could not reasonably be expected to comply with the heavy vehicle standard to which the exemption is to apply;

(iii) the exemption has been requested by a road authority for a participating jurisdiction for the use of heavy vehicles of that category in that jurisdiction;

(iv) the category of heavy vehicles consists of heavy vehicles that were, immediately before the commencement of this section in a participating jurisdiction, registered under an Australian road law of that jurisdiction and not required to comply with a similar standard at that time; and

(b) the Regulator is satisfied the use of heavy vehicles of the category to which the exemption is to apply on a road under the exemption will not pose a significant safety risk.

(2) In deciding whether to grant a vehicle standards exemption (notice), the Regulator must have regard to the approved guidelines for granting vehicle standards exemptions.

50 Conditions of vehicle standards exemption (notice)

A vehicle standards exemption (notice) may be subject to any conditions the Regulator considers appropriate, including, for example—

(a) conditions about protecting road infrastructure from damage; and

(b) a condition that the driver of a heavy vehicle who is driving the vehicle under the exemption must keep in the driver's possession a copy of—

(i) the Commonwealth Gazette notice for the exemption; or

(ii) an information sheet about the exemption published by the Regulator on the Regulator's website.

51 Period for which vehicle standards exemption (notice) applies

A vehicle standards exemption (notice)—

(a) takes effect—

(i) when the Commonwealth Gazette notice for the exemption is published; or

(ii) if a later time is stated in the Commonwealth Gazette notice, at the later time; and

(b) applies for the period stated in the Commonwealth Gazette notice.

52 Requirements about Commonwealth Gazette notice

(1) A Commonwealth Gazette notice for a vehicle standards exemption (notice) must state the following—

(a) the category of heavy vehicles to which the exemption applies;

(b) the heavy vehicle standard to which the exemption applies;

(c) the conditions of the exemption;

(d) the period for which the exemption applies.

(2) The Regulator must publish a copy of the Commonwealth Gazette notice on the Regulator's website.

53 Amendment or cancellation of vehicle standards exemption (notice)

(1) Each of the following is a ground for amending or cancelling a vehicle standards exemption (notice)—

(a) the use of heavy vehicles on a road under the exemption has caused, or is likely to cause, a significant safety risk;

(b) since the exemption was granted, there has been a change in circumstances that were relevant to the Regulator's decision to grant the exemption and, had the changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption, or would have granted the exemption subject to conditions or different conditions.

(2) If the Regulator considers a ground exists to amend or cancel a vehicle standards exemption (notice), the Regulator may amend or cancel the exemption by complying with subsections (3) to (5).

(3) The Regulator must publish a notice in the Commonwealth Gazette, in a newspaper circulating generally throughout each participating jurisdiction and on the Regulator's website—

(a) stating that the Regulator believes a ground mentioned in subsection (1)(a) or (b) for amending or cancelling the exemption exists; and

(b) outlining the facts and circumstances forming the basis for the belief; and

(c) stating the action the Regulator is proposing to take under this section (the ***proposed action***); and

(d) inviting persons who will be affected by the proposed action to make, within a stated time of at least 14 days after the Commonwealth Gazette notice is published, written representations about why the proposed action should not be taken.

(4) If, after considering all written representations made under subsection (3)(d), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the exemption—amend the exemption, including, for example, by imposing additional conditions on the exemption, in a way that is not substantially different from the proposed action; or

(b) if the proposed action was to cancel the exemption—

(i) amend the exemption, including, for example, by imposing additional conditions on the exemption; or

(ii) cancel the exemption.

(5) Notice of the amendment or cancellation must be published—

(a) in—

(i) the Commonwealth Gazette; and

(ii) a newspaper circulating generally throughout each participating jurisdiction; and

(b) on the Regulator's website.

(6) The amendment or cancellation takes effect—

(a) 28 days after the Commonwealth Gazette notice is published; or

(b) if a later time is stated in the Commonwealth Gazette notice, at the later time.

Division 3 Exemptions by permit

54 Regulator's power to exempt particular heavy vehicle from compliance with heavy vehicle standard

(1) The Regulator may, by giving a permit to a person as mentioned in section 59, exempt a heavy vehicle from

compliance with a heavy vehicle standard for a period of not more than 3 years.

(2) An exemption under subsection (1) is a ***vehicle standards exemption (permit)***.

(3) A vehicle standards exemption (permit) may apply to 1 or more heavy vehicles.

55 Application for vehicle standards exemption (permit)

(1) A person may apply to the Regulator for a vehicle standards exemption (permit).

(2) The application must be—

(a) in the approved form; and

(b) accompanied by the prescribed fee for the application.

(3) The Regulator may, by notice given to the applicant for a vehicle standards exemption (permit), require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

56 Restriction on grant of vehicle standards exemption (permit)

(1) The Regulator may grant a vehicle standards exemption (permit) for a heavy vehicle only if—

(a) 1 of the following applies—

(i) the Regulator is satisfied complying with the heavy vehicle standard to which the exemption is to apply would prevent the heavy vehicle from operating in the way in which, or for the purpose for which, the vehicle was built or modified;

(ii) the Regulator is satisfied the heavy vehicle is an experimental vehicle, prototype or similar vehicle that could not reasonably be expected to comply

with the heavy vehicle standard to which the exemption is to apply;

(iii) the heavy vehicle was, immediately before the commencement of this section in a participating jurisdiction, registered under an Australian road law of that jurisdiction and not required to comply with a similar standard at that time; and

(b) the Regulator is satisfied the use of the heavy vehicle on a road under the exemption will not pose a significant safety risk.

(2) In deciding whether to grant a vehicle standards exemption (permit), the Regulator must have regard to the approved guidelines for granting vehicle standards exemptions.

57 Conditions of vehicle standards exemption (permit)

A vehicle standards exemption (permit) may be subject to any conditions the Regulator considers appropriate, including, for example, a condition about protecting road infrastructure from damage.

58 Period for which vehicle standards exemption (permit) applies

(1) A vehicle standards exemption (permit) applies for the period stated in the permit for the exemption.

(2) The period may be less than the period sought by the applicant for the vehicle standards exemption (permit).

59 Permit for vehicle standards exemption (permit) etc.

(1) If the Regulator grants a vehicle standards exemption (permit) to a person, the Regulator must give the person—

(a) a permit for the exemption; and

(b) if the Regulator has imposed conditions on the exemption under section 57 or has granted the

exemption for a period less than the period of not more than 3 years sought by the person—an information notice for the decision to impose the conditions or grant the exemption for the shorter period.

(2) A permit for a vehicle standards exemption (permit) must state the following—

(a) the name of the person to whom the permit is given;

(b) each heavy vehicle to which the exemption applies, including the registration number of the vehicle if known when the permit is given;

(c) the heavy vehicle standard to which the exemption applies;

(d) the conditions of the exemption;

(e) the period for which the exemption applies.

60 Refusal of application for vehicle standards exemption (permit)

If the Regulator refuses an application for a vehicle standards exemption (permit), the Regulator must give the applicant an information notice for the decision to refuse the application.

61 Amendment or cancellation of vehicle standards exemption (permit) on application by permit holder

(1) The holder of a permit for a vehicle standards exemption (permit) may apply to the Regulator for an amendment or cancellation of the exemption.

(2) The application must—

(a) be in the approved form; and

(b) if the application is for an amendment—state clearly the amendment sought and the reasons for the amendment; and

(c) be accompanied by the permit.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

(4) The Regulator must decide the application as soon as practicable after receiving it.

(5) If the Regulator decides to grant the application—

(a) the Regulator must give the applicant notice of the decision; and

(b) the amendment or cancellation takes effect—

(i) when notice of the decision is given to the applicant; or

(ii) if a later time is stated in the notice, at the later time; and

(c) if the Regulator amended the exemption, the Regulator must give the applicant a replacement permit for the exemption as amended.

(6) If the Regulator decides not to amend or cancel the exemption as sought by the applicant, the Regulator must—

(a) give the applicant an information notice for the decision; and

(b) return the permit for the exemption to the applicant.

62 Amendment or cancellation of vehicle standards exemption (permit) on Regulator's initiative

(1) Each of the following is a ground for amending or cancelling a vehicle standards exemption (permit)—

(a) the exemption was granted because of a document or representation that was—

(i) false or misleading; or

(ii) obtained or made in an improper way;

(b) the holder of the permit for the exemption has contravened a condition of the exemption;

(c) the use of a heavy vehicle on a road under the exemption has caused, or is likely to cause, a significant safety risk;

(d) since the exemption was granted, there has been a change in the circumstances that were relevant to the Regulator's decision to grant the exemption and, had the changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption, or would have granted the exemption subject to conditions or different conditions.

(2) If the Regulator considers a ground exists to amend or cancel a vehicle standards exemption (permit) (the ***proposed action***), the Regulator must give the holder of the permit for the exemption a notice—

(a) stating the proposed action; and

(b) stating the ground for the proposed action; and

(c) outlining the facts and circumstances forming the basis for the ground; and

(d) if the proposed action is to amend the exemption (including a condition of the exemption)—stating the proposed amendment; and

(e) inviting the holder to make, within a stated time of at least 14 days after the notice is given to the holder, written representations about why the proposed action should not be taken.

(3) If, after considering all written representations made under subsection (2)(e), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the exemption—amend the exemption, including, for example, by imposing additional conditions on the exemption, in a way that is not substantially different from the proposed action; or

(b) if the proposed action was to cancel the exemption—

(i) amend the exemption, including, for example, by imposing additional conditions on the exemption; or

(ii) cancel the exemption.

(4) The Regulator must give the holder an information notice for the decision to amend or cancel the exemption.

(5) The amendment or cancellation takes effect—

(a) when the information notice is given to the holder; or

(b) if a later time is stated in the information notice, at the later time.

63 Minor amendment of vehicle standards exemption (permit)

The Regulator may, by notice given to the holder of a permit for a vehicle standards exemption (permit), amend the exemption—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the holder's interests.

64 Return of permit

(1) If a person's vehicle standards exemption (permit) is amended or cancelled, the Regulator may, by notice, require the person to return the person's permit for the exemption to the Regulator.

(2) The person must comply with the notice within 7 days after the notice is given to the person or, if a longer period is stated in the notice, within the longer period.

Maximum penalty—$2000.

(3) If the exemption has been amended, the Regulator must give the person a replacement permit for the exemption as amended.

65 Replacement of defaced etc. permit

(1) If a person's permit for a vehicle standards exemption (permit) is defaced, destroyed, lost or stolen, the person must, as soon as reasonably practicable after becoming aware of the matter, apply to the Regulator for a replacement permit.

Maximum penalty—$2000.

(2) If the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen, the Regulator must give the person a replacement permit as soon as practicable.

(3) If the Regulator decides not to give the person a replacement permit, the Regulator must give the person an information notice for the decision.

Division 4 Operating under vehicle standards exemption

66 Contravening condition of vehicle standards exemption

(1) A person must not contravene a condition of a vehicle standards exemption.

Maximum penalty—$2000.

(2) A person must not use, or permit to be used, on a road a heavy vehicle that contravenes a condition of a vehicle standards exemption applying to the vehicle.

Maximum penalty—$2000.

(3) A person must not use a heavy vehicle, or permit a heavy vehicle to be used, on a road in a way that contravenes a condition of a vehicle standards exemption applying to the vehicle.

Maximum penalty—$2000.

(4) A person does not commit an offence against this Law in relation to a heavy vehicle contravening a heavy vehicle standard if—

(a) the heavy vehicle is exempt, under a vehicle standards exemption, from compliance with the heavy vehicle standard; and

(b) the heavy vehicle, and its use on a road, complies with the conditions of the exemption.

(5) However, if a person commits a condition offence in relation to the exemption—

(a) the exemption does not operate in the person's favour while the contravention constituting the offence continues; and

(b) the exemption must be disregarded in deciding whether the person has committed an offence in relation to a contravention of a heavy vehicle standard applying to a heavy vehicle.

(6) If, because of the operation of subsection (5), a person commits an offence against a provision of this Law (the ***other offence provision***) in relation to a heavy vehicle standard to which the exemption applies, the person—

(a) may be charged with the condition offence or an offence against the other offence provision; but

(b) must not be charged with both offences.

(7) Subsection (1) does not apply to a condition mentioned in section 67(1).

(8) In this section—

condition offence means an offence against subsection (1), (2) or (3).

67 Keeping relevant document while driving under vehicle standards exemption (notice)

(1) This section applies if a vehicle standards exemption (notice) is subject to the condition that the driver of a heavy vehicle who is driving the vehicle under the exemption must keep a relevant document in the driver's possession.

(2) A driver of the heavy vehicle who is driving the vehicle under the vehicle standards exemption (notice) must comply with the condition.

Maximum penalty—$2000.

(3) If the driver of a heavy vehicle commits an offence against subsection (2), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (2) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (2) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (2) has been paid is evidence

that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

(7) In this section—

relevant document, for a vehicle standards exemption (notice), means a copy of—

(a) the Commonwealth Gazette notice for the exemption; or

(b) an information sheet about the exemption published by the Regulator on the Regulator's website.

relevant party, for the driver of a heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

68 Keeping copy of permit while driving under vehicle standards exemption (permit)

(1) The driver of a heavy vehicle who is driving the vehicle under a vehicle standards exemption (permit) must keep a copy of the permit for the exemption in the driver's possession.

Maximum penalty—$2000.

(2) If the driver of a heavy vehicle is driving the vehicle under a vehicle standards exemption (permit) granted to a relevant party for the driver and the relevant party has given the driver a copy of a permit for the purpose of subsection (1), the driver must, as soon as reasonably practicable, return the copy to the relevant party if the driver stops working for the relevant party.

Maximum penalty—$2000.

(3) If the driver of a heavy vehicle commits an offence against subsection (1), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (1) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (1) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (1) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

(7) In this section—

relevant party, for the driver of a heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

Part 3.3 Modifying heavy vehicles

69 Modifying heavy vehicle requires approval

(1) A person must not modify a heavy vehicle unless the modification has been approved by—

(a) an authorised entity under section 70; or

(b) the Regulator under section 71.

Maximum penalty—$2000.

(2) A person must not use, or permit to be used, on a road a heavy vehicle that has been modified unless the modification has been approved by—

(a) an authorised entity under section 70; or

(b) the Regulator under section 71.

Maximum penalty—$2000.

70 Approval of modification by authorised entity

(1) The Regulator may, by notice given to an entity (an ***authorised entity***), authorise the entity to approve modifications of heavy vehicles.

(2) An authorised entity may approve a modification of a heavy vehicle if, and only if, the modification complies with a code of practice prescribed by the national regulations for this section.

(3) If an authorised entity approves a modification of a heavy vehicle, the entity must—

(a) give a certificate approving the modification, in the approved form, to—

(i) the registered operator of the vehicle; or

(ii) if there is no registered operator of the vehicle—an owner of the vehicle; and

(b) ensure a plate, in the approved form, that is stamped or engraved with details of the modification is fitted to a conspicuous part of the vehicle.

Maximum penalty for subsection (3)—$2000.

71 Approval of modification by Regulator

(1) The Regulator may approve a modification of a heavy vehicle if the Regulator is satisfied the use on a road of the heavy vehicle as modified will not pose a significant safety risk.

(2) Subsection (1) applies whether or not the modification complies with a code of practice prescribed by the national regulations prescribed for this section.

(3) If the Regulator approves a modification of a heavy vehicle, the Regulator must—

(a) give a certificate approving the modification, in the approved form, to—

(i) the registered operator of the vehicle; or

(ii) if there is no registered operator of the vehicle—an owner of the vehicle; and

(b) ensure a plate, in the approved form, that is stamped or engraved with details of the modification is fitted to a conspicuous part of the vehicle.

Part 3.4 Other offences

72 Safety requirement

(1) A person must not use, or permit to be used, on a road a heavy vehicle that is unsafe.

Maximum penalty—$2000.

(2) For subsection (1), a heavy vehicle is unsafe only if the condition of the vehicle, or any of its components or equipment—

(a) makes the use of the vehicle unsafe; or

(b) endangers public safety.

Examples of when a heavy vehicle may be unsafe—

1 The steering or brakes are not operating properly.

2 Lights or reflectors required to be on the heavy vehicle under this Law are damaged or obscured.

3 The condition of the heavy vehicle or any of its components or equipment obscures the driver's view of the road.

4 The heavy vehicle's exhaust system or fuel system is not operating properly.

(3) Subsection (1) does not apply to a heavy vehicle that—

(a) is on a journey to a place for the repair of the vehicle, or any of its components or equipment, and is travelling on the most direct or convenient route to that place from the place where the journey began; or

(b) is on a road for testing or analysis of the vehicle, or any of its components or equipment, for the purpose of checking its compliance with the heavy vehicle standards.

73 Requirement about properly operating emission control system

(1) A person must not use, or permit to be used, on a road a heavy vehicle that is not fitted with an emission control system for a relevant emission.

Maximum penalty—$2000.

(2) A person must not use, or permit to be used, on a road a heavy vehicle fitted with an emission control system for a relevant emission that is not operating substantially in accordance with the system's original intended purpose.

Maximum penalty—$2000.

(3) However, subsection (2) does not apply to a heavy vehicle that—

(a) is on a journey to a place for the repair of the emission control system or any of the vehicle's components or equipment that affect the operation of the emission control system; and

(b) is travelling on the most direct or convenient route to that place from the place where the journey began.

(4) In this section—

emission control system means a device or system fitted to a vehicle that reduces the emission of a relevant emission from the vehicle.

Examples of an emission control system—

catalytic converter device, exhaust gas recirculation system

relevant emission means gas, particles or noise.

74 Display of warning signs on heavy vehicles if not required by heavy vehicle standards

(1) This section applies if, under the heavy vehicle standards, a warning sign is required to be displayed on a heavy vehicle of a particular type, size or configuration.

(2) A person must not use, or permit to be used, on a road a heavy vehicle that has the warning sign displayed on it unless the vehicle is of the particular type, size or configuration.

Maximum penalty—$2000.

(3) In this section—

warning sign means a sign indicating that the vehicle to which it is attached is of a particular type, size or configuration.

Example of warning sign—

A sign (consisting of 1 or more parts) showing the words 'LONG VEHICLE' or 'ROAD TRAIN'.

75 Person must not tamper with speed limiter fitted to heavy vehicle

(1) A person must not tamper with a speed limiter that is required under an Australian road law to be, and is, fitted to a heavy vehicle.

Maximum penalty—$6000.

(2) Subsection (1) does not apply to conduct associated with repairing a malfunctioning speed limiter.

(3) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(5) In this section—

speed limiter means a device or system used to limit the maximum road speed of a heavy vehicle to which it is fitted.

tamper, with a speed limiter fitted to a heavy vehicle, means alter, damage, remove or otherwise interfere with the speed limiter in a way that enables the vehicle to be driven at a speed higher than the speed permitted by the speed limiter.

Chapter 4 Vehicle operations—mass, dimension and loading

Part 4.1 Preliminary

76 Main purposes of Ch 4

(1) The main purposes of this Chapter are—

(a) to improve public safety by decreasing risks to public safety caused by excessively loaded heavy vehicles; and

(b) to minimise any adverse impact of excessively loaded heavy vehicles on road infrastructure or public amenity.

(2) The purposes are achieved by—

(a) imposing mass limits for heavy vehicles, particular components of heavy vehicles, and loads on heavy vehicles; and

(b) imposing restrictions about the size of heavy vehicles and the projections of loads on heavy vehicles; and

(c) imposing requirements about securing loads on heavy vehicles; and

(d) restricting access to roads by heavy vehicles of a particular mass, size or configuration even if the vehicles comply with the mass limits, restrictions and requirements mentioned in paragraphs (a) to (c).

(3) However, this Chapter recognises that the use of particular heavy vehicles that do not comply with the mass limits, restrictions and requirements mentioned in subsection (2)(a) to (c) may be permitted on roads in particular circumstances and subject to particular conditions—

(a) to allow for the efficient road transport of goods or passengers by heavy vehicles; and

(b) without compromising the achievement of the purposes.

Part 4.2 Mass requirements

Division 1 Requirements

77 National regulations may prescribe mass requirements

(1) The national regulations may prescribe requirements (the ***mass requirements***) about the following—

(a) the mass of heavy vehicles;

(b) the mass of components of heavy vehicles.

(2) Without limiting subsection (1), the mass requirements may include the following—

(a) requirements about mass limits relating to—

(i) the tare mass of heavy vehicles; or

(ii) the mass of heavy vehicles together with their loads; or

(iii) the mass on tyres, axles or axle groups of heavy vehicles;

(b) requirements about mass limits relating to axle spacing.

(3) Also, without limiting subsection (1) or (2), the mass requirements may—

(a) include mass limits that are to apply only to particular areas or routes; and

(b) authorise or require the Regulator to decide the areas or routes to which the mass limits are to apply.

(4) The national regulations may prescribe requirements (that are not mass requirements) about the use on roads of heavy vehicles under particular mass limits, including, for example—

(a) a requirement that drivers of heavy vehicles using the vehicles under mass limits applying only to particular

areas or routes decided by the Regulator must comply with conditions on the use of heavy vehicles on roads under the mass limits imposed by the Regulator (including conditions required by road managers for the roads); and

(b) a requirement that drivers of heavy vehicles who are driving the vehicles under particular mass limits must carry particular documents; and

(c) a requirement that a particular document or other thing must be displayed on heavy vehicles used under particular mass limits.

(5) In this section—

tare mass, of a heavy vehicle, means the actual mass of the vehicle excluding any load in the vehicle.

78 Compliance with mass requirements

(1) A person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not, comply with the mass requirements applying to the vehicle.

Maximum penalty—

(a) for a minor risk breach—$3750; or

(b) for a substantial risk breach—$6000; or

(c) for a severe risk breach—$10000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 2 Categories of breaches of mass requirements

79 Definitions for Div 2

In this Division—

severe risk breach lower limit, for a mass requirement applying to a heavy vehicle, means a mass equalling 120% of the maximum mass (rounded up to the nearest 0.1t) permitted for the vehicle under the mass requirements.

substantial risk breach lower limit, for a mass requirement applying to a heavy vehicle, means the higher of the following—

(a) a mass equalling 105% of the maximum mass (rounded up to the nearest 0.1t) permitted for the vehicle under the mass requirements;

(b) 0.5t.

80 Minor risk breach

A contravention of a mass requirement applying to a heavy vehicle is a ***minor risk breach*** if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement.

81 Substantial risk breach

A contravention of a mass requirement applying to a heavy vehicle is a ***substantial risk breach*** if the subject matter of the contravention is—

(a) equal to or greater than the substantial risk breach lower limit for the requirement; and

(b) less than the severe risk breach lower limit for the requirement.

82 Severe risk breach

A contravention of a mass requirement applying to a heavy vehicle is a ***severe risk breach*** if the subject matter of the contravention is equal to or greater than the severe risk breach lower limit for the requirement.

Part 4.3 Dimension requirements

Division 1 Requirements

83 National regulations may prescribe dimension requirements

(1) The national regulations may prescribe requirements (the ***dimension requirements***) about the following—

(a) the dimensions of a heavy vehicle (together with its equipment);

(b) the dimensions of a component of a heavy vehicle;

(c) the dimensions of a heavy vehicle's load.

(2) Without limiting subsection (1), the dimension requirements may include requirements about the following—

(a) the dimensions of a heavy vehicle (together with its equipment) disregarding its load;

(b) the dimensions of a heavy vehicle together with its equipment and load;

(c) the dimensions by which a heavy vehicle's load projects from the vehicle;

(d) the internal measurements of a heavy vehicle, including, for example—

(i) the distance between components of the vehicle; and

(ii) for a combination, the distance between—

(A) the component vehicles of the combination; or

(B) a component vehicle of the combination and a component of another component vehicle of the combination.

(3) The national regulations may also prescribe requirements (that are not dimension requirements) about the use of a vehicle to which a dimension requirement applies, including, for example, requirements about the use of signs and warning devices.

84 Compliance with dimension requirements

(1) A person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not or whose load does not, comply with the dimension requirements applying to the vehicle.

Maximum penalty—

(a) if the heavy vehicle does not have goods or passengers in it—$3000; or

(b) if the heavy vehicle has goods or passengers in it—

(i) for a minor risk breach—$3000; or

(ii) for a substantial risk breach—$5000; or

(iii) for a severe risk breach—$10000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 2 Categories of breaches of dimension requirements

85 Definitions for Div 2

In this Division—

severe risk breach lower limit means—

(a) for a dimension requirement applying to a heavy vehicle relating to its length—the length equalling the maximum length permitted for the vehicle under the dimension requirements plus 600mm; or

(b) for a dimension requirement applying to a heavy vehicle relating to its width—the width equalling the maximum width permitted for the vehicle under the dimension requirements plus 80mm; or

(c) for a dimension requirement applying to a heavy vehicle relating to its height—the height equalling the maximum height permitted for the vehicle under the dimension requirements plus 300mm; or

(d) for a dimension requirement applying to a heavy vehicle relating to its load projection—the projection of the vehicle's load equalling the maximum load projection permitted from any side of the vehicle under the dimension requirements plus 80mm.

substantial risk breach lower limit means—

(a) for a dimension requirement applying to a heavy vehicle relating to its length—the length equalling the maximum length permitted for the vehicle under the dimension requirements plus 350mm; or

(b) for a dimension requirement applying to a heavy vehicle relating to its width—the width equalling the maximum

width permitted for the vehicle under the dimension requirements plus 40mm; or

(c) for a dimension requirement applying to a heavy vehicle relating to its height—the height equalling the maximum height permitted for the vehicle under the dimension requirements plus 150mm; or

(d) for a dimension requirement applying to a heavy vehicle relating to its load projection—the projection of the vehicle's load equalling the maximum load projection permitted from any side of the vehicle under the dimension requirements plus 40mm.

86 Minor risk breach

A contravention of a dimension requirement applying to a heavy vehicle is a ***minor risk breach*** if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement.

Note—

See also section 89(2).

87 Substantial risk breach

(1) A contravention of a dimension requirement applying to a heavy vehicle is a ***substantial risk breach*** if—

(a) the subject matter of the contravention is—

(i) equal to or greater than a substantial risk breach lower limit for the requirement; and

(ii) less than the severe risk breach lower limit for the requirement; or

(b) the requirement is a substantial risk breach of a dimension requirement under subsection (2) or (3).

(2) A contravention of a dimension requirement applying to a heavy vehicle relating to its length is a ***substantial risk breach*** if—

(a) the contravention would only be a minor risk breach of the dimension requirement if this subsection were not enacted; and

(b) either—

(i) the rear of the vehicle's load does not carry a sign or warning device required by the national regulations; or

(ii) the vehicle's load projects in a way that is dangerous to persons or property.

(3) A contravention of a dimension requirement applying to a heavy vehicle relating to its width is a ***substantial risk breach*** if—

(a) the contravention would only be a minor risk breach of the dimension requirement if this subsection were not enacted; and

(b) the contravention happens—

(i) at night; or

(ii) in hazardous weather conditions causing reduced visibility.

Note—

See also section 89(3).

88 Severe risk breach

(1) A contravention of a dimension requirement applying to a heavy vehicle is a ***severe risk breach*** if—

(a) the subject matter of the contravention is equal to or greater than the severe risk breach lower limit for the dimension requirement; or

(b) the contravention is a severe risk breach of the dimension requirement under subsection (2) or (3).

(2) A contravention of a dimension requirement applying to a heavy vehicle relating to its length is a ***severe risk breach*** if—

(a) the contravention would only be a substantial risk breach of the dimension requirement as provided by section 87(1)(a) if this subsection were not enacted; and

(b) either—

(i) the rear of the vehicle's load does not carry a sign or warning device required by the national regulations; or

(ii) the vehicle's load projects from it in a way that is dangerous to persons or property.

(3) A contravention of a dimension requirement applying to a heavy vehicle relating to its width is a ***severe risk breach*** if—

(a) the contravention would only be a substantial risk breach of the dimension requirement as provided by section 87(1)(a) if this subsection were not enacted; and

(b) either—

(i) the contravention happens—

(A) at night; or

(B) in hazardous weather conditions causing reduced visibility; or

(ii) the vehicle's load projects from it in a way that is dangerous to persons or property.

Division 3 Other provisions relating to load projections

89 Dangerous projections taken to be contravention of dimension requirement

(1) This section applies if a heavy vehicle's load projects in a way that is dangerous to persons or property even if all dimension requirements, and all warning and other requirements prescribed by the national regulations, are met.

(2) The projection of the load is taken to be—

(a) a contravention of a dimension requirement; and

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

(3) The projection of the load is taken to be—

(a) a contravention of a dimension requirement; and

(b) a substantial risk breach of that requirement if the contravention happens—

(i) at night; or

(ii) in hazardous weather conditions causing reduced visibility.

90 Warning signals required for rear projection of loads

(1) This section applies if—

(a) a load projects more than 1.2m behind a heavy vehicle consisting of only a motor vehicle; or

(b) a load projects more than 1.2m behind either the towing vehicle or a trailer in a heavy combination; or

(c) a load projects from a pole-type trailer in a heavy combination; or

(d) a load projects from a heavy vehicle in a way that it would not be readily visible to a person following immediately behind the vehicle.

(2) A person must not use the heavy vehicle, or permit the heavy vehicle to be used, on a road unless—

(a) during the daytime—a brightly coloured red, red and yellow, or yellow flag at least 300mm by 300mm is fixed to the extreme back of the load; or

(b) at night—a light showing a clear red light to the back, visible at a distance of at least 200m, is fixed to the extreme back of the load.

Maximum penalty—$5000.

Part 4.4 Loading requirements

Division 1 Requirements

91 National regulations may prescribe loading requirements

(1) The national regulations may prescribe requirements (the ***loading requirements***) about securing a load on a heavy vehicle or a component of a heavy vehicle.

(2) Without limiting subsection (1), the loading requirements may include requirements about the restraint or positioning of a load or any part of it on a motor vehicle or trailer.

92 Compliance with loading requirements

(1) A person must not drive on a road a heavy vehicle that does not, or whose load does not, comply with the loading requirements applying to the vehicle.

Maximum penalty—

(a) for a minor risk breach—$3000; or

(b) for a substantial risk breach—$5000; or

(c) for a severe risk breach—$10000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 2 Categories of breaches of loading requirements

93 Minor risk breach

A contravention of a loading requirement applying to a heavy vehicle is a ***minor risk breach*** if—

(a) the subject matter of the contravention does not involve a loss or shifting of the load; and

(b) had the subject matter of the contravention involved a loss or shifting of the load, the loss or shifting of the load would not have been likely to have involved—

(i) an appreciable safety risk; or

(ii) an appreciable risk of—

(A) damage to road infrastructure; or

(B) causing an adverse effect on public amenity.

94 Substantial risk breach

(1) A contravention of a loading requirement applying to a heavy vehicle is a ***substantial risk breach*** if the subject matter of the contravention involves a loss or shifting of the load that does not involve—

(a) an appreciable safety risk; or

(b) an appreciable risk of—

(i) damage to road infrastructure; or

(ii) causing an adverse effect on public amenity.

(2) A contravention of a loading requirement applying to a heavy vehicle is also a ***substantial risk breach*** if—

(a) the subject matter of the contravention does not involve a loss or shifting of the load; and

(b) had the subject matter of the contravention involved a loss or shifting of the load, the loss or shifting of the load would have been likely to have involved—

(i) an appreciable safety risk; or

(ii) an appreciable risk of—

(A) damage to road infrastructure; or

(B) causing an adverse effect on public amenity.

95 Severe risk breach

A contravention of a loading requirement applying to a heavy vehicle is a ***severe risk breach*** if the subject matter of the contravention involves a loss or shifting of the vehicle's load that involves—

(a) an appreciable safety risk; or

(b) an appreciable risk of—

(i) damage to road infrastructure; or

(ii) causing an adverse effect on public amenity.

Division 3 Evidentiary provision

96 Proof of contravention of loading requirement

(1) In a proceeding for an offence against Division 1—

(a) evidence that a load on a heavy vehicle was not placed, secured or restrained in a way that met a performance standard stated in the Load Restraint Guide as in force at the time of the offence is evidence the load was not

placed, secured or restrained in compliance with a loading requirement applying to the vehicle; and

(b) evidence that a load, or part of a load, has fallen off a heavy vehicle is evidence that the load was not properly secured; and

(c) a court must presume 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 of the offence, until the contrary is proved.

(2) In this section—

Load Restraint Guide means a document of that name prepared by the National Transport Commission and published in the Commonwealth Gazette, from time to time.

Note—

The Load Restraint Guide may be accessed on the National Transport Commission's website at <www.ntc.gov.au>.

Part 4.5 Exemptions for particular overmass or oversize vehicles

Division 1 Preliminary

97 Class 1 heavy vehicles and class 3 heavy vehicles

(1) A heavy vehicle is a ***class 1 heavy vehicle*** if it, together with its load, does not comply with a mass requirement or dimension requirement applying to it, and—

(a) it is a special purpose vehicle; or

(b) it is an agricultural vehicle; or

(c) it—

(i) is a heavy vehicle carrying, or designed for the purpose of carrying, a large indivisible item, including, for example, a combination including a low loader; but

(ii) is not a road train or B-double, or carrying a freight container designed for multi-modal transport.

(2) A heavy vehicle is a ***class 3 heavy vehicle*** if—

(a) it, together with its load, does not comply with a mass requirement or dimension requirement applying to it; and

(b) it is not a class 1 heavy vehicle.

(3) In this section—

concrete pump means a vehicle with a component that can be used to transfer liquid concrete by pumping.

large indivisible item means an item that—

(a) can not be divided without extreme effort, expense or risk of damage to it; and

(b) can not be carried on any vehicle or combination without contravening a mass requirement or dimension requirement.

low loader means a trailer with a loading deck no more than 1m above the ground.

special purpose vehicle means—

(a) a motor vehicle or trailer, other than an agricultural vehicle or a tow truck, built for a purpose other than carrying goods; or

(b) a concrete pump or fire-engine.

Division 2 Exemptions by Commonwealth Gazette notice

98 Regulator's power to exempt category of class 1 or 3 heavy vehicles from compliance with mass or dimension requirement

(1) The Regulator may, by Commonwealth Gazette notice complying with section 102, exempt, for a period of not more than 5 years, a stated category of class 1 heavy vehicles or class 3 heavy vehicles from—

(a) a mass requirement, other than a requirement relating to—

(i) a heavy vehicle's GVM or GCM; or

(ii) a maximum mass limit for a heavy vehicle, or a component of a heavy vehicle, set by the manufacturer of the vehicle or component; or

(b) a dimension requirement.

(2) An exemption under subsection (1) is a ***mass or dimension exemption (notice)***.

Note—

See Division 3 of Part 4.7 in relation to amendment, suspension or cancellation of a mass or dimension exemption (notice).

99 Restriction on grant of mass or dimension exemption (notice)

(1) The Regulator may grant a mass or dimension exemption (notice) for a category of heavy vehicles only if—

(a) the Regulator is satisfied the use of heavy vehicles of that category on a road under the exemption will not pose a significant risk to public safety; and

(b) each relevant road manager for the exemption has consented to the grant.

(2) In deciding whether to grant a mass or dimension exemption (notice), the Regulator must have regard to the approved guidelines for granting mass or dimension exemptions.

100 Conditions of mass or dimension exemption (notice)

(1) A mass or dimension exemption (notice)—

(a) must include a condition about the areas or routes to which the exemption applies; and

(b) is subject to conditions prescribed by the national regulations for the exemption; and

(c) must be subject to the road conditions required by a relevant road manager for the exemption under section 138; and

(d) may be subject to any other conditions the Regulator considers appropriate, including, for example—

(i) conditions about 1 or more matters mentioned in Schedule 2; and

(ii) without limiting subparagraph (i), intelligent access conditions; and

(iii) a condition that the driver of a class 1 heavy vehicle or class 3 heavy vehicle who is driving the vehicle under the exemption must keep in the driver's possession a copy of—

(A) the Commonwealth Gazette notice for the exemption; or

(B) an information sheet about the exemption published by the Regulator on the Regulator's website.

(2) The condition about the areas or routes to which the exemption applies may be imposed by stating that the areas or routes to which the exemption applies are the areas or routes shown on a stated map prepared by the Regulator.

(3) If the Regulator imposes the condition about the areas or routes to which the exemption applies as mentioned in subsection (2), the Regulator—

(a) may amend the stated map but only by extending the areas or routes to which the exemption applies, including, for example, by adding additional areas or routes; and

(b) must ensure a copy of the map as in force from time to time is—

(i) made available for inspection, without charge, during normal business hours at each office of the Regulator; and

(ii) published on the Regulator's website.

(4) Without limiting the conditions that may be prescribed under subsection (1)(b), the national regulations may—

(a) prescribe conditions that are to apply only to particular areas or roads; and

(b) authorise the Regulator to decide the areas or roads to which the conditions are to apply.

101 Period for which mass or dimension exemption (notice) applies

A mass or dimension exemption (notice)—

(a) takes effect—

(i) when the Commonwealth Gazette notice for the exemption is published; or

(ii) if a later time is stated in the Commonwealth Gazette notice, at the later time; and

(b) applies for the period stated in the Commonwealth Gazette notice.

102 Requirements about Commonwealth Gazette notice

(1) A Commonwealth Gazette notice for a mass or dimension exemption (notice) must state the following—

(a) the category of heavy vehicles to which the exemption applies;

(b) the mass requirement or dimension requirement to which the exemption applies;

(c) the areas or routes to which the exemption applies;

(d) the conditions mentioned in section 100(1)(b), including, for example, by referencing the relevant provision of the national regulations;

(e) the road conditions required by a relevant road manager for the exemption under section 138;

(f) the other conditions of the exemption;

(g) the period for which the exemption applies.

(2) The Regulator must publish a copy of the Commonwealth Gazette notice on the Regulator's website.

Division 3 Exemptions by permit

103 Regulator's power to exempt particular class 1 or class 3 heavy vehicle from compliance with mass or dimension requirement

(1) The Regulator may, by giving a person a permit as mentioned in section 108, exempt, for a period of not more than 3 years, a class 1 heavy vehicle or class 3 heavy vehicle from compliance with—

(a) a mass requirement, other than a requirement relating to—

(i) the vehicle's GVM; or

(ii) the vehicle's GCM except as stated in subsection (2); or

(iii) a maximum mass limit for the vehicle, or a component of the vehicle, set by the manufacturer of the vehicle or component; or

(b) a dimension requirement.

(2) The Regulator may, under subsection (1), exempt a class 1 heavy vehicle consisting of 2 or more prime movers or 2 or more hauling units from compliance with a mass requirement relating to the GCM of the individual prime movers or hauling units if the total GCM of the prime movers or hauling units complies with the mass requirement relating to the GCM of the combined prime movers or hauling units.

(3) An exemption under subsection (1) is a ***mass or dimension exemption (permit)***.

(4) A mass or dimension exemption (permit) may apply to 1 or more heavy vehicles.

Note—

See Division 4 of Part 4.7 in relation to amendment, suspension or cancellation of a mass or dimension exemption (permit).

104 Application for mass or dimension exemption (permit)

(1) A person may apply to the Regulator for a mass or dimension exemption (permit).

(2) The application must be—

(a) in the approved form; and

(b) accompanied by the prescribed fee for the application.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

105 Restriction on grant of mass or dimension exemption (permit)

(1) The Regulator may grant a mass or dimension exemption (permit) for a heavy vehicle only if—

(a) the Regulator is satisfied the use of the heavy vehicle on a road under the exemption will not pose a significant risk to public safety; and

(b) each relevant road manager for the exemption has consented to the grant.

(2) In deciding whether to grant a mass or dimension exemption (permit), the Regulator must have regard to the approved guidelines for granting mass or dimension exemptions.

106 Conditions of mass or dimension exemption (permit)

(1) A mass or dimension exemption (permit)—

(a) must include a condition about the areas or routes to which the exemption applies; and

(b) is subject to conditions prescribed by the national regulations for the exemption; and

(c) must be subject to the road conditions required by a relevant road manager for the exemption under section 138; and

(d) may be subject to any other conditions the Regulator considers appropriate, including, for example—

(i) conditions about 1 or more matters mentioned in Schedule 2; and

(ii) without limiting subparagraph (i), intelligent access conditions.

(2) Without limiting the conditions that may be prescribed under subsection (1)(b), the national regulations may—

(a) prescribe conditions that are to apply only to particular areas or roads; and

(b) authorise the Regulator to decide the areas or roads to which the conditions are to apply.

107 Period for which mass or dimension exemption (permit) applies

(1) A mass or dimension exemption (permit) applies for the period stated in the permit for the exemption.

(2) The period may be less than the period sought by the applicant for the mass or dimension exemption (permit).

108 Permit for mass or dimension exemption (permit) etc.

(1) If the Regulator grants a mass or dimension exemption (permit) to a person, the Regulator must give the person—

(a) a permit for the exemption; and

(b) if the Regulator has imposed conditions on the exemption under section 106(1)(a), (c) or (d) or has granted the exemption for a period less than the period of not more than 3 years sought by the person—an information notice for the decision to impose the conditions or grant the exemption for the shorter period.

Note—

See section 141 for the requirements for an information notice relating to the imposition of a road condition at the request of a relevant road manager.

(2) A permit for a mass or dimension exemption (permit) must state the following—

(a) the name of the person to whom the permit is given;

(b) each heavy vehicle to which the exemption applies, including the registration number of the vehicle if known when the permit is given;

(c) the mass requirement or dimension requirement to which the exemption applies;

(d) the areas or routes to which the exemption applies;

(e) the conditions mentioned in section 106(1)(b), including, for example, by referencing the relevant provision of the national regulations;

(f) the road conditions required by a relevant road manager for the exemption under section 138;

(g) the other conditions of the exemption;

(h) the period for which the exemption applies.

109 Refusal of application for mass or dimension exemption (permit)

If the Regulator refuses an application for a mass or dimension exemption (permit), the Regulator must give the applicant an information notice for the decision to refuse the application.

Note—

See section 142 for the requirements for an information notice relating to a relevant road manager's decision not to give consent to the grant of a mass or dimension exemption (permit).

Division 4 Operating under mass or dimension exemption

110 Contravening condition of mass or dimension exemption generally

(1) The driver or operator of a heavy vehicle being used on a road under a mass or dimension exemption must not contravene a condition of the exemption.

Maximum penalty—$6000.

(2) A person must not use, or permit to be used, on a road a heavy vehicle that contravenes a condition of a mass or dimension exemption applying to the vehicle.

Maximum penalty—$6000.

(3) A person must not use a heavy vehicle, or permit a heavy vehicle to be used, on a road in a way that contravenes a condition of a mass or dimension exemption applying to the vehicle.

Maximum penalty—$6000.

(4) A person does not commit an offence against this Law in relation to a heavy vehicle contravening a mass requirement or dimension requirement if—

(a) the vehicle is exempt, under a mass or dimension exemption, from compliance with the mass requirement or dimension requirement; and

(b) the vehicle, and its use on a road, complies with the conditions of the exemption.

(5) However, if a person commits a condition offence—

(a) the exemption does not operate in the person's favour while the contravention constituting the offence continues; and

(b) the exemption must be disregarded in deciding—

(i) whether the person has committed an offence in relation to a contravention of a mass requirement or dimension requirement applying to a heavy vehicle; and

(ii) the risk category for the contravention.

(6) If, because of the operation of subsection (5), a person commits an offence against a provision of this Law (the ***other offence provision***) in relation to a mass requirement or dimension requirement to which an exemption under this Part applies, the person—

(a) may be charged with the condition offence or an offence against the other offence provision; but

(b) must not be charged with both offences.

(7) Subsection (1) does not apply to a condition mentioned in section 113(1).

(8) In this section—

condition offence means an offence against subsection (1), (2) or (3).

111 Contravening condition of mass or dimension exemption relating to pilot or escort vehicle

(1) This section applies if a mass or dimension exemption is subject to a condition requiring a heavy vehicle to which the exemption applies to be accompanied by a pilot vehicle or escort vehicle while the heavy vehicle is used on a road.

(2) The driver of the pilot vehicle or escort vehicle accompanying the heavy vehicle must comply with the conditions of the mass or dimension exemption about the use of the pilot vehicle or escort vehicle.

Maximum penalty—$4000.

(3) If the driver of the pilot vehicle or escort vehicle commits an offence against subsection (2), the operator of the heavy vehicle is also taken to have committed the offence.

Maximum penalty—$4000.

(4) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (2) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (2) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (2) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

112 Using pilot vehicle with a heavy vehicle that contravenes mass or dimension exemption

(1) The driver of a pilot vehicle must ensure the pilot vehicle does not accompany a heavy vehicle to which a mass or dimension exemption applies if the heavy vehicle, or its use on a road, contravenes a condition of the exemption.

Maximum penalty—$6000.

(2) If a person is both the driver of a pilot vehicle accompanying a heavy vehicle to which a mass or dimension exemption applies and an operator of the heavy vehicle, the person may, in relation to the heavy vehicle or its use on a road contravening a condition of the exemption, be prosecuted under section 110 or subsection (1), but not both.

113 Keeping relevant document while driving under mass or dimension exemption (notice)

(1) This section applies if a mass or dimension exemption (notice) is subject to the condition that the driver of a class 1 heavy vehicle or class 3 heavy vehicle who is driving the vehicle under the exemption must keep a relevant document in the driver's possession.

(2) A driver of the class 1 heavy vehicle or class 3 heavy vehicle who is driving the vehicle under the mass or dimension exemption (notice) must comply with the condition.

Maximum penalty—$2000.

(3) If the driver of a class 1 heavy vehicle or class 3 heavy vehicle commits an offence against subsection (2), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (2) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (2) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (2) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

relevant document, for a mass or dimension exemption (notice), means a copy of—

(a) the Commonwealth Gazette notice for the exemption; or

(b) an information sheet about the exemption published by the Regulator on the Regulator's website.

relevant party, for the driver of a class 1 heavy vehicle or class 3 heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

114 Keeping copy of permit while driving under mass or dimension exemption (permit)

(1) The driver of a class 1 heavy vehicle or class 3 heavy vehicle who is driving the vehicle under a mass or dimension exemption (permit) must keep a copy of the permit for the exemption in the driver's possession.

Maximum penalty—$2000.

(2) If the driver of a class 1 heavy vehicle or class 3 heavy vehicle is driving the vehicle under a mass or dimension exemption (permit) granted to a relevant party for the driver and the relevant party has given the driver a copy of a permit for the purpose of subsection (1), the driver must, as soon as reasonably practicable, return the copy to the relevant party if the driver stops working for the relevant party.

Maximum penalty—$2000.

(3) If the driver of a class 1 heavy vehicle or class 3 heavy vehicle commits an offence against subsection (1), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (1) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (1) is evidence that the offence

happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (1) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

(7) In this section—

relevant party, for the driver of a class 1 heavy vehicle or class 3 heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

Division 5 Other provision

115 Displaying warning signs on vehicles if not required by dimension exemption

(1) A heavy vehicle warning sign must not be displayed on a heavy vehicle unless it is being used under a dimension exemption.

Maximum penalty—$4000.

(2) A pilot vehicle warning sign must not be displayed on a vehicle unless it is being used as a pilot vehicle for a heavy vehicle being used under a dimension exemption.

Maximum penalty—$4000.

(3) In this section—

dimension exemption means an exemption under this Part from compliance with a dimension requirement.

heavy vehicle warning sign means a warning sign required under the national regulations to be attached to a heavy vehicle being used under a dimension exemption.

pilot vehicle warning sign means a warning sign required under the national regulations to be attached to a vehicle being used as a pilot vehicle for a heavy vehicle being used under a dimension exemption.

Part 4.6 Restricting access to roads by large vehicles that are not overmass or oversize vehicles

Division 1 Preliminary

116 Main purpose of Pt 4.6

The main purpose of this Part is to restrict access to roads by heavy vehicles that, while complying with mass requirements and dimension requirements applying to them, may, because of their size—

(a) endanger public safety; or

(b) damage road infrastructure; or

(c) adversely affect public amenity.

117 Class 2 heavy vehicles

A heavy vehicle is a ***class 2 heavy vehicle*** if it—

(a) complies with the mass requirements and dimension requirements applying to it; and

(b) is—

(i) a B-double; or

(ii) a road train; or

(iii) a bus, other than an articulated bus, that is longer than 12.5m; or

(iv) a combination carrying vehicles on more than 1 deck that, together with its load—

(A) is longer than 19m; or

(B) is higher than 4.3m; or

(v) a motor vehicle, or a combination, that is higher than 4.3m and is built to carry cattle, sheep, pigs or horses.

Division 2 Restriction

118 Using class 2 heavy vehicle

A person must not use a class 2 heavy vehicle, or permit a class 2 heavy vehicle to be used, on a road other than in accordance with a class 2 heavy vehicle authorisation.

Maximum penalty—$6000.

Division 3 Authorisation by Commonwealth Gazette notice

119 Regulator's power to authorise use of all or stated categories of class 2 heavy vehicles

(1) The Regulator may, by Commonwealth Gazette notice complying with section 123, authorise, for a period of not more than 5 years, the use of all or stated categories of class 2 heavy vehicles—

(a) in stated areas or on stated routes; and

(b) during stated hours of stated days.

(2) An authorisation under subsection (1) is a ***class 2 heavy vehicle authorisation (notice)***.

Note—

See Division 3 of Part 4.7 in relation to amendment, suspension or cancellation of a class 2 heavy vehicle authorisation (notice).

120 Restriction on grant of class 2 heavy vehicle authorisation (notice)

(1) The Regulator may grant a class 2 heavy vehicle authorisation (notice) only if—

(a) the Regulator is satisfied the use of class 2 heavy vehicles, or the stated categories of class 2 heavy vehicles, on a road under the authorisation will not pose a significant risk to public safety; and

(b) each relevant road manager for the authorisation has consented to the grant.

(2) In deciding whether to grant a class 2 heavy vehicle authorisation (notice), the Regulator must have regard to the approved guidelines for granting class 2 heavy vehicle authorisations.

121 Conditions of class 2 heavy vehicle authorisation (notice)

A class 2 heavy vehicle authorisation (notice) may be subject to a condition that the driver of a class 2 heavy vehicle who is driving the vehicle under the authorisation must keep in the driver's possession a copy of—

(a) the Commonwealth Gazette notice for the authorisation; or

(b) an information sheet about the authorisation published by the Regulator on the Regulator's website.

122 Period for which class 2 heavy vehicle authorisation (notice) applies

A class 2 heavy vehicle authorisation (notice)—

(a) takes effect—

(i) when the Commonwealth Gazette notice for the authorisation is published; or

(ii) if a later time is stated in the Commonwealth Gazette notice, at the later time; and

(b) applies for the period stated in the Commonwealth Gazette notice.

123 Requirements about Commonwealth Gazette notice etc.

(1) A Commonwealth Gazette notice for a class 2 heavy vehicle authorisation (notice) must state the following—

(a) that the authorisation applies to all class 2 heavy vehicles or, if the authorisation only applies to particular categories of class 2 heavy vehicles, the categories of class 2 heavy vehicles to which the authorisation applies;

(b) the areas or routes to which the authorisation applies;

(c) the days and hours to which the authorisation applies;

(d) any conditions applying to class 2 heavy vehicles being used on a road under the authorisation;

(e) the period for which the authorisation applies.

(2) The Commonwealth Gazette notice may state that the areas or routes to which the authorisation applies are the areas or routes shown on a stated map prepared by the Regulator.

(3) If the Commonwealth Gazette notice states the areas or routes to which the authorisation applies as mentioned in subsection (2), the Regulator—

(a) may amend the stated map but only by extending the areas or routes to which the authorisation applies,

including, for example, by adding additional areas or routes; and

(b) must ensure a copy of the map as in force from time to time is—

(i) made available for inspection, without charge, during normal business hours at each office of the Regulator; and

(ii) published on the Regulator's website.

(4) The Regulator must publish a copy of the Commonwealth Gazette notice on the Regulator's website.

Division 4 Authorisation by permit

124 Regulator's power to authorise use of a particular class 2 heavy vehicle

(1) The Regulator may, by giving a person a permit as mentioned in section 129, authorise, for a period of not more than 3 years, the use of a class 2 heavy vehicle—

(a) in stated areas or on stated routes; and

(b) during stated hours of stated days.

(2) An authorisation under subsection (1) is a ***class 2 heavy vehicle authorisation (permit)***.

(3) A class 2 heavy vehicle authorisation (permit) may apply to 1 or more heavy vehicles.

Note—

See Division 4 of Part 4.7 in relation to amendment, suspension or cancellation of a class 2 heavy vehicle authorisation (permit).

125 Application for class 2 heavy vehicle authorisation (permit)

(1) A person may apply to the Regulator for a class 2 heavy vehicle authorisation (permit).

(2) The application must be—

(a) in the approved form; and

(b) accompanied by the prescribed fee for the application.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

126 Restriction on grant of class 2 heavy vehicle authorisation (permit)

(1) The Regulator may grant a class 2 heavy vehicle authorisation (permit) for a class 2 heavy vehicle only if—

(a) the Regulator is satisfied the use of the class 2 heavy vehicle on a road under the authorisation will not pose a significant risk to public safety; and

(b) each relevant road manager for the authorisation has consented to the grant.

(2) In deciding whether to grant a class 2 heavy vehicle authorisation (permit), the Regulator must have regard to the approved guidelines for granting class 2 heavy vehicle authorisations.

127 Conditions of a class 2 heavy vehicle authorisation (permit)

A class 2 heavy vehicle authorisation (permit)—

(a) must be subject to the road conditions required by a relevant road manager for the authorisation under section 138; and

(b) may be subject to any other conditions the Regulator considers appropriate, including, for example—

(i) conditions about 1 or more matters mentioned in Schedule 2; and

(ii) without limiting subparagraph (i), intelligent access conditions.

128 Period for which class 2 heavy vehicle authorisation (permit) applies

(1) A class 2 heavy vehicle authorisation (permit) applies for the period stated in the permit for the authorisation.

(2) The period may be less than the period sought by the applicant for the class 2 heavy vehicle authorisation (permit).

129 Permit for class 2 heavy vehicle authorisation (permit) etc.

(1) If the Regulator grants a class 2 heavy vehicle authorisation (permit) to a person, the Regulator must give the person—

(a) a permit for the authorisation; and

(b) if the Regulator has imposed conditions on the authorisation under section 127 or has granted the authorisation for a period less than the period of not more than 3 years sought by the person—an information notice for the decision to impose the conditions or grant the authorisation for the shorter period.

Note—

See section 141 for the requirements for an information notice relating to the imposition of a road condition at the request of a relevant road manager.

(2) A permit for a class 2 heavy vehicle authorisation (permit) must state the following—

(a) the name and address of the person to whom the permit is given;

(b) each class 2 heavy vehicle to which the authorisation applies;

(c) the areas or routes to which the authorisation applies;

(d) the days and hours to which the authorisation applies;

(e) the road conditions required by a relevant road manager for the authorisation under section 138;

(f) any other conditions applying to a class 2 heavy vehicle being used on a road under the authorisation;

(g) the period for which the authorisation applies.

130 Refusal of application for class 2 heavy vehicle authorisation (permit)

If the Regulator refuses an application for a class 2 heavy vehicle authorisation (permit), the Regulator must give the applicant an information notice for the decision to refuse the application.

Note—

See section 142 for the requirements for an information notice relating to a road manager's decision not to give consent to the grant of a class 2 heavy vehicle authorisation (permit).

Division 5 Operating under class 2 heavy vehicle authorisation

131 Contravening condition of class 2 heavy vehicle authorisation

(1) The driver or operator of a class 2 heavy vehicle being used on a road under a class 2 heavy vehicle authorisation must not contravene a condition of the authorisation.

Maximum penalty—$3000.

(2) Subsection (1) does not apply to a condition mentioned in section 132(1).

132 Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice)

(1) This section applies if a class 2 heavy vehicle authorisation (notice) is subject to the condition that the driver of a class 2 heavy vehicle who is driving the vehicle under the authorisation must keep a relevant document in the driver's possession.

(2) A driver of the class 2 heavy vehicle who is driving the vehicle under the class 2 heavy vehicle authorisation (notice) must comply with the condition.

Maximum penalty—$2000.

(3) If the driver of a class 2 heavy vehicle commits an offence against subsection (2), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (2) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (2) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (2) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

(7) In this section—

relevant document, for a class 2 heavy vehicle authorisation (notice), means a copy of—

(a) the Commonwealth Gazette notice for the authorisation; or

(b) an information sheet about the authorisation published by the Regulator on the Regulator's website.

relevant party, for the driver of a class 2 heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

133 Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)

(1) The driver of a class 2 heavy vehicle who is driving the vehicle under a class 2 heavy vehicle authorisation (permit) must keep a copy of the permit for the authorisation in the driver's possession.

Maximum penalty—$2000.

(2) If the driver of a class 2 heavy vehicle is driving the vehicle under a class 2 heavy vehicle authorisation (permit) granted to a relevant party for the driver and the relevant party has given the driver a copy of a permit for the purpose of subsection (1), the driver must, as soon as reasonably practicable, return the

copy to the relevant party if the driver stops working for the relevant party.

Maximum penalty—$2000.

(3) If the driver of a class 2 heavy vehicle commits an offence against subsection (1), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (1) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (1) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (1) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

(7) In this section—

relevant party, for the driver of a class 2 heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

Part 4.7 Particular provisions about mass or dimension authorities

Division 1 Preliminary

134 Definitions for Pt 4.7

In this Part—

road condition—

(a) means a condition directed at—

(i) protecting road infrastructure; or

(ii) preventing or minimising an adverse effect on public amenity, including, for example, preventing or minimising an adverse effect caused by noise, emissions and traffic congestion resulting from vehicle use of roads; but

(b) does not include a condition requiring the installation of equipment or another thing in a vehicle unless the equipment or thing is required to be installed in the vehicle for an intelligent access condition imposed in connection with a condition directed at the matters mentioned in paragraph (a)(i) or (ii).

route assessment, in relation to a mass or dimension authority, means an assessment of the road infrastructure in the areas or on the routes to which the authority is to apply to

decide the impact the grant of the authority will have, or is likely to have, on the road infrastructure.

vehicle condition means a condition directed at ensuring a vehicle can operate safely on roads.

Division 2 Obtaining consent of relevant road managers

135 Application of Div 2

This Division applies in relation to the Regulator obtaining the consent of the road manager for a road for the purpose of granting a mass or dimension authority.

136 Deciding request for consent generally

(1) If the Regulator asks a road manager for a road for the road manager's consent to the grant of a mass or dimension authority, the road manager must decide to give or not to give the consent—

(a) within 28 days after the request is made; or

(b) within a longer period, of not more than 6 months after the request is made, agreed to by the Regulator.

Note—

See, however, section 137.

(2) The road manager may ask for, and the Regulator may agree to, a longer period under subsection (1)(b) only if—

(a) the road manager is required under a law to consult with another entity before deciding whether to give or not to give the consent (including, for example, for the purpose of obtaining that entity's approval to give the consent); or

(b) the road manager considers a route assessment is necessary for deciding whether to give or not to give the consent.

(3) The road manager may decide not to give the consent only if the road manager is satisfied—

(a) the mass or dimension authority will, or is likely to—

(i) cause damage to road infrastructure; or

(ii) adversely affect public amenity; and

(b) it is not possible to grant the authority subject to road conditions that will avoid, or significantly minimise, the damage, or likely damage, to road infrastructure or the adverse effect, or likely adverse effect, on public amenity.

(4) Also, in deciding whether or not to give the consent, the road manager must have regard to—

(a) for a mass or dimension exemption—the approved guidelines for granting mass or dimension exemptions; or

(b) for a class 2 heavy vehicle authorisation—the approved guidelines for granting class 2 heavy vehicle authorisations.

(5) If a relevant road manager for a mass or dimension authority decides not to give consent to the grant of the authority, the relevant road manager must give the Regulator written reasons for the road manager's decision.

137 Deciding request for consent if route assessment required

(1) This section applies if—

(a) a person (the ***applicant***) applies for a mass or dimension exemption (permit) or class 2 heavy vehicle authorisation (permit); and

(b) the Regulator asks a road manager for a road for the road manager's consent to the grant of the exemption or authorisation; and

(c) the road manager considers a route assessment is necessary for deciding whether to give or not to give the consent.

(2) The road manager may notify the Regulator of the following—

(a) that a route assessment is required for the road manager deciding whether to give or not to give the consent;

(b) the fee payable (if any) for the route assessment under a law of the jurisdiction in which the road is situated.

(3) The Regulator must notify the applicant of the following—

(a) that a route assessment is required for the road manager deciding whether to give or not to give the consent;

(b) the fee payable (if any) for the route assessment under a law of the jurisdiction in which the road is situated;

(c) if a fee is payable for the route assessment under a law of the jurisdiction in which the road is situated, that the road manager may stop considering whether to give or not to give the consent until the fee is paid;

(d) if, under section 136(1)(b), the Regulator agrees to a longer period for the road manager deciding whether to give or not to give the consent, the longer period agreed by the Regulator.

(4) If a fee is payable for the route assessment under a law of the jurisdiction in which the road is situated—

(a) the road manager may stop considering whether to give or not to give the consent until the fee is paid; and

(b) the period between the day the applicant is given the notification under subsection (3) and the day the fee is paid must not be counted in working out the period

taken by the road manager to decide whether to give or not to give the consent.

(5) If the applicant does not pay the fee for the route assessment within 28 days after the notification is given to the applicant under subsection (3), or a longer period agreed to by the Regulator, the application lapses.

138 Imposition of road conditions

(1) A relevant road manager for a mass or dimension authority may consent to the grant of the authority subject to the condition that a stated road condition is imposed on the authority.

(2) If a relevant road manager for a mass or dimension authority consents to the grant of the authority as mentioned in subsection (1)—

(a) the relevant road manager must give the Regulator written reasons for the road manager's decision to give consent to the grant of the authority subject to the condition; and

(b) the Regulator must impose the stated road condition on the authority.

(3) This section does not apply to a class 2 heavy vehicle authorisation (notice).

139 Imposition of vehicle conditions

(1) A relevant road manager for a mass or dimension authority who gives consent to the grant of the authority may ask the Regulator to impose a stated vehicle condition on the authority.

(2) If a relevant road manager for a mass or dimension authority makes a request as mentioned in subsection (1), the Regulator must—

(a) consider the request and decide—

(i) to impose the stated vehicle condition on the authority (with or without modification); or

(ii) not to impose the stated vehicle condition on the authority; and

(b) notify the relevant road manager of the decision under paragraph (a).

140 Obtaining consent of road authority if particular road manager refuses to give consent

(1) This section applies if a relevant road manager for a mass or dimension authority—

(a) is a public authority other than a road authority; and

(b) either—

(i) decides not to consent to the grant of the mass or dimension authority; or

(ii) consents to the grant of the mass or dimension authority subject to the imposition of road conditions the Regulator considers are not necessary to avoid, or significantly minimise, damage, or likely damage, to road infrastructure or an adverse effect, or likely adverse effect, on public amenity.

(2) The Regulator may ask the relevant road authority to consent to the grant.

(3) If the Regulator asks the relevant road authority for consent under this section, the road authority must decide to give or not to give the consent—

(a) within 3 months of the request; or

(b) within a longer period, of not more than 6 months, agreed to by the Regulator.

(4) If the relevant road authority gives the consent or gives the consent on the condition that a stated road condition is imposed on the mass or dimension authority—

(a) the decision of the relevant road manager has no effect for the purposes of this Law; and

(b) to the extent this Law applies in relation to the consent of, or the road conditions required by, the relevant road manager, this Law (other than this section) applies as if a reference in it to the relevant road manager were a reference to the relevant road authority.

(5) In this section—

relevant road authority, for a decision of a relevant road manager for a mass or dimension authority, means the road authority for the participating jurisdiction in which the road for which the relevant road manager is a road manager is situated.

141 Information notices for imposition of road conditions requested by road manager

(1) This section applies if—

(a) the Regulator grants a mass or dimension authority by giving a permit to a person; and

(b) the authority is subject to a road condition required by a relevant road manager for the authority when consenting to the grant of the authority.

(2) The information notice for the decision to impose the condition given to the person under this Law must state the following, in addition to any other information required to be included in the information notice—

(a) that the road manager consented to the mass or dimension authority on the condition that the road condition is imposed on the authority;

(b) the reasons for the road manager's decision to give the consent on the condition that the road condition be imposed on the authority;

(c) the review and appeal information for the road manager's decision to give the consent on the condition that the road condition be imposed on the authority.

142 Information notice for decision to refuse application because road manager did not give consent

(1) This section applies if an application for a mass or dimension authority is refused, wholly or partly, because a relevant road manager for the authority has refused to consent to the authority.

(2) The information notice for the decision to refuse the application given to the applicant under this Law must state the following, in addition to any other information required to be included in the information notice—

(a) that the road manager has refused to consent to the mass or dimension authority;

(b) the reasons for the road manager's decision to refuse to give the consent;

(c) the review and appeal information for the road manager's decision to refuse to give the consent.

Division 3 Amendment, cancellation or suspension of mass or dimension authority granted by Commonwealth Gazette notice

143 Amendment or cancellation on Regulator's initiative

(1) This section applies if the Regulator is satisfied the use of heavy vehicles on a road under a mass or dimension authority granted by Commonwealth Gazette notice has caused, or is likely to cause, a significant risk to public safety.

(2) The Regulator may amend or cancel the mass or dimension authority by complying with subsections (3) to (5).

(3) The Regulator must publish a notice in the Commonwealth Gazette, in a newspaper circulating generally throughout each relevant participating jurisdiction and on the Regulator's website—

(a) stating that the Regulator believes the use of heavy vehicles on a road under the mass or dimension authority has caused, or is likely to cause, a significant risk to public safety; and

(b) outlining the facts and circumstances forming the basis for the belief; and

(c) stating the action the Regulator is proposing to take under this section (the ***proposed action***); and

(d) inviting persons who will be affected by the proposed action to make, within a stated time of at least 14 days after the Commonwealth Gazette notice is published, written representations about why the proposed action should not be taken.

(4) If, after considering all written representations made under subsection (3)(d), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the mass or dimension authority—amend the authority in a way that is not substantially different from the proposed action, including, for example, by—

(i) amending the areas or routes to which the authority applies; or

(ii) amending the days or hours to which the authority applies; or

(iii) imposing additional vehicle conditions on the authority; or

(b) if the proposed action was to cancel the mass or dimension authority—

(i) amend the authority, including, for example, as mentioned in paragraph (a)(i), (ii) or (iii); or

(ii) cancel the authority.

(5) Notice of the amendment or cancellation must be published—

(a) in—

(i) the Commonwealth Gazette; and

(ii) a newspaper circulating generally throughout each relevant participating jurisdiction; and

(b) on the Regulator's website; and

(c) in any other newspaper the Regulator considers appropriate.

Example for paragraph (c)—

If the mass or dimension authority relates to a particular part of a participating jurisdiction, the Regulator may consider it appropriate to publish the notice in a newspaper circulating generally in the part.

(6) The amendment or cancellation takes effect—

(a) 28 days after the Commonwealth Gazette notice is published under subsection (5); or

(b) if a later time is stated in the Commonwealth Gazette notice, at the later time.

(7) In this section—

relevant participating jurisdiction, for a mass or dimension authority, means a participating jurisdiction in which the whole or part of an area or route to which the authority applies is situated.

144 Amendment or cancellation on request by relevant road manager

(1) This section applies if a relevant road manager for a mass or dimension authority granted by Commonwealth Gazette notice is satisfied the use of heavy vehicles on a road under the authority—

(a) has caused, or is likely to cause, damage to road infrastructure; or

(b) has had, or is likely to have, an adverse effect on public amenity.

(2) The road manager may ask the Regulator to—

(a) amend the mass or dimension authority, including, for example, by—

(i) amending the areas or routes to which the authority applies; or

(ii) amending the days or hours to which the authority applies; or

(iii) imposing or amending road conditions; or

(b) cancel the authority.

(3) The Regulator must comply with the request.

(4) However, if consent to the grant of the mass or dimension authority was given by a road authority under section 140—

(a) the Regulator may refer the request to the road authority; and

(b) if the road authority gives the Regulator its written approval of the request, the Regulator must comply with the request; and

(c) if the road authority does not give written approval of the road manager's request within 28 days after the referral is made, the Regulator—

(i) must not comply with the request; and

(ii) must notify the road manager that the road authority has not given its written approval of the request and, as a result, the Regulator must not comply with it.

(5) Notice of an amendment or cancellation under this section must be published—

(a) in—

(i) the Commonwealth Gazette; and

(ii) a newspaper circulating generally throughout each relevant participating jurisdiction; and

(b) on the Regulator's website; and

(c) in any other newspaper the Regulator considers appropriate.

Example for paragraph (c)—

If the mass or dimension authority relates to a particular part of a participating jurisdiction, the Regulator may consider it appropriate to publish the notice in a newspaper circulating generally in the part.

(6) The amendment or cancellation takes effect—

(a) 28 days after the Commonwealth Gazette notice is published under subsection (5); or

(b) if a later time is stated in the Commonwealth Gazette notice, at the later time.

(7) In this section—

relevant participating jurisdiction, for a mass or dimension authority, means a participating jurisdiction in which the whole or part of an area or route to which the authority applies is situated.

145 Immediate suspension

(1) This section applies if the Regulator considers it is necessary to suspend a mass or dimension authority granted by Commonwealth Gazette notice immediately to prevent or minimise serious harm to public safety or significant damage to road infrastructure.

(2) The Regulator may, by publishing a notice as mentioned in subsection (3) (***immediate suspension notice***), immediately suspend the authority until the earlier of the following—

(a) the Regulator publishes a notice under section 143(5) or 144(5);

(b) the end of 56 days after the day the immediate suspension notice is published.

(3) The immediate suspension notice must be published—

(a) in—

(i) the Commonwealth Gazette; and

(ii) a newspaper circulating generally throughout each relevant participating jurisdiction; and

(b) on the Regulator's website; and

(c) in any other newspaper the Regulator considers appropriate.

Example for paragraph (c)—

If the mass or dimension authority relates to a particular part of a participating jurisdiction, the Regulator may consider it appropriate to publish the notice in a newspaper circulating generally in the part.

(4) The suspension takes effect immediately after the Commonwealth Gazette notice is published under subsection (3).

(5) This section applies despite sections 143 and 144.

(6) In this section—

relevant participating jurisdiction, for a mass or dimension authority, means a participating jurisdiction in which the whole or part of an area or route to which the authority applies is situated.

Division 4 Amendment, cancellation or suspension of mass or dimension authority granted by permit

146 Amendment or cancellation on application by permit holder

(1) The holder of a permit for a mass or dimension authority may apply to the Regulator for an amendment or cancellation of the authority.

(2) The application must—

(a) be in writing; and

(b) if the application is for an amendment, state clearly the amendment sought and the reasons for the amendment; and

(c) be accompanied by the permit.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

(4) The Regulator must decide the application as soon as practicable after receiving it.

(5) If the Regulator decides to grant the application—

(a) the Regulator must give the applicant notice of the decision; and

(b) the amendment or cancellation takes effect—

(i) when notice of the decision is given to the applicant; or

(ii) if a later time is stated in the notice, at the later time; and

(c) if the Regulator amended the authority, the Regulator must give the applicant a replacement permit for the authority as amended.

(6) If the Regulator decides not to amend or cancel the mass or dimension authority as sought by the applicant, the Regulator must—

(a) give the applicant an information notice for the decision; and

(b) return the permit for the authority to the applicant.

147 Amendment or cancellation on Regulator's initiative

(1) Each of the following is a ground for amending or cancelling a mass or dimension authority granted by giving a permit to a person—

(a) the authority was granted because of a document or representation that was—

(i) false or misleading; or

(ii) obtained or made in an improper way;

(b) the holder of the permit for the authority has contravened a condition of the authority;

(c) the use of heavy vehicles on a road under the authority has caused, or is likely to cause, a significant risk to public safety.

(2) If the Regulator considers a ground exists to amend or cancel a mass or dimension authority granted by giving a permit to a person (the ***proposed action***), the Regulator must give the holder of the permit a notice—

(a) stating the proposed action; and

(b) stating the ground for the proposed action; and

(c) outlining the facts and circumstances forming the basis for the ground; and

(d) if the proposed action is to amend the authority (including a condition of the authority)—stating the proposed amendment; and

(e) inviting the holder to make, within a stated time of at least 14 days after the notice is given to the holder, written representations about why the proposed action should not be taken.

(3) If, after considering all written representations made under subsection (2)(e), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the mass or dimension authority—amend the authority in a way that is not substantially different from the proposed action, including, for example, by—

(i) amending the areas or routes to which the authority applies; or

(ii) amending the days or hours to which the authority applies; or

(iii) imposing additional vehicle conditions on the authority; or

(b) if the proposed action was to cancel the authority—

(i) amend the authority, including, for example, as mentioned in paragraph (a)(i), (ii) or (iii); or

(ii) cancel the authority.

(4) The Regulator must give the holder an information notice for the decision.

(5) The amendment or cancellation takes effect—

(a) when the information notice is given to the holder; or

(b) if a later time is stated in the information notice, at the later time.

148 Amendment or cancellation on request by relevant road manager

(1) This section applies if a relevant road manager for a mass or dimension authority granted by giving a permit to a person is

satisfied the use of heavy vehicles on a road under the authority—

(a) has caused, or is likely to cause, damage to road infrastructure; or

(b) has had, or is likely to have, an adverse effect on public amenity.

(2) The road manager may ask the Regulator to—

(a) amend the mass or dimension authority, including, for example, by—

(i) amending the areas or routes to which the authority applies; or

(ii) amending the days or hours to which the authority applies; or

(iii) imposing additional road conditions on the authority; or

(b) cancel the authority.

(3) The Regulator must comply with the request.

(4) However, if consent to the grant of the mass or dimension authority was given by a road authority under section 140—

(a) the Regulator may refer the request to the road authority; and

(b) if the road authority gives the Regulator its written approval of the request, the Regulator must comply with the request; and

(c) if the road authority does not give written approval of the request within 28 days after the referral is made, the Regulator—

(i) must not comply with the request; and

(ii) must notify the road manager that the road authority has not given its written approval of the request and, as a result, the Regulator must not comply with it.

(5) If the mass or dimension authority is amended or cancelled under this section, the Regulator must give the holder of the permit for the authority notice of the amendment or cancellation at least 28 days before the amendment or cancellation is to take effect.

(6) The notice given to the holder must state—

(a) the day the amendment or cancellation is to take effect; and

(b) the reasons given by the road manager for the amendment or cancellation; and

(c) the review and appeal information for the road manager's decision.

149 Immediate suspension

(1) This section applies if the Regulator considers it is necessary to suspend a mass or dimension authority granted by issuing a permit to someone immediately to prevent or minimise serious harm to public safety or significant damage to road infrastructure.

(2) The Regulator may, by notice (***immediate suspension notice***) given to the person to whom the permit was given, immediately suspend the authority until the earlier of the following—

(a) the Regulator gives the person a notice under section 147(4) or 148(5);

(b) the end of 56 days after the day the immediate suspension notice is given to the person.

(3) This section applies despite sections 147 and 148.

150 Minor amendment

The Regulator may, by notice given to the holder of a permit for a mass or dimension authority, amend the authority—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the holder's interests.

Division 5 Provisions about permits for mass or dimension authorities

151 Return of permit

(1) This section applies to a mass or dimension authority granted by giving a permit to a person.

(2) If the mass or dimension authority is amended or cancelled, the Regulator may, by notice, require the person to return the person's permit for the authority to the Regulator.

(3) The person must comply with the notice within 7 days after the notice is given to the person or, if a longer period is stated in the notice, within the longer period.

Maximum penalty—$2000.

(4) If the mass or dimension authority has been amended, the Regulator must give the person a replacement permit for the authority as amended.

152 Replacement of defaced etc. permit

(1) If a person's permit for a mass or dimension authority is defaced, destroyed, lost or stolen, the person must, as soon as reasonably practicable after becoming aware of the matter, apply to the Regulator for a replacement permit.

Maximum penalty—$2000.

(2) If the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen, the Regulator must give the person a replacement permit as soon as practicable.

(3) If the Regulator decides not to give a replacement permit to the person, the Regulator must give the person an information notice for the decision.

Part 4.8 Extended liability

153 Liability of employer etc. for driver's contravention of mass, dimension or loading requirement

(1) If the driver of a heavy vehicle commits an offence against section 78, 84 or 92, each of the following persons is also taken to have committed the offence—

(a) an employer of the driver if the driver is an employed driver;

(b) a prime contractor of the driver if the driver is a self-employed driver;

(c) an operator of the vehicle or, if it is a combination, an operator of a vehicle in the combination;

(d) a consignor of any goods for road transport using the vehicle that are in the vehicle;

(e) a packer of any goods in the vehicle;

(f) a loading manager of any goods in the vehicle;

(g) a loader of any goods in the vehicle.

Maximum penalty—the penalty for a contravention of the provision by the driver of the heavy vehicle.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(4) In a proceeding for an offence against subsection (1)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against section 78, 84 or 92 is irrelevant; and

(b) evidence a court has convicted the driver of the offence against section 78, 84 or 92 is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against section 78, 84 or 92 has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

154 Liability of employer etc. for driver's contravention of mass limit traffic offence

(1) If the driver of a heavy vehicle is convicted of a mass limit traffic offence, each of the following persons is also taken to have committed the offence—

(a) an employer of the driver if the driver is an employed driver;

(b) a prime contractor of the driver if the driver is a self-employed driver;

(c) an operator of the vehicle or, if it is a combination, an operator of a vehicle in the combination;

(d) a consignor of any goods for road transport using the vehicle that are in the vehicle;

(e) a packer of any goods in the vehicle;

(f) a loading manager of any goods in the vehicle;

(g) a loader of any goods in the vehicle.

Maximum penalty—$2000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(4) In this section—

indicated, by an official traffic sign, includes—

(a) indicated by way of a direction on an official traffic sign; and

(b) indicated by way of a direction, indication or requirement that, under a law, is prescribed as being given or imposed, because of an official traffic sign.

mass limit traffic offence means an offence committed by the driver of a heavy vehicle because the driver drove the heavy vehicle on a road in contravention of a mass limit indicated by an official traffic sign.

official traffic sign means a sign or device erected or placed, under a law, by a public authority to regulate traffic.

public authority includes a police force or police service.

Part 4.9 Other offences

Division 1 Towing restriction

155 Towing restriction

(1) A person must not drive a heavy motor vehicle towing more than 1 other vehicle.

Maximum penalty—$2000.

(2) Subsection (1) does not apply to a person driving a heavy vehicle under a mass or dimension authority.

Division 2 Coupling requirements

156 Requirements about coupling trailers

(1) A person commits an offence if—

(a) the person uses, or permits to be used, on a road a heavy combination; and

(b) a trailer in the combination is not securely coupled to the vehicle in front of it.

Maximum penalty—$2000.

(2) A person commits an offence if—

(a) the person uses, or permits to be used, on a road a heavy combination; and

(b) the components of a coupling used between vehicles in the heavy combination are not compatible with, or properly connected to, each other.

Maximum penalty—$2000.

(3) In this section—

coupling means a device used to couple a vehicle in a combination to the vehicle in front of it.

Division 3 Transport documentation

157 False or misleading transport documentation for goods

(1) This section applies if goods are consigned for road transport using a heavy vehicle, or for transport partly by road using a heavy vehicle and partly by some other means.

(2) Each consignor of the goods commits an offence if the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular.

Maximum penalty—$10000.

(3) Each packer of the goods commits an offence if—

(a) the goods are packed in Australia in a freight container or other container, or in a package or on a pallet, for road transport; and

(b) the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular.

Maximum penalty—$10000.

(4) Each loading manager or loader of the goods commits an offence if—

(a) the goods are loaded onto a heavy vehicle for road transport; and

(b) the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular.

Maximum penalty—$10000.

(5) Each receiver of the goods in Australia commits an offence if—

(a) the goods are packed outside Australia in a freight container or other container, or in a package or on a pallet, for road transport; and

(b) the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular.

Maximum penalty—$10000.

(6) A person charged with an offence against subsection (2), (3), (4) or (5) does not have the benefit of the mistake of fact defence for the offence.

(7) However, in a proceeding for an offence against subsection (2), (3), (4) or (5), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(8) In a proceeding for an offence against subsection (2), (3), (4) or (5), it is enough for a charge to state that the transport documentation was 'false or misleading', without specifying whether it was false or whether it was misleading.

(9) In this section—

receiver, of goods in Australia, means a person who, other than the person who merely unloads the goods—

(a) first receives the goods in Australia; or

(b) unpacks the goods after the goods are first unloaded in Australia.

158 False or misleading information in container weight declaration

(1) This section applies in relation to a freight container to be transported by road using a heavy vehicle, or partly by road using a heavy vehicle and partly by some other means.

(2) The responsible entity for the freight container commits an offence if—

(a) the responsible entity gives the container to an operator of a heavy vehicle; and

(b) the container weight declaration for the container contains information that is false or misleading in a material particular.

Maximum penalty—$10000.

(3) An operator of a heavy vehicle commits an offence if—

(a) the operator arranges for the freight container to be transported by road using the vehicle; and

(b) the container weight declaration for the container given to the vehicle's driver contains information that is false or misleading in a material particular.

Maximum penalty—$10000.

(4) For this section, information in a container weight declaration is not false or misleading merely because it overstates the actual weight of the freight container and its contents.

(5) A person charged with an offence against subsection (2) or (3) does not have the benefit of the mistake of fact defence for the offence.

(6) However, in a proceeding for an offence against subsection (2) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(7) In a proceeding for an offence against subsection (2) or (3), it is enough for a charge to state that information contained in the container weight declaration was 'false or misleading', without specifying whether it was false or whether it was misleading.

Division 4 Other offences about container weight declarations

159 Application of Div 4

This Division applies to a freight container consigned for road transport using a heavy vehicle, or for transport partly by road using a heavy vehicle and partly by some other means.

160 Meaning of *complying container weight declaration*

A container weight declaration for a freight container is a ***complying container weight declaration*** if—

(a) it contains the following additional information—

(i) the number and other particulars of the freight container necessary to identify the container;

(ii) the name and residential address or business address in Australia of the responsible entity for the freight container;

(iii) the date the container weight declaration is made; and

(b) it is written and easily legible; and

(c) the information in the container weight declaration is in a form readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container, including, for example, by—

(i) examining documents located in the heavy vehicle on which the freight container is loaded or to be loaded; or

(ii) obtaining the information by radio or mobile telephone or by other means.

161 Duty of responsible entity

(1) The responsible entity for the freight container must not permit an operator or driver of a heavy vehicle to transport the freight container by road using the vehicle unless the operator or driver has been provided with a complying container weight declaration for the freight container.

Maximum penalty—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

162 Duty of operator

(1) An operator of a heavy vehicle must not permit the vehicle's driver to transport the freight container by road using the vehicle unless the driver has been provided with a complying container weight declaration for the freight container.

Maximum penalty—$6000.

(2) If the driver of a heavy vehicle does not have the complying container weight declaration when transporting the freight container by road using the vehicle, an operator of the vehicle is taken to have contravened subsection (1) unless the operator

proves that the driver was provided with the declaration before the driver started transporting the freight container.

(3) If the freight container is to be transported partly by a person (a ***carrier***) by a means other than by road using a heavy vehicle, an operator of a heavy vehicle must not give the freight container to the carrier unless the carrier has been provided with—

(a) a complying container weight declaration for the freight container; or

(b) the prescribed particulars contained in a complying container weight declaration for the freight container.

Maximum penalty—$6000.

(4) A person charged with an offence against subsection (1) or (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (1) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In this section—

prescribed particulars, contained in a complying container weight declaration for a freight container, means—

(a) information about the weight of the freight container and its contents; and

(b) the information mentioned in section 160(a).

163 Duty of driver

(1) A person must not drive a heavy vehicle loaded with the freight container on a road unless the person has a complying container weight declaration for the container.

Maximum penalty—$6000.

(2) The driver of a heavy vehicle loaded with the freight container must, when driving the vehicle on a road, keep the complying container weight declaration for the container—

(a) in or about the vehicle; and

(b) in a way that enables the information in the declaration to be readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container.

Maximum penalty—$6000.

(3) A person charged with an offence against subsection (1) or (2) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (1) or (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 5 Other offences

164 Weight of freight container exceeding weight stated on container or safety approval plate

(1) This section applies if a freight container contains goods consigned for road transport using a heavy vehicle, or for transport partly by road using a heavy vehicle and partly by some other means.

(2) Each consignor or packer of the goods commits an offence if the weight of the container exceeds the maximum gross weight marked on the container or the container's safety approval plate.

Maximum penalty—$10000.

(3) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(5) In this section—

safety approval plate, for a freight container, means the safety approval plate required to be attached to the container under the International Convention for Safe Containers set out in Schedule 5 of the *Navigation Act 1912* of the Commonwealth.

165 Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement

(1) A person who is a consignee of goods consigned for road transport using a heavy vehicle commits an offence if—

(a) the person does an act or makes an omission; and

(b) the doing of the act or making of the omission results, or is likely to result, in inducing or rewarding a contravention of a mass, dimension or loading requirement; and

(c) the person—

(i) intends that result; or

(ii) is reckless or negligent as to the matter mentioned in paragraph (b).

Maximum penalty—$10000.

(2) Without limiting subsection (1)(c)(i), the person is taken to have intended the result mentioned in subsection (1)(b) if the person knew or ought reasonably to have known that—

(a) a container weight declaration for the container in which the goods were consigned was not given as required by this Law; or

(b) a container weight declaration given for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Part 4.10 Other provisions

166 Conflicting mass limits

(1) This section applies if—

(a) a mass requirement applies to a heavy vehicle; and

(b) the heavy vehicle is not exempted from compliance with the mass requirement by a mass exemption; and

(c) another requirement about the mass of the heavy vehicle or any of its components, including, for example, another mass requirement or a requirement of a condition of a mass or dimension authority, conflicts with the mass requirement.

(2) Of the conflicting requirements, the requirement imposing the lower mass limit applies to the heavy vehicle and the other requirement must be disregarded to the extent of the conflict.

Examples—

1 If the mass limit applying to a heavy combination as a whole is lower than the sum of the mass limits applying to its component vehicles, the mass limit applying to the heavy combination as a whole must be complied with.

2 If a mass exemption applying to a heavy vehicle provides that a particular component of the heavy vehicle may be of a higher mass than that allowed under a mass requirement but the exemption does not provide that the heavy vehicle as a whole may be of a higher mass than the mass limit applying to the vehicle as a whole under a

mass requirement, the mass limit applying to the vehicle as a whole continues to apply to the vehicle and must be complied with.

(3) In this section—

mass exemption means an exemption under Part 4.5 from compliance with a mass requirement.

167 Exemption from compliance with particular requirements in emergency

(1) The Regulator may, orally or in writing, exempt a heavy vehicle, or the driver or operator of a heavy vehicle, from a prescribed requirement if the Regulator is satisfied—

(a) the vehicle is being used, or is intended to be used, in an emergency, including, for example, a fire, explosion or natural disaster—

(i) to protect life or property; or

(ii) to restore communication or the supply of energy or water or services, including, for example, sewage disposal; and

(b) granting the exemption will not create an unreasonable danger to other road users.

(2) An exemption granted under subsection (1) may be subject to conditions the Regulator considers appropriate.

(3) If an exemption is granted orally under subsection (1), the Regulator must, as soon as practicable—

(a) make a written record of the exemption and any conditions to which it is subject; and

(b) give a copy of the written record to an operator of the heavy vehicle to which it relates.

(4) An exemption under this section has effect only while the conditions, if any, to which it is subject are complied with.

(5) In this section—

prescribed requirement means—

(a) a mass requirement; or

(b) a dimension requirement; or

(c) a requirement under Part 4.5, including, for example, a requirement to comply with a condition of an exemption under that Part; or

(d) a requirement under Part 4.6, including, for example, a requirement to comply with a condition of an authorisation under that Part.

168 Recovery of losses arising from non-provision of container weight declaration

(1) This section applies if the driver of a heavy vehicle transporting a freight container by road using the vehicle has not been provided with a container weight declaration for the freight container before starting to transport the freight container.

(2) A person who has incurred a loss as a result of the declaration not being provided (the ***plaintiff***) has a right to recover the loss from the responsible entity for the freight container.

(3) For subsection (2), the losses that may be recovered include the following—

(a) loss incurred from delays in the delivery of the freight container, any of its contents or any other goods;

(b) loss incurred from the damage to or spoliation of anything contained in the freight container;

(c) loss incurred from providing another heavy vehicle, and loss incurred from delays arising from providing another heavy vehicle;

(d) costs or expenses incurred for weighing the freight container or any of its contents.

(4) The plaintiff may enforce the plaintiff's right to recovery under subsection (2) by bringing a proceeding in a court of

competent jurisdiction for an order for payment of the monetary value of the loss.

169 Recovery of losses for provision of inaccurate container weight declaration

(1) This section applies if—

(a) an operator or driver of a heavy vehicle transporting a freight container by road using the vehicle has been provided with a container weight declaration for the freight container; and

(b) the declaration contains information (the ***false or misleading information***) that is false or misleading in a material particular because it—

(i) understates the weight of the container; or

(ii) otherwise indicates the weight of the container is lower than its actual weight; and

(c) a contravention of a mass requirement applying to the heavy vehicle occurs as a result of the operator or driver relying on the false or misleading information; and

(d) at the relevant time, the operator or driver either—

(i) had a reasonable belief the vehicle was not in contravention of the mass requirement; or

(ii) did not know, and ought not reasonably to have known, that the minimum weight stated in the declaration was lower than the actual weight of the container.

(2) A person who has incurred a loss as a result of the declaration containing the false or misleading information (the ***plaintiff***) has a right to recover the loss from the responsible entity for the freight container.

(3) For subsection (2), the losses that may be recovered include the following—

(a) the amount of a fine or other penalty imposed on the plaintiff for an offence against this Law;

(b) the amount of a fine or other penalty imposed on an employee or agent of the plaintiff for an offence against this Law and reimbursed by the plaintiff;

(c) loss incurred from delays in the delivery of the freight container, any of its contents, or any other goods;

(d) loss incurred from the damage to or spoliation of anything contained in the freight container;

(e) loss incurred from providing another heavy vehicle, and loss incurred from delays arising from providing another heavy vehicle;

(f) costs or expenses incurred for weighing the freight container or any of its contents.

(4) The plaintiff may enforce the plaintiff's right to recovery under subsection (2) by bringing a proceeding in a court of competent jurisdiction for an order for payment of the monetary value of the loss.

170 Recovery by responsible entity of amount paid under s 169

(1) This section applies if, under section 169, a person brings a proceeding (a ***recovery proceeding***) in a court for an order that the responsible entity for a freight container pay the person an amount for loss incurred by the person as a result of the container weight declaration for the freight container containing false or misleading information mentioned in section 169(1)(b).

(2) The responsible entity has a right to recover from a person (the ***information provider***) who provided the responsible entity with all or part of the false or misleading information the part of the amount (the ***attributable amount***) attributable to the information provided by the information provider.

(3) The responsible entity may enforce the entity's right to recovery under subsection (2) by—

(a) if the recovery proceeding has not been decided—joining the information provider in the proceeding and applying to the court for an order that the information provider pay the attributable amount to the responsible entity if an order is made under section 169(4); or

(b) if the recovery proceeding has been decided—bringing a proceeding in a court of competent jurisdiction for an order that the information provider pay the attributable amount to the responsible entity.

171 Assessment of monetary value or attributable amount

(1) The court may assess the monetary value of a loss recoverable under section 168(2) or 169(2), or the attributable amount recoverable under section 170(2), in the way it considers appropriate.

(2) In making the assessment, the court may have regard to the matters it considers appropriate, including any evidence adduced in a proceeding for an offence against this Law.

Chapter 5 Vehicle operations—speeding

Part 5.1 Preliminary

172 Main purpose of Ch 5

The main purpose of this Chapter 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.

173 Outline of the main features of Ch 5

This Chapter—

(a) 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; and

(b) 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; and

(c) requires loading managers to take reasonable steps to ensure the arrangements for loading goods onto and unloading goods from a heavy vehicle do not cause the vehicle's driver to exceed speed limits; and

(d) requires particular persons who consign goods for transport by a heavy vehicle, or who receive the goods, to take reasonable steps to ensure the terms of consignment of the goods do not cause the vehicle's driver to exceed speed limits; and

(e) prohibits anyone from asking the driver of a heavy vehicle to exceed speed limits and from entering into an agreement that causes the driver of a heavy vehicle to exceed speed limits; and

(f) imposes liability on persons who are most directly responsible for the use of a heavy vehicle for offences committed by the vehicle's driver exceeding speed limits.

Part 5.2 Particular duties and offences

Division 1 Employers, prime contractors and operators

174 Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit etc.

(1) A relevant party for the driver of a heavy vehicle must take all reasonable steps to ensure the relevant party's business practices will not cause the driver to exceed a speed limit applying to the driver.

Examples of reasonable steps—

- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues
- reviewing driving, work and trip records
- a program to report and monitor (for example, by GPS tracking) incidents of speeding and related risks and hazards
- training and information about speeding for drivers of heavy vehicles, staff and parties in the chain of responsibility for heavy vehicles (within the meaning given by section 184)
- regular maintenance of vehicle components that relate to complying with speed limits (for example, speedometer, engine management system and speed limiters)

Maximum penalty—$8000.

Notes—

1 Section 564 sets out some of the factors a court may consider in deciding whether a person has taken all reasonable steps.

2 Section 565 sets out 1 method by which an employer, prime contractor and operator can take all reasonable steps for this section.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) In this section—

business practices, of a relevant party for the driver of a heavy vehicle, means the practices of the relevant party in running the relevant party's business, and includes each of the following—

(a) the operating policies and procedures of the business;

(b) the human resource and contract management arrangements of the business;

(c) arrangements for managing safety.

relevant party, for the driver of a heavy vehicle, means any of the following—

(a) an employer of the driver if the driver is an employed driver;

(b) a prime contractor of the driver if the driver is a self-employed driver;

(c) an operator of the vehicle if the driver is making or is to make a journey for the operator.

175 Duty of employer not to cause driver to drive if particular requirements not complied with

An employer of an employed driver of a heavy vehicle must not cause the driver to drive the heavy vehicle unless—

(a) the employer has complied with section 174; and

(b) the employer is reasonably satisfied each scheduler for the vehicle has complied with sections 177 and 178.

Maximum penalty—$4000.

176 Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with

(1) This section applies to—

(a) a prime contractor of a self-employed driver of a heavy vehicle (the ***driver***); and

(b) an operator of a heavy vehicle that is to be driven by someone else (also the ***driver***).

(2) The prime contractor, or operator, must not cause the driver to drive the heavy vehicle unless—

(a) the prime contractor, or operator, has complied with section 174; and

(b) the prime contractor, or operator, is reasonably satisfied each scheduler for the vehicle has complied with sections 177 and 178.

Maximum penalty—$4000.

Division 2 Schedulers

177 Duty to ensure driver's schedule will not cause driver to exceed speed limit

(1) A scheduler for a heavy vehicle must take all reasonable steps to ensure the schedule for the vehicle's driver will not cause the driver to exceed a speed limit applying to the driver.

Examples of reasonable steps—

- consulting drivers about their schedules and work requirements
- taking account of the average speed that can be travelled lawfully on scheduled routes
- allowing for traffic conditions or other delays in schedules
- contingency planning concerning schedules

Maximum penalty—$8000.

Notes—

1 Section 564 sets out some of the factors a court may consider in deciding whether a person has taken all reasonable steps.

2 Section 565 sets out 1 method by which a scheduler for a heavy vehicle can take all reasonable steps for this section.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

178 Duty not to cause driver to drive if particular requirements not complied with

A scheduler for a heavy vehicle must not cause the vehicle's driver to drive the vehicle unless—

(a) the scheduler has complied with section 177; and

(b) the driver's schedule for driving the vehicle allows—

(i) for compliance with all speed limits; and

(ii) for the driver to take all required rest in compliance with all laws regulating the driver's work times and rest times; and

(iii) for traffic conditions and other delays that could reasonably be expected.

Examples for subparagraph (iii)—

- the actual average speed able to be travelled lawfully and safely by the driver on the route to be travelled by the heavy vehicle
- known traffic conditions, for example, road works or traffic congestion on the route
- delays caused by loading, unloading or queuing

Maximum penalty—$4000.

Division 3 Loading managers

179 Duty to ensure loading arrangements will not cause driver to exceed speed limit

(1) A loading manager must take all reasonable steps to ensure the arrangements for loading goods onto and unloading goods

from heavy vehicles will not cause the driver of a heavy vehicle to exceed a speed limit applying to the driver.

Examples of reasonable steps—

- reviewing loading and unloading times and delays at loading and unloading places
- identifying potential loading and unloading congestion in consultation with drivers and other parties in the chain of responsibility
- having a system of setting and allocating loading and unloading times the driver can reasonably rely on
- allowing loading and unloading to happen at an agreed time

Notes—

1 Section 564 sets out some of the factors a court may consider in deciding whether a person has taken all reasonable steps.

2 Section 565 sets out 1 method by which a loading manager can take all reasonable steps for this section.

Maximum penalty—$8000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) In this section—

loading manager means a person who—

(a) manages, or is responsible for the operation of, regular loading or unloading premises for heavy vehicles; or

(b) has been assigned by a person mentioned in paragraph (a) as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of goods at the premises.

Division 4 Particular consignors and consignees

180 Consignors to whom Div 4 applies

This Division applies to a person (a ***commercial consignor***) who engages a particular operator of a heavy vehicle, either directly or through an agent or other intermediary, to transport goods for the person by road for commercial purposes.

181 Consignees to whom Div 4 applies

This Division applies only to a consignee of goods—

(a) who has consented to being, and is named or otherwise identified as, the intended consignee of goods in the transport documentation relating to the transport of the goods by road by a particular operator of a heavy vehicle; and

(b) who knows, or who ought reasonably to know, that the goods are to be transported by road.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

182 Duty to ensure terms of consignment will not cause driver to exceed speed limit etc.

(1) A commercial consignor or a consignee of goods must take all reasonable steps to ensure the terms of consignment will not cause the relevant driver to exceed a speed limit applying to the driver.

Maximum penalty—$8000.

(2) A commercial consignor or a consignee of goods must take all reasonable steps to ensure the terms of consignment will not cause a relevant party for the relevant driver to cause the driver to exceed a speed limit applying to the driver.

Examples of reasonable steps for subsections (1) and (2)—

- ensuring contractual arrangements and documentation for the consignment and delivery of goods enable speed limit compliance
- contingency planning concerning consignments and delivery times
- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues

Maximum penalty—$8000.

Notes for subsections (1) and (2)—

1 Section 564 sets out some of the factors a court may consider in deciding whether a person has taken all reasonable steps.

2 Section 565 sets out 1 method by which a consignor or consignee can take all reasonable steps for subsection (1) or (2).

(3) A person charged with an offence against subsection (1) or (2) does not have the benefit of the mistake of fact defence for the offence.

(4) In this section—

relevant driver, for consigned goods, means the driver of the heavy vehicle by which the goods are to be or are being transported.

relevant party, for the relevant driver for consigned goods, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the heavy vehicle by which the goods are transported if the driver is to make, or is making, a journey for the operator.

183 Duty not to make a demand that may result in driver exceeding the speed limit

A commercial consignor or a consignee of goods must not make a demand that affects, or may affect, a time in a schedule for the transport of the consigned goods unless—

(a) the consignor or consignee has complied with section 182; and

(b) the consignor or consignee is reasonably satisfied the making of the demand will not cause a person to contravene section 177 or 178.

Maximum penalty—$6000.

Division 5 Particular requests etc. and contracts etc. prohibited

184 Who is a *party in the chain of responsibility*

(1) For this Division, each of the following persons is a ***party in the chain of responsibility*** for a heavy vehicle—

(a) an employer of the vehicle's driver if the driver is an employed driver;

(b) a prime contractor for the vehicle's driver if the driver is a self-employed driver;

(c) an operator of the vehicle;

(d) a scheduler for the vehicle;

(e) a loading manager of any goods in the vehicle;

(f) a commercial consignor of any goods for transport by the vehicle that are in the vehicle;

(g) a consignee of any goods in the vehicle, if Division 4 applies to the consignee.

Note—

The exercise of any of these functions, whether exclusively or occasionally, decides whether a person falls within any of these definitions, rather than the person's job title or contractual description.

(2) A person may be a party in the chain of responsibility for a heavy vehicle in more than 1 capacity.

Example—

A person may be simultaneously the driver's employer, an operator and a consignor of goods in relation to a heavy vehicle and be subject to duties in each of the capacities.

185 Particular requests etc. prohibited

A person must not ask, direct or require, directly or indirectly, the driver of a heavy vehicle, or a party in the chain of responsibility for a heavy vehicle, to do something the person knows, or ought reasonably to know, would have the effect of causing the driver to exceed a speed limit applying to the driver.

Example of a requirement that contravenes this section—

a requirement that the driver complete a journey in a time the person knows or ought reasonably to know can not be complied with unless the driver exceeds the speed limit or does not have all the rest time the driver is required to have under a minimum rest requirement

Maximum penalty—$8000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

186 Particular contracts etc. prohibited

(1) A person must not enter into a contract or other agreement with the driver of a heavy vehicle, or with a party in the chain of responsibility for a heavy vehicle, that the person knows, or ought reasonably to know, would have the effect of causing the vehicle's driver to exceed a speed limit applying to the driver.

Maximum penalty—$8000.

(2) A person must not enter into a contract or other agreement with the driver of a heavy vehicle, or with a party in the chain of responsibility for a heavy vehicle, that the person knows, or ought reasonably to know, would encourage or provide an incentive for the vehicle's driver, or a party in the chain of responsibility for the vehicle to cause the vehicle's driver, to exceed a speed limit applying to the driver.

Maximum penalty—$8000.

Notes for subsections (1) and (2)—

1 See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

2 See also section 677, which provides that particular contracts or other agreements are void.

Division 6 Provisions about offences against this Part

187 Objective reasonableness test to be used in deciding causation

(1) This section applies in relation to a proceeding for an offence against this Part that may be committed by a person failing to take all reasonable steps to ensure someone else does not drive a heavy vehicle in excess of a speed limit applying to the vehicle's driver (***prohibited act***).

(2) For subsection (1), a person failing to take all reasonable steps to ensure someone else does not do a prohibited act includes—

(a) the person failing to take reasonable steps to ensure the other person does not do the prohibited act; and

(b) the person failing to take reasonable steps to ensure the person's activities, or anything arising out of the person's activities, do not—

(i) cause the other person to do the prohibited act; or

(ii) result in the other person doing the prohibited act; or

(iii) provide an incentive for the other person to do the prohibited act.

(3) Subsection (4) applies if—

(a) a person does an act or makes an omission; and

(b) as a result of the act or omission someone else does a prohibited act.

(4) A court may find the person caused the other person to do the prohibited act if the court is satisfied a reasonable person would have foreseen that the person's act or omission would be reasonably likely to cause the other person to do the prohibited act.

188 Commission of speeding offence is irrelevant to Pt 5.2 prosecution

In a prosecution for an offence against this Part, it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Part 5.3 Extended liability

189 Liability of employer etc. for driver's contravention of speeding offence

(1) If the driver of a heavy vehicle is convicted of a speeding offence, each of the following persons is also taken to have committed the offence—

(a) an employer of the driver if the driver is an employed driver;

(b) a prime contractor of the driver if the driver is a self-employed driver;

(c) an operator of the vehicle if the driver is making a journey for the operator.

Maximum penalty—

(a) if the speeding offence involves the driver of a heavy vehicle exceeding a speed limit of 50km/h or 60km/h—$1000; or

(b) if the speeding offence involves the driver of a heavy vehicle exceeding a speed limit of 70km/h or 80km/h—

(i) by less than 15km/h—$1000; or

(ii) by 15km/h or more—$4000; or

(c) if the speeding offence involves the driver of a heavy vehicle other than a road train exceeding a speed limit of 90km/h—

(i) by less than 15km/h—$1000; or

(ii) by 15km/h or more—$4000; or

(d) if the speeding offence involves the driver of a road train exceeding a speed limit of 90km/h—

(i) by less than 15km/h—$4000; or

(ii) by 15km/h or more—$8000; or

(e) if the speeding offence involves the driver of a heavy vehicle exceeding a speed limit of 100km/h or more—

(i) by less than 15km/h—$4000; or

(ii) by 15km/h or more—$8000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(4) In this section—

speeding offence means an offence committed by the driver of a heavy vehicle because the driver exceeded a speed limit applying to the driver.

Chapter 6 Vehicle operations—driver fatigue

Part 6.1 Preliminary

190 Main purpose of Ch 6

(1) The main purpose of this Chapter is to provide for the safe management of the fatigue of drivers of fatigue-regulated heavy vehicles while they are driving on a road.

(2) The main purpose is achieved by—

(a) 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; and

(b) imposing general duties directed at preventing persons driving fatigue-regulated heavy vehicles on a road while impaired by fatigue; and

(c) imposing additional duties directed at helping drivers of fatigue-regulated heavy vehicles to comply with this Chapter, which are imposed on particular parties in the chain of responsibility; and

(d) providing for the maximum work requirements and minimum rest requirements applying to drivers of fatigue-regulated heavy vehicles; and

(e) providing for recording the work times and rest times of drivers, amongst other things.

191 Definitions for Ch 6

In this Chapter—

100km work has the meaning given by section 258(1).

100+km work has the meaning given by section 258(2).

ADR means a national standard under section 7 of the *Motor Vehicle Standards Act 1989* of the Commonwealth.

AFM fatigue management system has the meaning given by section 409.

AFM hours has the meaning given by section 227.

approved electronic recording system means an electronic recording system the subject of a current approval under section 313 or a corresponding fatigue law.

approved sleeper berth means—

(a) for a fatigue-regulated heavy vehicle other than a fatigue-regulated bus—a driver's sleeper berth that complies with ADR 42/04 and is able to be used by the driver when resting; or

(b) for a fatigue-regulated bus—a driver's sleeper berth that—

(i) complies with a standard for sleeper berths that is approved by the responsible Ministers under section 595; and

(ii) is able to be used by the driver when resting.

base, of the driver of a fatigue-regulated heavy vehicle, has the meaning given by section 259.

BFM hours has the meaning given by section 223.

cancel, in relation to an unused daily sheet in a written work diary, means cancel by writing 'cancelled' in large letters across the sheet.

cause of fatigue means any factor that could cause or contribute to a person being fatigued while driving a fatigue-regulated heavy vehicle on a road.

Examples—

- physical or mental exertion
- long periods of time awake
- not enough sleep or not enough restorative sleep
- not enough rest time
- a person's circadian rhythm (body clock)
- environmental stress factors, including heat, noise, vibrations
- personal health

corresponding fatigue law—

1 A *corresponding fatigue law* is a law of a non-participating jurisdiction that provides for the same, or substantially the same, matters as this Chapter.

2 A *corresponding fatigue law* for a provision of this Chapter is a provision of a corresponding fatigue law within the meaning of paragraph 1 that corresponds, or substantially corresponds, to the provision of this Chapter.

3 For paragraph 1, it is irrelevant whether the law of the non-participating jurisdiction—

(a) is in 1 instrument or 2 or more instruments; or

(b) is part of an instrument; or

(c) is part of an instrument and the whole or part of 1 or more other instruments.

critical risk breach, for a maximum work requirement or minimum rest requirement, has the meaning given by section 192(4).

daily sheet, for a written work diary, has the meaning given by section 309(2)(b).

electronic recording system means a system of recording information electronically.

electronic work diary means a device that—

(a) is, or is part of, an approved electronic recording system; and

(b) is fitted to or used in a fatigue-regulated heavy vehicle; and

(c) has attached to it an electronic work diary label relating to the approval.

electronic work diary label means a label that—

(a) indicates that the device to which it is attached is, or is part of, an approved electronic recording system; and

(b) states the number of the certificate of approval issued by the Regulator for the approved electronic recording system; and

(c) is in the approved form.

engage, when used in the context of a person exercising a function for another person, means engage under a contract for services.

entry, in a work record, means anything written in the work record.

exemption hours has the meaning given by section 229.

fatigue has the meaning given by section 193.

impaired by fatigue has the meaning given by section 195.

intelligent access reporting entity, for an approved intelligent transport system, means a person on whom there is an

obligation, imposed by Chapter 7, to report a malfunction of or tampering with the system to the Regulator.

major rest break means rest time of at least 5 continuous hours.

malfunction, of an electronic work diary or an odometer, means the work diary or odometer—

(a) ceases to work at all, or works only intermittently; or

(b) does not perform 1 or more functions required under this Chapter; or

(c) performs the functions mentioned in paragraph (b) only intermittently; or

(d) performs the functions mentioned in paragraph (b) in a way that is inaccurate or unreliable, including intermittently inaccurate or unreliable.

Examples of an electronic work diary malfunctioning—

- corruption of data held in the electronic work diary
- a software program fault
- physical damage that impairs the functioning of the electronic work diary

Example of an odometer malfunctioning—

- an odometer that no longer keeps an accurate record of distance travelled

minor risk breach has the meaning given by section 192(1).

night work time means work time between midnight and 6a.m.

Note—

Under sections 218 and 273, the time must be based on the time zone of the driver's base for drivers on a journey in a different time zone to the driver's base.

non-participating jurisdiction means a State or Territory that is not a participating jurisdiction.

participating jurisdiction means a State or Territory in which—

(a) this Chapter applies as a law of the State or Territory; or

(b) a law containing provisions that substantially correspond to the provisions of this Chapter is in force.

party in the chain of responsibility, for a fatigue-regulated heavy vehicle, has the meaning given by section 197.

record keeper has the meaning given by section 287.

record location, of the driver of a fatigue-regulated heavy vehicle, has the meaning given by section 260.

rest, in relation to a fatigue-regulated heavy vehicle, means not work in relation to a fatigue-regulated heavy vehicle.

rest time, for the driver of a fatigue-regulated heavy vehicle, means any time that is not work time for the driver.

severe risk breach has the meaning given by section 192(3).

sign of fatigue means any sign that a person was, is or will be fatigued while driving a fatigue-regulated heavy vehicle on a road.

Examples—

- lack of alertness
- inability to concentrate
- reduced ability to recognise or respond to external stimuli
- poor judgement or memory
- making more mistakes than usual
- drowsiness, or falling asleep, at work (including microsleeps)
- finding it difficult to keep eyes open
- needing more frequent naps than usual
- not feeling refreshed after sleep
- excessive head-nodding or yawning
- blurred vision

- mood changes, increased irritability or other changes to the person's mental health
- changes to the person's health or fitness

solo driver means a driver who is not a party to a two-up driving arrangement.

standard hours has the meaning given by section 219.

stationary rest time means rest time a driver spends—

(a) out of a fatigue-regulated heavy vehicle; or

(b) in an approved sleeper berth of a stationary fatigue-regulated heavy vehicle.

substantial risk breach has the meaning given by section 192(2).

supplementary record means a supplementary record made under section 275.

tamper, with an approved electronic recording system, has the meaning given by section 305.

two-up driving arrangement means an arrangement under which 2 persons share the driving of a fatigue-regulated heavy vehicle that has an approved sleeper berth.

unload, when used as a verb and ***unloader***—

A person *unloads* goods in a fatigue-regulated heavy vehicle, and is an *unloader* of goods in a fatigue-regulated heavy vehicle, if the person is a person who—

(a) unloads from the vehicle goods that have been transported by road; or

(b) unloads from a bulk container or freight container on the vehicle, or a tank that is part of the vehicle, goods that have been transported by road; or

(c) unloads from the vehicle a freight container, whether or not it contains goods, that has been transported by road.

work, in relation to a fatigue-regulated heavy vehicle, means—

(a) drive a fatigue-regulated heavy vehicle; or

(b) instruct another person to drive, or supervise another person driving, a fatigue-regulated heavy vehicle; or

(c) perform another task relating to the use of a fatigue-regulated heavy vehicle, including, for example—

(i) load things onto, or unload things from, the heavy vehicle; and

(ii) inspect, service or repair the heavy vehicle; and

(iii) inspect or attend to a load on the heavy vehicle; and

(iv) if the heavy vehicle is a bus, attend to passengers on the bus; and

(v) clean or refuel the heavy vehicle; and

(vi) perform marketing tasks in relation to the use of the vehicle; and

Examples for subparagraph (vi)—

- arranging for the transport of goods or passengers by the heavy vehicle
- canvassing for orders for the transport of goods or passengers by the heavy vehicle

(vii) help another person to perform, or supervise another person performing, a task mentioned in any of subparagraphs (i) to (vi); and

(viii) record information or complete a document, as required under this Law, a corresponding fatigue law or otherwise, in relation to the use of the vehicle.

work and rest change, for the driver of a fatigue-regulated heavy vehicle, means—

(a) a change from work time to rest time; or

(b) a change from rest time to work time; or

(c) a change from being a solo driver to being a driver who is a party to a two-up driving arrangement; or

(d) a change from being a driver who is a party to a two-up driving arrangement to being a solo driver.

work and rest hours option has the meaning given by section 213.

work diary, for the driver of a fatigue-regulated heavy vehicle—

(a) generally, means a written work diary or electronic work diary kept by the driver for the purposes of this Law; and

(b) for Subdivision 1 of Division 2 of Part 6.4, see section 262.

work record means—

(a) a written or electronic work diary of the driver of a fatigue-regulated heavy vehicle; or

(b) a supplementary record; or

(c) a record required to be made or kept under Division 3 of Part 6.4; or

(d) a copy of a document, or an entry in a document, mentioned in paragraph (a), (b) or (c).

work time, for the driver of a fatigue-regulated heavy vehicle, means any time the driver spends working in relation to the vehicle.

written work diary means a written work diary issued to the driver of a fatigue-regulated heavy vehicle by the Regulator under section 311 or a corresponding fatigue law.

192 Categories of breaches

(1) A contravention of a maximum work requirement or minimum rest requirement is a ***minor risk breach*** if it is

declared under the national regulations to be a breach in the minor risk category.

(2) A contravention of a maximum work requirement or minimum rest requirement is a ***substantial risk breach*** if it is declared under the national regulations to be a breach in the substantial risk category.

(3) A contravention of a maximum work requirement or minimum rest requirement is a ***severe risk breach*** if it is declared under the national regulations to be a breach in the severe risk category.

(4) A contravention of a maximum work requirement or minimum rest requirement is a ***critical risk breach*** if it is declared under the national regulations to be a breach in the critical risk category.

Part 6.2 Duties relating to fatigue

Division 1 Preliminary

193 What is *fatigue*

Fatigue includes—

(a) feeling sleepy; and

(b) feeling physically or mentally tired, weary or drowsy; and

(c) feeling exhausted or lacking energy; and

(d) behaving in a way consistent with paragraph (a), (b) or (c).

194 Matters court may consider in deciding whether person was fatigued

(1) When deciding whether the driver of a fatigue-regulated heavy vehicle was fatigued, a court may consider the following—

(a) what is commonly understood as being fatigued;

(b) any cause of fatigue that may have caused or contributed to the driver's fatigue, whether or not the cause arose while the driver was working;

(c) any sign of fatigue exhibited by the driver, whether or not the sign was exhibited before, during or after the driver drove the vehicle;

(d) any relevant body of fatigue knowledge;

(e) any other matter prescribed by the national regulations.

(2) Subsection (1) does not limit the matters the court may consider when deciding whether a driver was impaired by fatigue.

195 What is *impaired by fatigue*

A person is ***impaired by fatigue*** if the person is fatigued to the extent the person is incapable of driving a fatigue-regulated heavy vehicle safely.

196 Matters court may consider in deciding whether person was impaired by fatigue

(1) When deciding whether the driver of a fatigue-regulated heavy vehicle was impaired by fatigue, a court may consider any of the following—

(a) any cause of fatigue that may have caused or contributed to the driver's fatigue;

(b) any sign of fatigue exhibited by the driver;

(c) the degree to which a cause mentioned in paragraph (a) or a sign mentioned in paragraph (b) indicates the driver was impaired by fatigue;

(d) any behaviour exhibited by the driver that may have resulted from the driver being impaired by fatigue;

Examples for paragraph (d)—

- the circumstances of any incident, crash or near miss
- poor driving judgement
- inattentive driving such as drifting into other lanes on a road or not changing gears smoothly

(e) the nature and extent of any physical or mental exertion by the driver;

(f) whether the driver was in breach of the driver's work and rest hours option.

(2) Subsection (1) does not limit the matters the court may consider when deciding whether a driver was impaired by fatigue.

(3) A court may consider the driver to be impaired by fatigue even if the driver has complied with—

(a) the requirements of this Law, including, for example, the maximum work requirements and minimum rest requirements applying to the driver; or

(b) any other law.

197 Who is a *party in the chain of responsibility*

(1) Each of the following persons is a ***party in the chain of responsibility*** for a fatigue-regulated heavy vehicle—

(a) an employer of the vehicle's driver;

(b) a prime contractor for the vehicle's driver;

(c) an operator of the vehicle;

(d) a scheduler for the vehicle;

(e) a consignor of any goods for transport by the vehicle that are in the vehicle;

(f) a consignee of any goods in the vehicle;

(g) a loading manager of any goods in the vehicle;

(h) a loader of any goods in the vehicle;

(i) an unloader of any goods in the vehicle.

(2) A person may be a party in the chain of responsibility for a fatigue-regulated heavy vehicle in more than 1 capacity.

Example—

A person may be simultaneously a driver's employer, an operator and a consignor of goods in relation to a fatigue-regulated heavy vehicle, and be subject to duties in each of the capacities.

Division 2 Duty to avoid and prevent fatigue

198 Duty of driver to avoid driving while fatigued

A person must not drive a fatigue-regulated heavy vehicle on a road while the person is impaired by fatigue.

Maximum penalty—$4500.

199 Duty of party in the chain of responsibility to prevent driver driving while fatigued

(1) A party in the chain of responsibility (a ***party***) for a fatigue-regulated heavy vehicle must take all reasonable steps to ensure a person (the ***other person***) does not drive the vehicle on a road while the other person is impaired by fatigue.

Maximum penalty—$6000.

(2) In relation to proof of whether a party took all reasonable steps to ensure the other person did not drive the vehicle on a

road while impaired by fatigue, in a proceeding for an offence against subsection (1)—

(a) evidence that, at the relevant time, the party complied with a prescribed fatigue duty under another law is evidence the party took the reasonable steps; and

(b) if the party is an operator of the fatigue-regulated heavy vehicle—evidence that, at the relevant time, the party, in that capacity, complied with the conditions of the operator's BFM accreditation or AFM accreditation is evidence the party, in that capacity, took the reasonable steps.

(3) In a proceeding for an offence against subsection (1), it is not necessary for the prosecution to prove that the other person drove, or would or may have driven, the vehicle on a road while impaired by fatigue.

(4) In this section—

prescribed fatigue duty under another law means a duty under another law of a participating jurisdiction prescribed by the national regulations.

Division 3 Additional duties of employers, prime contractors and operators

200 Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued etc.

(1) A relevant party for the driver of a fatigue-regulated heavy vehicle must take all reasonable steps to ensure the relevant party's business practices will not cause the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—$4500.

(2) In this section—

business practices, of a relevant party for the driver of a fatigue-regulated heavy vehicle, means the practices of the relevant party in running the relevant party's business, and includes—

(a) the operating policies and procedures of the business; and

(b) the human resource and contract management arrangements of the business; and

(c) arrangements for managing safety.

relevant party, for the driver of a fatigue-regulated heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making, or is to make, a journey for the operator.

201 Duty of employer not to cause driver to drive if particular requirements not complied with

An employer of an employed driver of a fatigue-regulated heavy vehicle must not cause the driver to drive the vehicle unless—

(a) the employer has complied with section 200; and

(b) the employer, after making reasonable inquiries, is satisfied each scheduler for the vehicle has complied with Division 4.

Maximum penalty—$3000.

202 Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with

(1) This section applies to—

(a) a prime contractor of a self-employed driver (the ***driver***) of a fatigue-regulated heavy vehicle; and

(b) an operator of a fatigue-regulated heavy vehicle being driven by someone else (also the ***driver***).

(2) The prime contractor or operator must not cause the driver to drive the fatigue-regulated heavy vehicle, or enter into a contract or other agreement with the driver to that effect, unless—

(a) the prime contractor or operator has complied with section 200; and

(b) the prime contractor or operator, after making reasonable inquiries, is satisfied each scheduler for the vehicle has complied with Division 4.

Maximum penalty—$3000.

Division 4 Additional duties of schedulers

203 Duty to ensure driver's schedule will not cause driver to drive while fatigued etc.

A scheduler for a fatigue-regulated heavy vehicle must take all reasonable steps to ensure the schedule for the vehicle's driver will not cause the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—$4500.

204 Duty not to cause driver to drive if particular requirements not complied with

A scheduler for a fatigue-regulated heavy vehicle must not cause the vehicle's driver to drive the vehicle unless—

(a) the scheduler has complied with section 203; and

(b) the schedule for the vehicle's driver allows for—

(i) the driver to have the rest time required under the driver's work and rest hours option; and

(ii) traffic conditions and other delays that could reasonably be expected.

Examples of traffic conditions and other delays that could reasonably be expected—

- the actual average speed able to be travelled lawfully and safely by the driver on the route to be travelled by the vehicle
- known traffic conditions, for example, road works or traffic congestion on the route
- delays caused by loading, unloading or queuing

Maximum penalty—$3000.

Division 5 Additional duties of consignors and consignees

205 Duty to ensure terms of consignment will not cause driver to drive while fatigued etc.

(1) A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must take all reasonable steps

to ensure the terms of consignment will not result in, encourage or provide an incentive to the vehicle's driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—$4500.

(2) A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must take all reasonable steps to ensure the terms of consignment will not result in, encourage or provide an incentive to a relevant party for the vehicle's driver to cause the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Example of terms of consignment—

delivery times

Maximum penalty—$4500.

(3) In this section—

relevant party, for the driver of a fatigue-regulated heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making, or is to make, a journey for the operator.

206 Duty not to cause driver to drive if particular requirements not complied with

(1) A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must not cause the vehicle's driver to drive the vehicle, or enter into a contract or other agreement to that effect, unless—

(a) the consignor or consignee has complied with section 205; and

(b) the consignor or consignee, after making reasonable inquiries, is satisfied—

(i) each relevant party for the driver has complied with Division 3; and

(ii) each scheduler for the vehicle has complied with Division 4.

Maximum penalty—$3000.

(2) In this section—

relevant party, for the driver of a fatigue-regulated heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making, or is to make, a journey for the operator.

207 Duty not to make a demand that may result in driver driving while fatigued etc.

(1) A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must not make a demand that affects, or may affect, a time in a schedule for the transport of the consigned goods and that may cause the vehicle's driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—$4500.

(2) Subsection (1) does not apply if the consignor or consignee, before making the demand—

(a) has complied with section 205; and

(b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause a scheduler for the fatigue-regulated heavy vehicle to contravene Division 4.

Division 6 Additional duties of loading managers

208 Duty to ensure loading arrangements will not cause driver to drive while fatigued

(1) A loading manager must take all reasonable steps to ensure the arrangements for loading goods onto and unloading goods from fatigue-regulated heavy vehicles at or from the premises in relation to which the person is a loading manager will not cause the driver of a fatigue-regulated heavy vehicle to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Examples of reasonable steps to comply with this section—

- providing for necessary rest time to be had with adequate facilities
- providing for the reporting of travel delays and providing a mechanism for managing late arrivals
- allowing loading and unloading to happen at an agreed time
- having a system of setting and allocating loading and unloading times the driver of a fatigue-regulated heavy vehicle can reasonably rely on to comply with the maximum work requirements and minimum rest requirements applying to the driver

Maximum penalty—$4500.

(2) In this section—

loading manager means a person who—

(a) manages, or is responsible for the operation of, regular loading or unloading premises for heavy vehicles; or

(b) has been assigned by a person mentioned in paragraph (a) as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of goods at the premises.

209 Duty to ensure drivers can rest in particular circumstances

(1) This section applies if a loading manager of goods in a fatigue-regulated heavy vehicle, or a person acting under the loading manager's supervision or control—

(a) has advised the vehicle's driver, either directly or indirectly, of when the loading of goods onto or unloading of goods from the vehicle is to start, and the loading manager or person becomes aware the loading or unloading will, or is likely to, start more than 30 minutes late; or

(b) has advised the vehicle's driver, either directly or indirectly, of when the loading of goods onto or unloading of goods from the vehicle is to finish, and the loading manager or person becomes aware the loading

or unloading will, or is likely to, finish more than 30 minutes late; or

(c) is unable to advise the vehicle's driver of when the loading of goods onto or unloading of goods from the vehicle is to start; or

(d) is unable to advise the vehicle's driver of when the loading of goods onto or unloading of goods from the vehicle is to finish.

(2) The loading manager must take all reasonable steps to ensure the driver is able to rest while waiting for the goods to be loaded onto or unloaded from the fatigue-regulated heavy vehicle.

Example of reasonable steps that may be taken to ensure the driver of a fatigue-regulated heavy vehicle is able to rest—

providing a system of notifying the driver when goods can be loaded onto or unloaded from the driver's vehicle that does not require the driver to be awake or unreasonably alert

Maximum penalty—$3000.

Division 7 Particular requests etc. and contracts etc. prohibited

210 Particular requests etc. prohibited

A person must not ask, direct or require, directly or indirectly, the driver of a fatigue-regulated heavy vehicle, or a party in the chain of responsibility for a fatigue-regulated heavy vehicle, to do or not do something the person knows, or ought reasonably to know, would have the effect of causing the vehicle's driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Example of a requirement that contravenes this section—

a requirement that the driver complete a journey in a time the person knows or ought reasonably to know can not be complied with unless the driver commits a speeding offence or does not have all the rest time the driver is required to have under this Law

Maximum penalty—$6000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

211 Particular contracts etc. prohibited

(1) A person must not enter into a contract or other agreement with the driver of a fatigue-regulated heavy vehicle, or with a party in the chain of responsibility for a fatigue-regulated heavy vehicle, that the person knows, or ought reasonably to know, would have the effect of causing the vehicle's driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—$6000.

(2) A person must not enter into a contract or other agreement with the driver of a fatigue-regulated heavy vehicle, or with a party in the chain of responsibility for a fatigue-regulated heavy vehicle that the person knows, or ought reasonably to know, would encourage or provide an incentive for the vehicle's driver, or a party in the chain of responsibility for the vehicle to cause the vehicle's driver, to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work and rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—$6000.

Notes for subsections (1) and (2)—

1 See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

2 See section 677, which provides that particular contracts or other agreements are void.

Division 8 Provisions about offences against this Part

212 Objective reasonableness test to be used in deciding causation

(1) This section applies in relation to a proceeding for an offence against this Part that may be committed by a person failing to take all reasonable steps to ensure someone else does not drive a fatigue-regulated heavy vehicle while impaired by fatigue (***prohibited act***).

(2) For subsection (1), a person failing to take all reasonable steps to ensure someone else does not do a prohibited act includes—

(a) the person failing to take reasonable steps to ensure the other person does not do the prohibited act; and

(b) the person failing to take reasonable steps to ensure the person's activities, or anything arising out of the person's activities, do not—

(i) cause the other person to do the prohibited act; or

(ii) result in the other person doing the prohibited act; or

(iii) provide an incentive for the other person to do the prohibited act.

(3) Subsection (4) applies if—

(a) a person does an act or makes an omission; and

(b) as a result of the act or omission someone else does a prohibited act.

(4) A court may find the person caused the other person to do the prohibited act if the court is satisfied a reasonable person would have foreseen the person's act or omission would be reasonably likely to cause the other person to do the prohibited act.

Part 6.3 Requirements relating to work time and rest time

Division 1 Preliminary

213 What is a driver's *work and rest hours option*

(1) The ***work and rest hours option*** of the driver of a fatigue-regulated heavy vehicle is the maximum work requirements and minimum rest requirements applying to the driver under this Law.

(2) The ***work and rest hours option*** are—

(a) the standard work and rest arrangements, which—

(i) apply to drivers of fatigue-regulated heavy vehicles operating other than under a BFM accreditation, AFM accreditation or work and rest hours exemption; and

(ii) are known as 'standard hours'; or

(b) the BFM work and rest arrangements, which—

(i) apply to drivers of fatigue-regulated heavy vehicles operating under a BFM accreditation; and

(ii) are known as 'BFM hours'; or

(c) the AFM work and rest arrangements, which—

(i) apply to drivers of fatigue-regulated heavy vehicles operating under an AFM accreditation; and

(ii) are known as 'AFM hours'; or

(d) the maximum work times and minimum rest times stated in a work and rest hours exemption, which—

(i) apply to drivers of fatigue-regulated heavy vehicles operating under the exemption; and

(ii) are known as 'exemption hours'.

214 Counting time spent in participating jurisdictions

When counting work time or rest time spent by the driver of a fatigue-regulated heavy vehicle for this Part, the work time or rest time spent by the driver in any participating jurisdiction must be counted.

215 Counting time spent outside participating jurisdictions

(1) This section applies to the driver of a fatigue-regulated heavy vehicle if the driver drives a fatigue-regulated heavy vehicle into a participating jurisdiction from a non-participating jurisdiction.

(2) If, within the last 7 days, the driver has spent any work time in a participating jurisdiction, any time spent by the driver in the non-participating jurisdiction must be treated in the same way as it would have been treated if the time had been spent in a participating jurisdiction.

(3) If, within the last 7 days, the driver spent work time only in non-participating jurisdictions—

(a) any time spent by the driver in the non-participating jurisdiction before the start of the driver's last major rest break before entering a participating jurisdiction must be disregarded; and

(b) any time spent by the driver in the non-participating jurisdiction after the start of the last major rest break mentioned in paragraph (a) must be—

(i) taken into account; and

(ii) treated in the same way as it would have been treated if the time had been spent in a participating jurisdiction.

216 Counting periods of less than 15 minutes

(1) Work time must be counted in 15 minute periods.

(2) A period of work time of less than 15 minutes counts as 15 minutes work time.

Examples for subsection (2)—

1 A period of working for 14 minutes counts as 15 minutes work time.

2 A period of working for 17 minutes counts as 30 minutes work time.

3 A period of working for 53 minutes counts as 1 hour work time.

(3) Rest time must be counted in blocks of time of no less than 15 minutes.

(4) A period of rest time of less than 15 minutes must be disregarded.

Examples for subsection (4)—

1 A period of not working for only 14 minutes does not count as rest time, because 14 minutes is less than 15 minutes.

2 A period of not working for 17 minutes counts as 15 minutes rest time, because 17 minutes is more than 15 minutes, but is less than 2 lots of 15 minutes (30 minutes).

217 Time to be counted after rest time ends

When counting time in a period, the time must not be counted from within rest time, but instead must be counted forward from—

(a) if 1 or more major rest breaks are relevant to the period—the end of a relevant major rest break; or

(b) in any other case—the end of a relevant period of rest time.

Example—

An authorised officer intercepts the driver of a fatigue-regulated heavy vehicle on a Friday and inspects the driver's work diary. The driver operates under standard hours. The officer examines the work diary entries for the previous Monday. The entries show that the driver completed 7 continuous hours of stationary rest time at 6.30a.m. on that day, started work at that time, worked until 11a.m. that day, had 30 minutes of rest time, worked until 5.30p.m. that day, had 30 minutes of rest time, worked until 8pm, then had stationary rest time until 4.30a.m. on the following Tuesday, then worked until 6.30am on that day.

For the purposes of deciding the number of hours worked by the driver in a 24 period starting on the Monday, the officer must count the periods the driver worked between the end of the major rest break that finished at 6.30a.m. on the Monday and 6.30a.m. on the following Tuesday. Adding the periods 6.30a.m. to 11a.m. and 11.30a.m. to 5.30p.m. and 6p.m. to 8p.m. and 4.30am to 6.30a.m. results in a total of $14^{1}/_{2}$ hours worked in the 24 hour period.

The officer might also decide to calculate the number of continuous hours worked in the second period of work time that day. This requires the counting to start at the end of the rest time that finished at 11.30a.m. and results in a total of 6 continuous hours.

For the purposes of deciding the number of continuous hours of stationary rest time the driver had in a 24 period starting on the Monday, the officer must consider the periods of stationary rest time the driver had between the end of the major rest break that finished at 6.30a.m. on the Monday and 6.30a.m. on the following Tuesday. This results in a

total of $8^{1}/_{2}$ continuous hours of stationary rest time, being the time between 8p.m. on the Monday and 4.30a.m. on the following Tuesday.

218 Time to be counted by reference to time zone of driver's base

If the driver of a fatigue-regulated heavy vehicle undertakes a journey and is in a different time zone from the time zone of the driver's base at the time when a period of time is relevant for the purposes of this Law, the period must be counted by reference to the time zone of the driver's base.

Example—

If, for the driver of a fatigue-regulated heavy vehicle with a base in Queensland, it is necessary to work out the hours of night work time while the driver is in Western Australia on a journey, the hours of night work time are the hours between midnight and 6a.m. in the Queensland time zone (being the time zone in which the driver's base is situated), even though the hours equate to 10p.m. and 4a.m. in Western Australia.

Division 2 Standard work and rest arrangements

219 Standard hours

(1) The national regulations may prescribe the maximum work times and minimum rest times (the ***standard hours***) applying to the driver of a fatigue-regulated heavy vehicle for a period if the driver is not operating under a BFM accreditation, AFM accreditation or work and rest hours exemption.

(2) Without limiting subsection (1), the national regulations may prescribe—

(a) different standard hours for solo drivers, solo drivers of fatigue-regulated buses and drivers who are a party to a two-up driving arrangement; and

(b) that a solo driver of a fatigue-regulated bus may operate under either, but not both, the standard hours for solo

drivers or the standard hours for solo drivers of fatigue-regulated buses.

220 Operating under standard hours—solo drivers

(1) The solo driver of a fatigue-regulated heavy vehicle commits an offence if, in any period stated in the standard hours for the driver, the driver—

(a) works for more than the maximum work time stated in the standard hours for the period; or

(b) rests for less than the minimum rest time stated in the standard hours for the period.

Maximum penalty—

(a) for a minor risk breach—$1500; or

(b) for a substantial risk breach—$3000; or

(c) for a severe risk breach—$4500; or

(d) for a critical risk breach—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

221 Operating under standard hours—two-up drivers

(1) The driver of a fatigue-regulated heavy vehicle who is a party to a two-up driving arrangement commits an offence if, in any period stated in the standard hours for the driver, the driver—

(a) works for more than the maximum work time stated in the standard hours for the period; or

(b) rests for less than the minimum rest time stated in the standard hours for the period.

Maximum penalty—

(a) for a minor risk breach—$1500; or

(b) for a substantial risk breach—$3000; or

(c) for a severe risk breach—$4500; or

(d) for a critical risk breach—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

222 Defence relating to short rest breaks for drivers operating under standard hours

(1) This section applies if, at a particular time, the driver of a fatigue-regulated heavy vehicle is required, under section 220 or 221, to have a short rest break.

Examples of when this section applies—

The driver is required to have 15 continuous minutes rest time because—

(a) the driver has worked for $5^{1}/_{4}$ hours; or

(b) the driver has worked for $7^{1}/_{2}$ hours and has only had 15 continuous minutes rest time during that period; or

(c) the driver has worked for 10 hours and has only had 3 lots of 15 continuous minutes rest time during that period.

(2) In a proceeding for an offence against section 220 or 221 relating to the driver failing to have the short rest break, it is a defence for the driver to prove that—

(a) at the time the driver was required to have the short rest break, there was no suitable rest place for fatigue-regulated heavy vehicles; and

(b) the driver had the short rest break—

(i) at the next suitable rest place for fatigue-regulated heavy vehicles available after that time on the forward route of the driver's journey; and

(ii) no later than 45 minutes after the time the driver was required to have the short rest break.

Example of when the defence applies—

The driver of a fatigue-regulated heavy vehicle fails to have a short rest break after $5^{1}/_{4}$ hours of work time because there was no suitable rest place for fatigue-regulated heavy vehicles when the driver was scheduled to have the short rest break. Instead, the driver has a short rest break after $5^{1}/_{2}$ hours work at a suitable rest place for fatigue-regulated heavy vehicles down the road.

(3) In this section—

short rest break means rest time of less than 1 hour.

Division 3 BFM work and rest arrangements

223 BFM hours

(1) The national regulations may prescribe the 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 accreditation (the ***BFM hours***).

(2) Without limiting subsection (1), the national regulations may prescribe different BFM hours for solo drivers and drivers who are a party to a two-up driving arrangement.

224 Operating under BFM hours—solo drivers

(1) The solo driver of a fatigue-regulated heavy vehicle commits an offence if, in any period stated in the BFM hours for the driver, the driver—

(a) works for more than the maximum work time stated in the BFM hours for the period; or

(b) rests for less than the minimum rest time stated in the BFM hours for the period.

Maximum penalty—

(a) for a minor risk breach—$1500; or

(b) for a substantial risk breach—$3000; or

(c) for a severe risk breach—$4500; or

(d) for a critical risk breach—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

225 Defence for solo drivers operating under BFM hours relating to split rest breaks

(1) This section applies if, at a particular time, the driver of a fatigue-regulated heavy vehicle is required under section 224 to have 7 continuous hours of stationary rest time in a period of 24 hours.

(2) In a proceeding for an offence against section 224 for a solo driver of a fatigue-regulated heavy vehicle relating to the driver failing to have the 7 continuous hours of stationary rest time, it is a defence for the driver to prove that—

(a) at the time the driver was required to have the 7 continuous hours of stationary rest time, the driver was operating under BFM hours as a solo driver of a fatigue-regulated heavy vehicle; and

(b) during the period of 24 hours for which the 7 continuous hours of stationary rest time was required to be had, the driver had 6 continuous hours of stationary rest time and 2 continuous hours of stationary rest time (a ***split rest break***); and

(c) the driver had not had a split rest break in the previous 24-hour period.

Example of when the defence applies—

The driver of a fatigue-regulated heavy vehicle stops work to have 7 continuous hours of stationary rest time, but can not sleep, so the driver has only 2 continuous hours of stationary rest time and then drives on for a further 2 hours and has a further 6 continuous hours of stationary rest time at another place down the road. In the previous 24-hour period the driver had 7 continuous hours of stationary rest time.

226 Operating under BFM hours—two-up drivers

(1) The driver of a fatigue-regulated heavy vehicle who is a party to a two-up driving arrangement commits an offence if, in any period stated in the BFM hours for the driver, the driver—

(a) works for more than the maximum work time stated in the BFM hours for the period; or

(b) rests for less than the minimum rest time stated in the BFM hours for the period.

Maximum penalty—

(a) for a minor risk breach—$1500; or

(b) for a substantial risk breach—$3000; or

(c) for a severe risk breach—$4500; or

(d) for a critical risk breach—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 4 AFM work and rest arrangements

227 AFM hours

AFM hours are the maximum work times and minimum rest times applying, for a period, to the driver of a fatigue-regulated heavy vehicle operating under an AFM accreditation, and stated in the accreditation certificate for the accreditation.

228 Operating under AFM hours

(1) The driver of a fatigue-regulated heavy vehicle commits an offence if, in any period stated in the AFM hours for the driver, the driver—

(a) works for more than the maximum work time stated in the AFM hours; or

(b) rests for less than the minimum rest time stated in the AFM hours.

Maximum penalty—

(a) for a minor risk breach—$1500; or

(b) for a substantial risk breach—$3000; or

(c) for a severe risk breach—$4500; or

(d) for a critical risk breach—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 5 Arrangements under work and rest hours exemption

229 Exemption hours

(1) ***Exemption hours*** are the maximum work times and minimum rest times applying, for a period, to the driver of a fatigue-regulated heavy vehicle operating under a work and rest hours exemption, and stated in the relevant document for the exemption.

(2) In this section—

relevant document means—

(a) for a work and rest hours exemption (notice)—the Commonwealth Gazette notice for the exemption; or

(b) for a work and rest hours exemption (permit)—the permit for the exemption.

230 Operating under exemption hours

(1) The driver of a fatigue-regulated heavy vehicle operating under a work and rest hours exemption commits an offence if, in any period stated in the exemption hours for the exemption, the driver—

(a) works for more than the maximum work time stated in the exemption hours; or

(b) rests for less than the minimum rest time stated in the exemption hours.

Maximum penalty—

(a) for a minor risk breach—$1500; or

(b) for a substantial risk breach—$3000; or

(c) for a severe risk breach—$4500; or

(d) for a critical risk breach—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 6 Extended liability

231 Liability of employer etc. for driver's contravention of maximum work requirement or minimum rest requirement

(1) If the driver of a fatigue-regulated heavy vehicle is convicted of an offence involving a contravention of a maximum work requirement or minimum rest requirement applying to the driver under Division 2, 3, 4 or 5 (the ***relevant offence***), each of the following persons is also taken to have committed the offence—

(a) an employer of the driver if the driver is an employed driver;

(b) a prime contractor of the driver if the driver is a self-employed driver;

(c) an operator of the vehicle;

(d) a scheduler for the vehicle;

(e) a consignor of any goods for transport by the vehicle that are in the vehicle;

(f) a consignee of any goods in the vehicle;

(g) a loading manager of any goods in the vehicle;

(h) a loader of any goods in the vehicle;

(i) an unloader of goods in the vehicle.

Maximum penalty—

(a) for a minor risk breach—$1500; or

(b) for a substantial risk breach—$3000; or

(c) for a severe risk breach—$4500; or

(d) for a critical risk breach—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 7 Changing work and rest hours option

232 Changing work and rest hours option

(1) The driver of a fatigue-regulated heavy vehicle may operate under only 1 work and rest hours option at any 1 time.

(2) However, the driver of a fatigue-regulated heavy vehicle may change from 1 work and rest hours option to a different work and rest hours option.

233 Operating under new work and rest hours option after change

(1) The driver of a fatigue-regulated heavy vehicle must not drive the vehicle after changing from 1 work and rest hours option to a different work and rest hours option unless—

(a) if the change is from standard hours or BFM hours, either the driver—

(i) is in compliance with all the maximum work requirements and minimum rest requirements under the work and rest hours option to which the driver has changed; or

(ii) has had a reset rest break; and

Examples for paragraph (a)—

1 If the driver of a fatigue-regulated heavy vehicle is changing from BFM hours to standard hours and the minimum rest requirements applying to drivers operating under standard hours requires the driver to have a longer rest time than is required under BFM hours, the driver may start driving under standard hours only if the driver has had the longer rest time or a reset rest break.

2 If the driver of a fatigue-regulated heavy vehicle is changing from BFM hours to standard hours and the minimum rest requirements applying to drivers operating under standard hours requires the driver to have rest time earlier than is required under BFM hours, the driver may start driving under standard hours only if the driver has had the earlier rest time or a reset rest break.

(b) if the change is from AFM hours or exemption hours, the driver has had a reset rest break; and

(c) the driver complies with all other requirements of the work and rest hours option to which the driver has changed.

Example of other requirements for paragraph (c)—

If the driver is changing to BFM hours or AFM hours, the driver must be inducted into the relevant operator's BFM or AFM fatigue management system.

Maximum penalty—$3000.

(2) If the driver of a fatigue-regulated heavy vehicle has had a reset rest break between changing from 1 work and rest hours option to a different work and rest hours option, the period to which the new work and rest hours option applies must be counted forward from the end of the reset rest break.

(3) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(5) In this section—

reset rest break means a period of rest time of at least 48 continuous hours.

234 Duty of employer, prime contractor, operator and scheduler to ensure driver compliance

(1) This section applies if the driver of a fatigue-regulated heavy vehicle changes from 1 work and rest hours option to a different work and rest hours option.

(2) A relevant party for the driver must—

(a) ensure the driver does not drive a fatigue-regulated heavy vehicle after making the change unless the driver has complied with section 233; and

(b) take whatever action is necessary to ensure the driver can comply with his or her obligations in relation to the change.

Maximum penalty—$3000.

(3) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(5) In this section—

relevant party, for the driver of a fatigue-regulated heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator; or

(d) a scheduler for the vehicle.

Division 8 Exemptions relating to work times and rest times

Subdivision 1 Exemption for emergency services

235 Emergency services exemption

(1) A person who is acting for an emergency service and who has time-critical duties on the way to, or during, an emergency is exempted in the course of carrying out the duties from compliance with this Part.

(2) A person who is acting for an emergency service and who is returning from attending an emergency is exempted from

compliance with this Part if the person reasonably believes the noncompliance does not present an unreasonable danger to other road users.

(3) In this section—

emergency means an event, or an anticipated event, that—

(a) endangers, or may endanger, life, property or the environment; or

(b) has disrupted, or may disrupt, communications, energy supply, water supply or sewerage services; or

(c) is declared to be an emergency or disaster by—

(i) the Commonwealth or a State or Territory; or

(ii) a Commonwealth or State or Territory authority responsible for managing responses to emergencies or disasters.

Examples of an emergency—

fire, explosion or natural disaster

emergency service means an entity that has a statutory responsibility to respond to an emergency and includes the following—

(a) an ambulance service;

(b) a fire brigade, including a volunteer fire brigade;

(c) a police force or police service;

(d) a disaster or emergency organisation of the Commonwealth or a State or Territory.

Subdivision 2 Exemptions by Commonwealth Gazette notice

236 Regulator's power to exempt class of drivers from particular maximum work requirements and minimum rest requirements

(1) The Regulator may, by Commonwealth Gazette notice complying with section 240, grant an exemption to allow, for a period of not more than 3 years, a class of drivers of fatigue-regulated heavy vehicles to operate under the maximum work times and minimum rest times stated in the exemption.

(2) An exemption under subsection (1) is a ***work and rest hours exemption (notice)***.

237 Restriction on grant of work and rest hours exemption (notice)

(1) The Regulator may grant a work and rest hours exemption (notice) only if the Regulator is satisfied—

(a) requiring the class of drivers to whom the exemption is to apply to comply with the standard hours would be an unreasonable restriction on operations conducted by—

(i) the class of drivers; or

(ii) relevant parties for the class of drivers; and

(b) if the maximum work times and minimum rest times to apply under the exemption could be accommodated within BFM hours or AFM hours—the requirements applying to BFM accreditation or AFM accreditation under this Law would, having regard to the nature of the operations, be unreasonable for the operations conducted by—

(i) the class of drivers; or

(ii) relevant parties for the class of drivers; and

(c) the driver fatigue management practices that are to apply to drivers operating under the exemption would, if followed, safely manage fatigue risks; and

(d) the class of drivers to whom the exemption is to apply is likely to follow the practices consistently and effectively.

(2) In deciding whether or not to grant a work and rest hours exemption (notice), the Regulator must have regard to the approved guidelines for granting work and rest hours exemptions.

(3) In this section—

relevant parties, for a class of drivers of fatigue-regulated heavy vehicles, means—

(a) employers of the class of drivers if they are employed drivers; or

(b) prime contractors for the class of drivers if they are self-employed drivers; or

(c) operators of fatigue-regulated heavy vehicles if the drivers of the class are to make journeys for the operators using the vehicles.

238 Conditions of work and rest hours exemption (notice)

A work and rest hours exemption (notice) may be subject to any conditions the Regulator considers appropriate, including, for example, conditions about—

(a) driver fatigue management practices that are to apply to drivers operating under the exemption; and

(b) keeping records relating to the driver fatigue management practices; and

(c) a condition that the driver of a fatigue-regulated heavy vehicle who is operating under the exemption must keep in the driver's possession a copy of—

(i) the Commonwealth Gazette notice for the exemption; or

(ii) an information sheet about the exemption published by the Regulator on the Regulator's website.

239 Period for which work and rest hours exemption (notice) applies

A work and rest hours exemption (notice)—

(a) takes effect—

(i) when the Commonwealth Gazette notice for the exemption is published; or

(ii) if a later time is stated in the Commonwealth Gazette notice, at the later time; and

(b) applies for the period stated in the Commonwealth Gazette notice.

240 Requirements about Commonwealth Gazette notice

(1) A Commonwealth Gazette notice for a work and rest hours exemption (notice) must state the following—

(a) the class of drivers of fatigue-regulated heavy vehicles to which the exemption applies;

(b) the maximum work times and minimum rest times that are to apply to drivers operating under the exemption;

(c) the other conditions of the exemption;

(d) the period for which the exemption applies.

(2) The Regulator must publish a copy of the Commonwealth Gazette notice on the Regulator's website.

241 Amendment or cancellation of work and rest hours exemption (notice)

(1) Each of the following is a ground for amending or cancelling a work and rest hours exemption (notice)—

(a) the circumstances in which the Regulator may grant the exemption are no longer satisfied;

(b) the use of fatigue-regulated heavy vehicles under the exemption has caused, or is likely to cause, a significant risk to public safety.

(2) If the Regulator considers a ground exists to amend or cancel a work and rest hours exemption (notice), the Regulator may, by Commonwealth Gazette notice, amend or cancel the exemption.

(3) The Regulator must publish a copy of the Commonwealth Gazette notice on the Regulator's website.

Subdivision 3 Exemptions by permit

242 Regulator's power to exempt drivers from particular maximum work requirements and minimum rest requirements

(1) The Regulator may, by giving a person a permit as mentioned in section 247, grant an exemption to allow, for a period of not more than 3 years, a driver of a fatigue-regulated heavy vehicle, or a class of drivers of fatigue-regulated heavy vehicles, to operate under the maximum work times and minimum rest times stated in the exemption.

(2) An exemption under subsection (1) is a ***work and rest hours exemption (permit)***.

(3) The Regulator may grant a work and rest hours exemption (permit) to the operator of a fatigue-regulated heavy vehicle in combination with the operator's BFM accreditation or AFM accreditation.

(4) The Regulator may grant a work and rest hours exemption (permit)—

(a) in a way that does not cover all the drivers sought by the applicant; or

(b) setting maximum work times and minimum rest times different to the maximum work times and minimum rest times sought by the applicant.

243 Application for work and rest hours exemption (permit)

(1) Any of the following persons may apply to the Regulator for a work and rest hours exemption (permit)—

(a) an employer of a driver of a fatigue-regulated heavy vehicle;

(b) a prime contractor for a driver of a fatigue-regulated heavy vehicle;

(c) an operator of a fatigue-regulated heavy vehicle;

(d) a self-employed driver of a fatigue-regulated heavy vehicle.

(2) The application must—

(a) be in the approved form; and

(b) state the following—

(i) the period for which the exemption is sought;

(ii) any conditions to which the exemption is sought to be subject;

(iii) the name of the driver of a fatigue-regulated heavy vehicle to whom the exemption is sought to apply, or details of the class of drivers of fatigue-regulated heavy vehicles to whom the exemption is sought to apply;

(iv) the proposed maximum work times and minimum rest times that would be followed by drivers operating under the exemption;

(v) if the proposed maximum work times and minimum rest times to apply under the exemption could be accommodated within BFM hours or AFM hours—

(A) the driver fatigue management practices that would be followed by the applicant and drivers operating under the exemption; and

(B) how the practices would safely manage fatigue risks; and

(C) how the requirements applying to BFM accreditation or AFM accreditation under this Law would be unreasonable for the operations conducted by the applicant, having regard to the nature of the operations; and

(c) be accompanied by the prescribed fee for the application.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

244 Restriction on grant of work and rest hours exemption (permit)

(1) The Regulator may grant a work and rest hours exemption (permit) only if the Regulator is satisfied—

(a) requiring the drivers to whom the exemption is to apply to comply with the standard hours would be an unreasonable restriction on operations conducted by the applicant; and

(b) if the maximum work times and minimum rest times to apply under the exemption could be accommodated within BFM hours or AFM hours—the requirements applying to BFM accreditation or AFM accreditation under this Law would be unreasonable for the

operations conducted by the applicant, having regard to the nature of the operations; and

(c) the driver fatigue management practices that are to apply to drivers operating under the exemption would, if followed, safely manage fatigue risks; and

(d) the drivers to whom the exemption is to apply are likely to follow the practices consistently and effectively.

(2) In deciding whether or not to grant a work and rest hours exemption (permit), the Regulator must have regard to the approved guidelines for granting work and rest hours exemptions.

245 Conditions of work and rest hours exemption (permit)

(1) If the Regulator grants a work and rest hours exemption (permit) to the operator of a fatigue-regulated heavy vehicle in combination with the operator's BFM accreditation or AFM accreditation, it is a condition of the exemption that the operator must comply with all the conditions of the operator's BFM accreditation or AFM accreditation.

(2) A work and rest hours exemption (permit) may be subject to any other conditions the Regulator considers appropriate, including, for example, conditions about—

(a) driver fatigue management practices that are to apply to drivers operating under the exemption; and

(b) keeping records relating to the driver fatigue management practices.

246 Period for which work and rest hours exemption (permit) applies

(1) A work and rest hours exemption (permit) applies for the period stated in the permit for the exemption.

(2) The period may be less than the period sought by the applicant for the work and rest hours exemption (permit).

247 Permit for work and rest hours exemption (permit) etc.

(1) If the Regulator grants a work and rest hours exemption (permit) to a person, the Regulator must give the person—

(a) a permit for the exemption; and

(b) if prescribed circumstances apply to the grant of the exemption—an information notice for the prescribed circumstances.

(2) A permit for a work and rest hours exemption (permit) must state the following—

(a) the name of the person to whom the permit is given;

(b) the driver of a fatigue-regulated heavy vehicle, or class of drivers of fatigue-regulated heavy vehicles, to which the exemption applies;

(c) the maximum work times and minimum rest times that apply to drivers operating under the exemption;

(d) the conditions of the exemption, including, if applicable, the condition mentioned in section 245(1);

(e) the period for which the exemption applies.

(3) In this section—

prescribed circumstances, for a work and rest hours exemption (permit), means the Regulator has—

(a) imposed conditions on the exemption under section 245(2); or

(b) granted the exemption in a way that does not cover all the drivers sought by the applicant for the exemption; or

(c) granted the exemption setting maximum work times and minimum rest times different to the maximum work times and minimum rest times sought by the applicant for the exemption; or

(d) granted the exemption for a period less than the period of not more than 3 years sought by the applicant for the exemption.

248 Refusal of application for work and rest hours exemption (permit)

If the Regulator refuses an application for a work and rest hours exemption (permit), the Regulator must give the applicant an information notice for the decision to refuse the application.

249 Amendment or cancellation of work and rest hours exemption (permit) on application

(1) The holder of a permit for a work and rest hours exemption (permit) may apply to the Regulator for an amendment or cancellation of the exemption.

(2) The application must—

(a) be in the approved form; and

(b) if the application is for an amendment—state clearly the amendment sought and the reasons for the amendment; and

(c) be accompanied by the permit.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

(4) The Regulator must decide the application as soon as practicable after receiving it.

(5) If the Regulator decides to grant the application—

(a) the Regulator must give the applicant notice of the decision; and

(b) the amendment or cancellation takes effect—

(i) when notice of the decision is given to the applicant; or

(ii) if a later time is stated in the notice, at the later time; and

(c) if the Regulator amended the exemption, the Regulator must give the applicant a replacement permit for the exemption as amended.

(6) If the Regulator decides not to amend or cancel the exemption as sought by the applicant, the Regulator must—

(a) give the applicant an information notice for the decision; and

(b) return the permit for the exemption to the applicant.

250 Amendment or cancellation of work and rest hours exemption (permit) on Regulator's initiative

(1) Each of the following is a ground for amending or cancelling a work and rest hours exemption (permit)—

(a) the exemption was granted because of a document or representation that was—

(i) false or misleading; or

(ii) obtained or made in an improper way;

(b) the holder of the permit for the exemption has contravened this Law or a corresponding fatigue law;

(c) a driver of a fatigue-regulated heavy vehicle to whom the exemption applies has contravened this Law or a corresponding fatigue law;

(d) the circumstances in which the Regulator may grant the exemption are no longer satisfied.

(2) If the Regulator considers a ground exists to amend or cancel a work and rest hours exemption (permit) (the ***proposed action***), the Regulator must give the holder of the permit for the exemption a notice—

(a) stating the proposed action; and

(b) stating the ground for the proposed action; and

(c) outlining the facts and circumstances forming the basis for the ground; and

(d) if the proposed action is to amend the exemption (including a condition of the exemption)—stating the proposed amendment; and

(e) inviting the holder to make, within a stated time of at least 14 days after the notice is given to the holder, written representations about why the proposed action should not be taken.

(3) If, after considering all written representations made under subsection (2)(e), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the exemption—amend the exemption, including, for example, by imposing additional conditions on the exemption, in a way that is not substantially different from the proposed action; or

(b) if the proposed action was to cancel the exemption—

(i) amend the exemption, including, for example, by imposing additional conditions on the exemption; or

(ii) cancel the exemption.

(4) The Regulator must give the holder an information notice for the decision.

(5) The amendment or cancellation takes effect—

(a) when the information notice is given to the holder; or

(b) if a later time is stated in the information notice, at the later time.

251 Immediate suspension of work and rest hours exemption (permit)

(1) This section applies if the Regulator considers—

(a) a ground exists to cancel a work and rest hours exemption (permit); and

(b) it is necessary to suspend the exemption immediately to prevent or minimise serious harm to public safety.

(2) Despite section 250, the Regulator may, by notice (***immediate suspension notice***) given to the person to whom the permit for the exemption was given, immediately suspend the exemption until the earlier of the following—

(a) the Regulator gives the holder a notice under section 250(4);

(b) the end of 56 days after the day the immediate suspension notice is given to the holder.

252 Minor amendment of work and rest hours exemption (permit)

The Regulator may, by notice given to the holder of a permit for a work and rest hours exemption (permit), amend the exemption—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the holder's interests.

253 Return of permit

(1) If a person's work and rest hours exemption (permit) is amended or cancelled, the Regulator may, by notice given to the person, require the person to return the person's permit for the exemption to the Regulator.

(2) The person must comply with the notice within 7 days after the notice is given to the person or, if a longer period is stated in the notice, within the longer period.

Maximum penalty—$2000.

(3) If the exemption has been amended, the Regulator must give the person a replacement permit for the exemption as amended.

254 Replacement of defaced etc. permit

(1) If a person's permit for a work and rest hours exemption (permit) is defaced, destroyed, lost or stolen, the person must, as soon as reasonably practicable after becoming aware of the matter, apply to the Regulator for a replacement permit.

Maximum penalty—$2000.

(2) If the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen, the Regulator must give the person a replacement permit as soon as practicable.

(3) If the Regulator decides not to give a replacement permit to the person, the Regulator must give the person an information notice for the decision.

Subdivision 4 Offences relating to operating under work and rest hours exemption etc.

255 Contravening condition of work and rest hours exemption

(1) A person must not contravene a condition of a work and rest hours exemption.

Maximum penalty—$3000.

(2) In this section—

condition, of a work and rest hours exemption, does not include—

(a) a condition mentioned in section 256(1); or

(b) anything stating the exemption hours for the exemption.

256 Keeping relevant document while operating under work and rest hours exemption (notice)

(1) This section applies if a work and rest hours exemption (notice) is subject to the condition that the driver of a fatigue-regulated heavy vehicle who is operating under the exemption must keep a relevant document in the driver's possession.

(2) A driver of the fatigue-regulated heavy vehicle who is operating under the work and rest hours exemption (notice) must comply with the condition.

Maximum penalty—$2000.

(3) If the driver of a fatigue-regulated heavy vehicle commits an offence against subsection (2), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (2) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (2) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (2) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

(7) In this section—

relevant document, for a work and rest hours exemption (notice), means a copy of—

(a) the Commonwealth Gazette notice for the exemption; or

(b) an information sheet about the exemption published by the Regulator on the Regulator's website.

relevant party, for the driver of a fatigue-regulated heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

257 Keeping copy of permit while driving under work and rest hours exemption (permit)

(1) The driver of a fatigue-regulated heavy vehicle who is driving the vehicle under a work and rest hours exemption (permit) must keep a copy of the permit for the exemption in the driver's possession.

Maximum penalty—$2000.

(2) If the driver of a fatigue-regulated heavy vehicle is operating under a work and rest hours exemption (permit) granted to a relevant party for the driver and the relevant party has given the driver a copy of a permit for the purpose of subsection (1), the driver must, as soon as reasonably practicable, return the copy to the relevant party if the driver—

(a) stops working for the relevant party; or

(b) stops operating under the relevant party's exemption; or

(c) no longer meets the requirements relating to drivers under the relevant party's exemption.

Maximum penalty—$2000.

(3) If the driver commits an offence against subsection (1), each relevant party for the driver is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (1) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (1) is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (1) has been paid is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

(7) In this section—

relevant party, for the driver of a fatigue-regulated heavy vehicle, means—

(a) an employer of the driver if the driver is an employed driver; or

(b) a prime contractor of the driver if the driver is a self-employed driver; or

(c) an operator of the vehicle if the driver is making a journey for the operator.

Part 6.4 Requirements about record keeping

Division 1 Preliminary

258 What is *100km work* and *100+km work*

(1) The driver of a fatigue-regulated heavy vehicle is engaged in ***100km work*** if the driver is driving in an area with a radius of 100km or less from the driver's base.

(2) The driver of a fatigue-regulated heavy vehicle is engaged in ***100+km work*** if the driver is driving in an area with a radius of more than 100km from the driver's base.

(3) To remove any doubt, it is declared that the driver of a fatigue-regulated heavy vehicle to whom subsection (2) applies is taken to be engaged in 100+km work even while the driver was driving in an area within a radius of 100km or less from the driver's base.

259 What is a driver's *base* in particular circumstances

(1) The ***base*** of the driver of a fatigue-regulated heavy vehicle, in relation to particular work, is the place from which the driver normally does the work or receives instructions for the work.

(2) Despite subsection (1), if the driver has not recorded a base in the driver's work diary in relation to particular work, for the purposes of this Law the driver's base in relation to that work is—

(a) the vehicle's relevant garage address; or

(b) if the vehicle does not have a garage address—the place where the vehicle is normally kept when not in use.

(3) If the driver is an employed driver and a self-employed driver at different times—

(a) the driver has a base as an employed driver and another base as a self-employed driver; and

(b) the bases may be at the same or different places.

(4) If the driver has 2 or more employers—

(a) the driver has a different base in relation to each employer; and

(b) the bases may be at the same or different places.

260 What is a driver's *record location*

The ***record location*** of the driver of a fatigue-regulated heavy vehicle is—

(a) if the driver's record keeper has advised the driver of the place that is the driver's record location—the place advised; or

(b) otherwise—the driver's base.

Division 2 Work diary requirements

Subdivision 1 Requirement to carry work diary

261 Application of Sdiv 1

This Subdivision applies if the driver of a fatigue-regulated heavy vehicle—

(a) is engaged in 100+km work under standard hours; or

(b) was engaged in 100+km work under standard hours in the last 28 days; or

(c) is working under BFM hours, AFM hours or exemption hours; or

(d) was working under BFM hours, AFM hours or exemption hours in the last 28 days.

262 Meaning of *work diary* for Sdiv 1

(1) In this Subdivision, a reference to a ***work diary*** in relation to the driver of a fatigue-regulated heavy vehicle is a reference to the following—

(a) if the driver has used only 1 or more written work diaries in the last 28 days—

(i) the written work diary the driver is currently using; and

(ii) any filled-up written work diary the driver has used during the last 28 days;

(b) if the driver has used only 1 or more electronic work diaries in the last 28 days—

(i) the electronic work diary the driver is currently using; and

(ii) printouts of the information no longer stored in the electronic work diary the driver is currently using

and relating to any period during the last 28 days; and

(iii) printouts of the information in any other electronic work diary the driver has used in the last 28 days, relating to any period during the last 28 days and not stored in the electronic work diary the driver is currently using;

(c) if the driver has used a combination of written work diaries and electronic work diaries in the last 28 days—

(i) the written work diary, or electronic work diary, the driver is currently using; and

(ii) each written work diary the driver has used during the last 28 days; and

(iii) if the driver is currently using an electronic work diary, printouts of the information no longer stored in the diary and relating to any period during the last 28 days; and

(iv) printouts of the information in any electronic work diary the driver has used in the last 28 days, relating to any period during the last 28 days and not recorded in the written work diary or electronic work diary the driver is currently using.

(2) If the driver has made a supplementary record in the last 28 days, for this Subdivision, the supplementary record is taken to be part of the driver's work diary.

263 Driver of fatigue-regulated heavy vehicle must carry work diary

(1) The driver of a fatigue-regulated heavy vehicle must—

(a) keep a work diary; and

(b) ensure—

(i) the driver's work diary records the information required to be recorded under Subdivision 2 for each day in the previous 28 days; and

(ii) the driver's work diary is in the driver's possession while the driver is driving the vehicle.

Maximum penalty—$6000.

Notes—

1 For the requirement to record particular information in a supplementary record if the work diary of the driver of a fatigue-regulated heavy vehicle is filled up, destroyed, lost, stolen or, for an electronic diary, is malfunctioning, see section 275.

2 Under section 512, an authorised officer may require the driver of a fatigue-regulated heavy vehicle to produce for inspection the driver's work diary.

(2) Subsection (1) applies irrespective of the number of days in the previous 28 days the driver spent working in relation to a fatigue-regulated heavy vehicle.

(3) In a proceeding for an offence against subsection (1) relating to the driver failing to keep a work diary containing particular information, it is a defence for the driver to prove that—

(a) the information was recorded in a work diary that, at the time of the offence, has been destroyed (other than by the driver) or lost or stolen; or

(b) the information was—

(i) recorded in an electronic work diary; and

(ii) destroyed or lost as a result of a malfunction of the electronic work diary before the information was given to the driver's record keeper or recorded in any other way.

Subdivision 2 Information required to be included in work diary

264 Purpose of Sdiv 2

This Subdivision states the information the driver of a fatigue-regulated heavy vehicle must record in the driver's work diary for each day on which the driver—

(a) engages in 100+km work under standard hours; or

(b) works under BFM hours, AFM hours or exemption hours.

265 How information requirements apply to a day

(1) In this Subdivision, the requirement to record information for a day continues to apply for each period of work time and rest time the driver has on that day.

(2) However, if the driver stops working on a day and starts a major rest break that will continue until the end of the day, the driver may stop recording information for the day when the driver stops working and starts the major rest break.

266 Information to be recorded immediately after starting work

(1) Immediately after starting work on a day, the driver must record—

(a) the day of the week and date; and

(b) the driver's name; and

(c) the driver's current driver licence number and the jurisdiction in which the licence was issued; and

(d) whether the driver is operating under—

(i) standard hours (including whether the driver is operating under standard hours for solo drivers of a fatigue-regulated bus); or

(ii) BFM hours; or

(iii) AFM hours; or

(iv) exemption hours; and

(e) if the driver is operating under an operator's BFM accreditation or a work and rest hours exemption (permit) granted in combination with an operator's BFM accreditation—the accreditation number for the operator's BFM accreditation; and

(f) if the driver is operating under an operator's AFM accreditation or a work and rest hours exemption (permit) granted in combination with an operator's AFM accreditation—the accreditation number for the operator's AFM accreditation; and

(g) the address of the driver's base, unless the driver has previously recorded the address in relation to the work and it is still current; and

(h) the address of the driver's record location, unless the driver has previously recorded the address and it is still current; and

(i) the time zone of the driver's base.

Maximum penalty—$6000.

(2) In a proceeding for an offence against subsection (1) relating to the driver of a fatigue-regulated heavy vehicle failing to record information before starting to engage in 100+km work under standard hours on a day, it is a defence for the driver to prove that at the time of the offence—

(a) the driver was unaware that the driver would be engaging in 100+km work under standard hours on the day; and

(b) the driver recorded the information in the driver's work diary as soon as practicable after becoming aware that the driver would be engaging in 100+km work under standard hours on the day.

(3) In this section—

accreditation number, for a BFM accreditation or AFM accreditation, means the number identifying the accreditation given to the holder of the accreditation—

(a) under section 416 of this Law; or

(b) for a BFM accreditation or AFM accreditation granted under another law of a participating jurisdiction, under that law.

267 Information to be recorded immediately before or after work and rest change

(1) Immediately before or after each work and rest change on a day, the driver must record—

(a) the nature of the work and rest change; and

(b) the work time or rest time spent anywhere by the driver since the last work and rest change; and

(c) the time and place of the work and rest change; and

(d) the odometer reading at the time of the work and rest change; and

(e) the registration number for each fatigue-regulated heavy vehicle the driver drives; and

(f) if the driver is or becomes a party to a two-up driving arrangement on the day—the following information about the other driver in the two-up driving arrangement—

(i) the other driver's name;

(ii) the other driver's current driver licence number and the jurisdiction in which the licence was issued;

(iii) unless the driver is recording information in an electronic work diary the driver shares with the other driver, the security or other identifying number of the other driver's work diary.

Maximum penalty—$6000.

(2) A driver who is a party to a two-up driving arrangement must, at the request of the other driver party to the arrangement, provide the other driver with any details the driver needs to be able to comply with subsection (1)(f).

Maximum penalty—$2000.

(3) In a proceeding for an offence against subsection (1)(d), it is a defence for the driver to prove that—

(a) at the time of the offence, the odometer was malfunctioning; and

(b) the driver has complied with section 349.

268 Information to be recorded immediately after change of base or record location

(1) Immediately after any change of the driver's base or record location, the driver must record—

(a) for a change of the driver's base—

(i) the address of the new base; and

(ii) the time zone of the new base; or

(b) for a change of the driver's record location—the address of the new record location.

Maximum penalty—$6000.

(2) Subsection (1) does not require the driver to record the change of the driver's base or record location if, before the change, the driver was not—

(a) engaging in 100+km work under standards hours; or

(b) operating under BFM hours, AFM hours or exemption hours.

269 Information to be recorded immediately before finishing work

Immediately before finishing work on a day, the driver must ensure all periods of work time and rest time the driver had that day are recorded.

Maximum penalty—$6000.

Subdivision 3 How information must be recorded in work diary

270 Purpose of Sdiv 3

This Subdivision states how the driver of a fatigue-regulated heavy vehicle who is required to record information in the driver's work diary under Subdivision 2 must record the information.

271 Recording information in written work diary

If the driver's work diary is a written work diary, the driver must record information in the work diary in the following way—

(a) the information for each day must be written on a separate daily sheet in the work diary that has not been cancelled by the Regulator;

(b) if, on a day, the driver changes the work and rest hours option under which the driver is working, the information for the part of the day after the change must be written on a separate daily sheet in the work diary that has not been cancelled by the Regulator;

(c) information must be written on a daily sheet in the way stated in the instructions in the work diary for recording information on daily sheets;

(d) the daily sheets in the work diary must be used in turn from the front of the work diary;

(e) each daily sheet must be—

(i) signed and dated by the driver; and

(ii) if the driver is driving under a two-up driving arrangement—signed by the other driver who is a party to the arrangement;

(f) information must be written on a daily sheet with enough pressure to ensure a readable record of the information appears on the duplicate daily sheets;

(g) information recorded other than on a daily sheet must be written in the work diary in the way stated in the instructions in the work diary for the recording of the information.

Maximum penalty—$2000.

272 Recording information in electronic work diary

If the driver's work diary is an electronic work diary, the driver must record information in the work diary in a way complying with—

(a) if the Regulator has, when approving the electronic recording system constituting the work diary, or of which the work diary is a part, imposed any conditions in relation to the way information must be recorded in the work diary—those conditions; and

(b) the manufacturer's instructions for recording information in the electronic work diary, to the extent the instructions are consistent with the conditions mentioned in paragraph (a).

Maximum penalty—$2000.

Note—

The Regulator may impose conditions on the use of an electronic recording system under section 313.

273 Time zone of driver's base must be used

The driver must record time in the driver's work diary according to the time zone in the place where the driver's base is, rather than the time zone in the place where the driver is.

Maximum penalty—$2000.

Note—

See also section 218.

Subdivision 4 Requirements about work diaries that are filled up etc.

274 Application of Sdiv 4

This Subdivision applies to the driver of a fatigue-regulated heavy vehicle who is required to record information in the driver's work diary under Subdivision 2 if—

(a) for a driver who uses a written work diary—the driver's work diary has been filled up, destroyed, lost or stolen; or

(b) for a driver who uses an electronic work diary—the driver's work diary—

(i) has been filled up, destroyed, lost or stolen; or

(ii) is not in working order because a part of the diary has been destroyed, lost or stolen; or

(iii) is malfunctioning or has malfunctioned.

275 Driver must make supplementary records in particular circumstances

(1) During any period in which the driver of a fatigue-regulated heavy vehicle is unable to use the driver's work diary (the ***existing work diary***) because of circumstances mentioned in section 274(a) or (b), the driver must record in a supplementary record the information the driver is required under Subdivision 2 to record for the period (the ***required information***).

Maximum penalty—$6000.

Note—

Under Subdivision 1, the driver of a fatigue-regulated heavy vehicle must keep a supplementary record for 28 days after it is made as part of the driver's work diary. See sections 262(2) and 263.

Also, under section 292, the driver's record keeper must keep the supplementary record for at least 3 years after it is made (if the record keeper is the driver) or received by the record keeper (if the record keeper is not the driver).

(2) For a supplementary record that is not in electronic form, the required information must be recorded in the record as follows—

(a) the information for each day must be written on a separate page of the record;

(b) if, on a day, the driver changes the work and rest hours option under which the driver is working, the information for the part of the day after the change must be written on a separate page of the record;

(c) each page of the record must be—

(i) signed and dated by the driver; and

(ii) if the driver is driving under a two-up driving arrangement—signed by the other driver who is a party to the arrangement.

Maximum penalty—$2000.

(3) The driver must record time in the supplementary record according to the time zone in the place where the driver's base is, rather than the time zone in the place where the driver is.

Maximum penalty—$2000.

(4) Subsections (1) to (3) cease to apply—

(a) if the existing work diary is a written work diary, when the first of the following happens—

(i) the driver is issued a new written work diary, or obtains an electronic work diary that is in working order;

(ii) the expiry of 7 business days after the day on which the driver starts recording information under this section; or

(b) if the existing work diary is an electronic work diary, when the first of the following happens—

(i) the driver obtains a new electronic work diary that is in working order, or a written work diary;

(ii) the existing work diary is—

(A) if the diary is filled up—made capable of recording new information; or

(B) if the diary is not in working order as mentioned in section 274(b)(ii) or is malfunctioning—brought into working order;

(iii) the expiry of 7 business days after—

(A) the day on which the driver starts recording information under this section; or

(B) if the driver is directed to use a written work diary under section 283 and the driver did not have a written work diary when the direction was given—the day the direction is given to the driver under that section.

Note—

If subsection (1) ceases to apply, the driver must, under Subdivision 2, record the required information in a written or electronic work diary.

(5) In this section—

supplementary record means a record that—

(a) is not made in a written or electronic work diary; but

(b) is in a similar form to a written or electronic work diary.

276 Driver must notify Regulator if written work diary filled up etc.

Within 2 business days after the driver of a fatigue-regulated heavy vehicle becomes aware that the driver's written work diary has been filled up, destroyed, lost or stolen, the driver must give the Regulator notice, in the approved form, of that happening.

Maximum penalty—$4000.

277 Driver must notify Regulator if electronic work diary filled up etc.

(1) This section applies if the driver of a fatigue-regulated heavy vehicle—

(a) becomes aware that the driver's electronic work diary has been filled up, destroyed, lost or stolen or is not in working order as mentioned in section 274(b)(ii); or

(b) becomes aware or has reason to suspect that the driver's electronic work diary is malfunctioning or has malfunctioned.

(2) The driver must give the Regulator notice, in the approved form, of the matter within 2 business days.

Maximum penalty—$4000.

278 What driver must do if lost or stolen written work diary found or returned

(1) If a lost or stolen written work diary (the ***old work diary***) is found by or returned to the driver of a fatigue-regulated heavy vehicle after a replacement work diary has been issued to the driver, the driver must do the following—

(a) immediately cancel any unused daily sheets in the old work diary;

(b) if the old work diary is found or returned within 28 days after it was lost or stolen—

(i) immediately notify the Regulator in the approved form that it has been found or returned; and

(ii) give it to the Regulator within 2 business days after the 28-day period ends;

(c) if the old work diary is found or returned later than 28 days after it was lost or stolen—give it to the Regulator as soon as practicable after it is found or returned.

Maximum penalty—$4000.

(2) If a driver of a fatigue-regulated heavy vehicle gives a previously lost or stolen written work diary to the Regulator under subsection (1), the Regulator must—

(a) if the driver has not complied with subsection (1)(a), cancel any unused daily sheets in the work diary; and

(b) return the work diary to the driver.

279 Driver must notify record keeper if electronic work diary filled up etc.

(1) This section applies if—

(a) the driver of a fatigue-regulated heavy vehicle—

(i) becomes aware that the driver's electronic work diary has been filled up, destroyed, lost or stolen or

is not in working order as mentioned in section 274(b)(ii); or

(ii) becomes aware or has reason to suspect that the driver's electronic work diary is malfunctioning or has malfunctioned; and

(b) the driver's record keeper is a person other than the driver.

(2) The driver must, within 2 business days after the driver becomes aware of the matter, inform the driver's record keeper of the matter.

Maximum penalty—$4000.

280 Intelligent access reporting entity must notify record keeper if approved electronic recording system malfunctioning

(1) This section applies if—

(a) an approved electronic recording system—

(i) constitutes an electronic work diary or has a part that constitutes an electronic work diary; and

(ii) is or is part of an approved intelligent transport system; and

(b) an intelligent access reporting entity for the approved intelligent transport system becomes aware or has reason to suspect that the approved electronic recording system is malfunctioning or has malfunctioned.

(2) The intelligent access reporting entity must inform the driver's record keeper of the matter within 2 business days.

Maximum penalty—$4000.

281 What record keeper must do if electronic work diary filled up

(1) This section applies if—

(a) the record keeper for the driver of a fatigue-regulated heavy vehicle is a person other than the driver; and

(b) the driver uses an electronic work diary supplied to the driver by the record keeper; and

(c) the record keeper is informed, under section 279, that the electronic work diary has been filled up.

(2) The record keeper must, as soon as reasonably practicable after being informed of the matter—

(a) either—

(i) make the electronic work diary capable of recording new information; or

(ii) give the driver a new electronic work diary that is in working order; and

(b) if the record keeper removes any information relating to any period during the last 28 days from the work diary to make it capable of recording new information—give the driver a printout of the removed information.

Maximum penalty—$4000.

(3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—

(a) the record keeper remains liable for an offence against subsection (2); and

(b) the other person is also liable for an offence against subsection (2) as if the other person were the record keeper mentioned in the subsection.

(4) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

282 What record keeper must do if electronic work diary destroyed, lost or stolen

(1) This section applies if—

(a) the record keeper for the driver of a fatigue-regulated heavy vehicle is a person other than the driver; and

(b) the driver uses an electronic work diary supplied to the driver by the record keeper; and

(c) the record keeper is informed, under section 279, that the electronic work diary has been destroyed, lost or stolen.

(2) The record keeper must, as soon as reasonably practicable after being informed of the matter—

(a) give the driver a new electronic work diary that is in working order; and

(b) give the driver a printout of any information that was in the destroyed, lost or stolen electronic work diary that—

(i) has been given to the record keeper; and

(ii) relates to any period during the last 28 days; and

(iii) is not stored in the new electronic work diary.

Maximum penalty—$4000.

(3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—

(a) the record keeper remains liable for an offence against subsection (2); and

(b) the other person is also liable for an offence against subsection (2) as if the other person were the record keeper mentioned in the subsection.

(4) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

283 What record keeper must do if electronic work diary not in working order or malfunctioning

(1) This section applies if—

(a) the record keeper for the driver of a fatigue-regulated heavy vehicle is a person other than the driver; and

(b) the driver uses an electronic work diary supplied to the driver by the record keeper; and

(c) the record keeper—

(i) is informed, under section 279, that the electronic work diary is not in working order as mentioned in section 274(b)(ii); or

(ii) is informed, under section 279 or 280, of malfunctioning or suspected malfunctioning of the electronic work diary.

(2) The record keeper must, as soon as reasonably practicable after being informed of the matter—

(a) do one of the following—

(i) ensure the electronic work diary is examined and brought into working order;

(ii) give the driver a new electronic work diary;

(iii) direct the driver, in writing, to use a written work diary for recording information the driver is

required to record in the driver's work diary under this Part; and

(b) give the driver a printout of any information that was in the electronic work diary that—

(i) has been given to the record keeper; and

(ii) relates to any period during the last 28 days; and

(iii) is not stored in the work diary that has been brought into working order under subsection (2)(a)(i), or a new electronic work diary given to the driver under subsection (2)(a)(ii).

Maximum penalty—$4000.

(3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—

(a) the record keeper remains liable for an offence against subsection (2); and

(b) the other person is also liable for an offence against subsection (2) as if the other person were the record keeper mentioned in the subsection.

(4) Subsection (3) does not apply if the other person is engaged only to repair or otherwise bring the electronic work diary into working order.

Example for subsection (4)—

A person in the business of repairing electronic recording systems is engaged to repair or otherwise bring the electronic work diary into working order on behalf of the record keeper.

(5) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(6) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Subdivision 5 Use of electronic work diaries

284 How electronic work diary must be used

(1) This section applies if the driver of a fatigue-regulated heavy vehicle who is required to record information in the driver's work diary under Subdivision 2 uses an electronic work diary.

(2) The driver must use the electronic work diary in a way complying with—

(a) any conditions applying under this Law or a corresponding fatigue law in relation to the use of the approved electronic recording system constituting the work diary or of which the work diary is a part; and

(b) the manufacturer's specifications for the electronic recording system that is or includes the work diary, to the extent the specifications are consistent with the conditions mentioned in paragraph (a).

Maximum penalty—$2000.

(3) The record keeper of a driver of a fatigue-regulated heavy vehicle who uses an electronic work diary must ensure the driver complies with the requirements of subsection (2).

Maximum penalty—$2000.

(4) In a proceeding for an offence against subsection (2) or (3) involving a person failing to comply with a particular specification of the manufacturer of an electronic recording system, it is a defence for the person to prove that—

(a) the specification was not integral to the effective operation of the electronic recording system; or

(b) what was done or not done in relation to the specification was in accordance with industry practice in relation to the handling or maintenance of an electronic recording system of that type from that manufacturer.

Subdivision 6 Extended liability

285 Liability of employer etc. for driver's contravention of particular requirements of this Division

(1) If the driver of a fatigue-regulated heavy vehicle is convicted of an offence against Subdivision 1, 2, 3 or 4 (the ***relevant offence***), each of the following persons is also taken to have committed the offence—

(a) an employer of the driver if the driver is an employed driver;

(b) a prime contractor of the driver if the driver is a self-employed driver;

(c) an operator of the vehicle if the driver is making a journey for the operator;

(d) a scheduler for the vehicle.

Maximum penalty—an amount equal to the maximum penalty for the relevant offence.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 3 Records relating to drivers

Subdivision 1 Preliminary

286 Application of Div 3

This Division—

(a) applies in relation to each record keeper for the driver of a fatigue-regulated heavy vehicle; and

(b) if there is more than 1 record keeper for the driver of a fatigue-regulated heavy vehicle—applies only to the extent the driver is carrying out work in relation to which the record keeper is a record keeper for the driver.

Example for paragraph (b)—

The driver of a fatigue-regulated heavy vehicle is an employed driver employed by employer A and employer B, each of whom is a record keeper of the driver. A's obligations to record information under this Division apply only to the extent the information is about the work the driver carries out for A. Under section 289 or 291, A need only record the registration numbers of the fatigue-regulated heavy vehicles the driver drives for carrying out work for A and the work times and rest times of the driver while carrying out that work. A does not need to record the registration numbers for the fatigue-regulated heavy vehicles the driver drives for carrying out work for B or the work times and rest times of the driver while carrying out that work.

287 Who is a driver's *record keeper*

The following person is the ***record keeper*** for the driver of a fatigue-regulated heavy vehicle—

(a) if the driver is operating under a BFM accreditation or AFM accreditation of an operator of the vehicle or a work and rest hours exemption (permit) granted in combination with an operator's BFM accreditation or AFM accreditation—the operator;

(b) otherwise—

(i) for an employed driver of a fatigue-regulated heavy vehicle—the driver's employer; or

(ii) for a self-employed driver of a fatigue-regulated heavy vehicle—the driver.

Subdivision 2 Record keeping obligations relating to drivers engaging in 100km work under standard hours

288 Application of Sdiv 2

This Subdivision applies in relation to the driver of a fatigue-regulated heavy vehicle who is engaging in only 100km work under standard hours.

289 Records record keeper must have

(1) The driver's record keeper must—

(a) record the following information within the prescribed period—

(i) the driver's name and contact details;

(ii) the driver's current driver licence number and the jurisdiction in which the licence was issued;

(iii) the dates on which the driver drives a fatigue-regulated heavy vehicle on a road;

(iv) the registration number for each fatigue-regulated heavy vehicle the driver drives;

(v) the total of the driver's work times and rest times on each day on which the driver drives a fatigue-regulated heavy vehicle;

(vi) the total of the driver's work times and rest times for each week during which the driver drives a fatigue-regulated heavy vehicle;

(vii) the driver's rosters and trip schedules, including details of driver changeovers; and

(b) keep a copy of payment records relating to the driver, including time sheet records if the driver is paid according to time at work.

Maximum penalty—$6000.

(2) If the record keeper has engaged another person to comply with subsection (1) for the record keeper—

(a) the record keeper remains liable for an offence against subsection (1); and

(b) the other person is also liable for an offence against subsection (1) as if the other person were the record keeper mentioned in the subsection.

(3) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(5) In this section—

prescribed period, for recording information mentioned in subsection (1) relating to the driver of a fatigue-regulated heavy vehicle, means—

(a) if the driver's record keeper is the driver—within 24 hours after the driver stops working on a day for which the information is relevant; or

(b) if the driver's record keeper is a person other than the driver—as soon as possible after the person receives the information.

Subdivision 3 Record keeping obligations relating to drivers engaging in 100+km work under standard hours or operating under BFM hours, AFM hours or exemption hours

290 Application of Sdiv 3

This Subdivision applies in relation to the driver of a fatigue-regulated heavy vehicle who is—

(a) engaging in 100+km work under standard hours; or

(b) operating under BFM hours, AFM hours or exemption hours.

291 Records record keeper must have

(1) The driver's record keeper must—

(a) record the following information within the prescribed period—

(i) the driver's name and contact details;

(ii) the driver's current driver licence number and the jurisdiction in which the licence was issued;

(iii) the driver's rosters and trip schedules, including details of driver changeovers; and

(b) keep a copy of all duplicate pages and other copies of work diary entries given to the record keeper under section 292; and

(c) keep a copy of payment records relating to the driver, including time sheet records if the driver is paid according to time at work.

Maximum penalty—$6000.

(2) If the driver is operating under BFM hours or AFM hours, the record keeper must also record the following information—

(a) the information required to be kept by the record keeper as a condition of the BFM accreditation or AFM accreditation under which the driver is operating;

(b) the information required to be kept by the record keeper under the BFM standards and business rules or AFM standards and business rules.

Maximum penalty—$6000.

Note—

See also section 422 for other record-keeping requirements applying to a record keeper who is an operator operating under a BFM accreditation or AFM accreditation.

(3) If the record keeper has engaged another person to comply with subsection (1) or (2) for the record keeper—

(a) the record keeper remains liable for an offence against the subsection; and

(b) the other person is also liable for an offence against the subsection as if the other person were the record keeper mentioned in the subsection.

(4) A person charged with an offence against subsection (1) or (2) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (1) or (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) This section does not apply to the record keeper for the driver of a fatigue-regulated heavy vehicle who—

(a) is exempt from the requirements of Division 2 under section 326; or

(b) is operating under a work diary exemption.

(7) In this section—

AFM standards and business rules has the meaning given by section 409.

BFM standards and business rules has the meaning given by section 409.

prescribed period, for recording information mentioned in subsection (1) relating to the driver of a fatigue-regulated heavy vehicle, means—

(a) if the driver's record keeper is the driver—within 24 hours after the driver stops working on a day for which the information is relevant; or

(b) if the driver's record keeper is a person other than the driver—as soon as possible after the person receives the information.

292 General requirements about driver giving information to record keeper

(1) This section applies if—

(a) the driver of a fatigue-regulated heavy vehicle is required to record information in the driver's work diary under Division 2; and

(b) the driver's record keeper is a person other than the driver.

(2) The driver must, within 21 days after the day on which the driver drove the vehicle, give a copy of the work diary entry recording the information, including any entry made in a supplementary record recording the information for that day, to each person who was a record keeper for the driver on that day.

Maximum penalty—$2000.

(3) For subsection (2), if the work diary entry is made in an electronic work diary, the driver may give a copy of the entry to the record keeper by electronically transmitting it to the record keeper.

(4) The record keeper must ensure the driver complies with subsection (2).

Maximum penalty—$2000.

(5) If the record keeper has engaged another person to comply with subsection (4) for the record keeper—

(a) the record keeper remains liable for an offence against subsection (4); and

(b) the other person is also liable for an offence against subsection (4) as if the other person were the record keeper mentioned in the subsection.

(6) A person charged with an offence against subsection (2) or (4) does not have the benefit of the mistake of fact defence for the offence.

(7) However, in a proceeding for an offence against subsection (2) or (4), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

293 Requirements about driver giving information to record keeper if driver changes record keeper

(1) This section applies if—

(a) the driver of a fatigue-regulated heavy vehicle is, or was in the previous 28 days, required to record information in the driver's work diary under Division 2; and

(b) the driver changes record keepers; and

(c) the new record keeper is a person other than the driver.

(2) The driver must, before driving a fatigue-regulated heavy vehicle for the driver's new record keeper, give the new record keeper a copy of information the driver recorded in a work diary in the 28 days before the change happened that relates to that 28-day period.

Maximum penalty—$2000.

(3) The new record keeper must ensure the driver complies with subsection (2).

Maximum penalty—$2000.

(4) If the new record keeper has engaged another person to comply with subsection (3) for the new record keeper—

(a) the new record keeper remains liable for an offence against subsection (3); and

(b) the other person is also liable for an offence against subsection (3) as if the other person were the new record keeper mentioned in the subsection.

(5) A person charged with an offence against subsection (2) or (3) does not have the benefit of the mistake of fact defence for the offence.

(6) However, in a proceeding for an offence against subsection (2) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

294 Record keeper must give printouts of information from electronic work diary

(1) This section applies if—

(a) the driver of a fatigue-regulated heavy vehicle is required to record information in the driver's work diary under Division 2; and

(b) the driver's record keeper is a person other than the driver; and

(c) the driver is using an electronic work diary supplied to the driver by the driver's record keeper.

(2) If the driver stops using the electronic work diary, the driver's record keeper must immediately give the driver a printout of

the information recorded in the work diary for each day on which the driver was using the electronic work diary.

Maximum penalty—$2000.

(3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—

(a) the record keeper remains liable for an offence against subsection (2); and

(b) the other person is also liable for an offence against subsection (2) as if the other person were the record keeper mentioned in the subsection.

(4) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Subdivision 4 Requirements about records record keeper must make or keep

295 Period for which, and way in which, records must be kept

(1) The record keeper of the driver of a fatigue-regulated heavy vehicle must keep a record required to be made or kept under this Division, or a copy of the record, for 3 years after—

(a) for a record made by the record keeper—the day the record keeper makes the record; or

(b) for another record—the day the record keeper receives the record.

Maximum penalty—$6000.

(2) The record keeper must keep the record or copy at the driver's record location in a way that ensures it is readily available to an authorised officer at the record location.

Maximum penalty—$2000.

(3) The record keeper must keep the record or copy in a way that ensures it is—

(a) readable and reasonably capable of being understood; and

(b) capable of being used as evidence.

Example—

To ensure a record kept in a storage facility does not become unreadable, for example, by degrading, the record keeper could scan the hard copy of the record and keep it in an electronic format that is readable.

Maximum penalty—$2000.

(4) If the record keeper has engaged another person to comply with subsection (1), (2) or (3) for the record keeper—

(a) the record keeper remains liable for an offence against the subsection; and

(b) the other person is also liable for an offence against the subsection as if the other person were the record keeper mentioned in the subsection.

(5) A person charged with an offence against subsection (1), (2) or (3) does not have the benefit of the mistake of fact defence for the offence.

(6) However, in a proceeding for an offence against subsection (1), (2) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 4 Provisions about false representations relating to work records

296 False or misleading entries

(1) A person must not record something in a work record that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty—$6000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

(2) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the entry was 'false or misleading', without specifying whether it was false or whether it was misleading.

297 Keeping 2 work diaries simultaneously prohibited

(1) The driver of a fatigue-regulated heavy vehicle must not have in the driver's possession more than 1 written work diary in which information can be recorded on a daily sheet.

Maximum penalty—$6000.

(2) The driver of a fatigue-regulated heavy vehicle must not record information for the same period in—

(a) a written work diary and an electronic work diary; or

(b) more than 1 electronic work diary.

Example—

The driver of a fatigue-regulated heavy vehicle works for A and B. The driver keeps a written work diary for work done for A and an electronic work diary for work done for B. On a particular day, the driver works from 1p.m. to 5p.m. for A and from 6p.m. to 11p.m. for B.

The driver must record the information about the period between 1p.m. and 5p.m. in the written work diary kept for A, and the information for the period between 6p.m. and 11p.m. in the electronic work diary kept for B.

The driver must not record information about the period between 1p.m. and 5p.m., or the period between 6p.m. to 11p.m., in both the written work diary and electronic work diary.

Maximum penalty—$6000.

298 Possession of purported work records etc. prohibited

The driver of a fatigue-regulated heavy vehicle or the record keeper for a driver of a fatigue-regulated heavy vehicle must not have in the driver's or record keeper's possession a thing purporting to be a work record if the driver or record keeper knows, or ought reasonably to know, that it is not a work record.

Maximum penalty—$6000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

299 False representation about work records prohibited

A person must not falsely represent that a work record was made by the person.

Maximum penalty—$6000.

Division 5 Interfering with work records

Subdivision 1 Work records generally

300 Defacing or changing work records etc. prohibited

A person must not deface or change a work record that the person knows, or ought reasonably to know, is correct.

Maximum penalty—$6000.

Notes—

1 Giving a false or misleading document to an official is prohibited by section 642.

2 See section 295 for the requirement that the record keeper for the driver of a fatigue-regulated heavy vehicle keep particular records in a way that ensures they are readable and reasonably capable of being understood and capable of being used as evidence.

3 See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

301 Making entries in someone else's work records prohibited

(1) A person must not make an entry in someone else's work record.

Maximum penalty—$6000.

(2) Subsection (1) does not apply to—

(a) a person who—

(i) makes an entry in another person's work diary under a work diary exemption (permit) applying to the other person; and

(ii) is nominated by the other person to make the entry; or

(b) an authorised officer; or

(c) a party to a two-up driving arrangement—

(i) signing the written work diary of the other party to the arrangement; or

(ii) making an entry in the other party's electronic work diary indicating the party's approval of the information recorded in the work diary.

302 Destruction of particular work records prohibited

If a work record is required under this Part to be kept for a particular period by a person, the person or someone else must not destroy the record before the end of the period.

Maximum penalty—$6000.

Note—

See section 295 for the period for which record keepers for drivers of fatigue-regulated heavy vehicles are required to keep particular work records.

303 Offence to remove pages from written work diary

A person must not remove a daily sheet, or the copies of a daily sheet, from a written work diary except as required or authorised by this Law or a corresponding fatigue law.

Maximum penalty—$6000.

Subdivision 2 Approved electronic recording systems

304 Application of Sdiv 2

This Subdivision applies to an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part.

305 Meaning of *tamper*

Tamper with an approved electronic recording system means—

(a) engage in conduct that—

(i) results in the system, or a part of the system, malfunctioning; or

(ii) could result in the system, or a part of the system, malfunctioning; or

(iii) alters any of the data recorded by the system or a part of the system; or

(iv) could alter any of the data recorded by the system or a part of the system; or

(v) results in inaccurate information being recorded by the system or a part of the system; or

(vi) could result in inaccurate information being recorded by the system or a part of the system; or

(b) engage in conduct that alters or otherwise interferes with an electronic signal sent to or from the system, or a part of the system, if the alteration or interference has or could have an effect mentioned in paragraph (a)(i), (iii) or (v).

306 Person must not tamper with approved electronic recording system

(1) A person must not tamper with an approved electronic recording system.

Maximum penalty—$6000.

(2) Subsection (1) does not apply to conduct associated with repairing an approved electronic recording system, or a part of an approved electronic recording system, that is malfunctioning or has malfunctioned.

(3) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(5) Also, in a proceeding for an offence against subsection (1) involving a person engaging in conduct that alters or otherwise interferes with any electronic signal sent to or from an approved electronic recording system, or a part of an approved electronic recording system, it is a defence for the person to prove that the person was not aware, and could not reasonably be expected to have been aware, that the conduct would alter or otherwise interfere with the electronic signal.

307 Person using approved electronic recording system must not permit tampering with it

(1) A person who uses an approved electronic recording system must not permit another person to tamper with the system.

Maximum penalty—$6000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

308 Intelligent access reporting entity must not permit tampering with approved electronic recording system

(1) This section applies if an approved electronic recording system is or is part of an approved intelligent transport system.

(2) An intelligent access reporting entity for the approved intelligent transport system must not permit another person to tamper with the approved electronic recording system.

Maximum penalty—$6000.

(3) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Division 6 Obtaining written work diary

309 Form of written work diary

(1) This section states the requirements for written work diaries issued by the Regulator under this Division.

(2) A written work diary must contain—

(a) a unique identifying number for the work diary; and

(b) sheets (***daily sheets***) that—

(i) provide for recording information daily; and

(ii) are sequentially numbered; and

(c) 2 duplicates of each daily sheet; and

(d) a duplicate of any application form contained in the work diary under subsection (3); and

(e) instructions for use of the work diary.

(3) A written work diary may contain an application in the approved form for the issue of another work diary.

(4) Each daily sheet of a written work diary must be in a form that ensures that, if information is written on the daily sheet in the way stated in the instructions in the work diary or this Law, the information should be automatically copied on to the duplicates for the sheet.

310 Application for written work diary

(1) The driver of a fatigue-regulated heavy vehicle may apply to the Regulator for a written work diary.

(2) The application must be in the approved form.

(3) If the application is for a written work diary to replace a written work diary previously issued to the driver (the ***existing written work diary***), the driver must give the existing written work diary to the Regulator with the application, unless the existing written work diary has been destroyed, lost or stolen.

(4) If the driver gives the existing written work diary to the Regulator, the Regulator must—

(a) cancel any unused daily sheets in the written work diary; and

(b) return the written work diary to the driver when the Regulator issues the replacement written work diary to the driver.

(5) If the application is for a written work diary to replace a written work diary that has been destroyed, lost or stolen, the application must—

(a) state the previous work diary's number and that it has been destroyed, lost or stolen; and

(b) briefly outline the circumstances of the destruction, loss or theft.

311 Issue of written work diary

(1) The Regulator must issue a written work diary to the driver of a fatigue-regulated heavy vehicle if the driver—

(a) applies for the work diary under section 310; and

(b) identifies himself or herself by showing his or her current driver licence to the Regulator; and

(c) pays the prescribed fee for the issue of the work diary.

(2) If the Regulator issues a written work diary to the driver of a fatigue-regulated heavy vehicle, the Regulator must note the date, time and place of issue on the written work diary.

(3) The Regulator may make other notes on the written work diary the Regulator considers appropriate.

Division 7 Approval of electronic recording systems

Subdivision 1 Approval of electronic recording systems

312 Application for approval of electronic recording system

(1) A person may apply to the Regulator for the approval of an electronic recording system.

Examples of persons who may apply for an approval under this section—

- manufacturers of electronic recording systems
- operators of fatigue-regulated heavy vehicles
- drivers of fatigue-regulated heavy vehicles

(2) The application must be in the approved form.

313 Deciding application for approval

(1) The Regulator must, as soon as practicable after receiving an application for an electronic recording system approval—

(a) grant the approval, with or without conditions about the use or maintenance of the electronic recording system to which the approval relates; or

(b) refuse the application.

(2) The Regulator may approve an electronic recording system only if the Regulator is satisfied the system—

(a) is suitable or has a part that is suitable for fitting to, or for use in, a fatigue-regulated heavy vehicle; and

(b) has a mechanism that readily indicates to the driver of the fatigue-regulated heavy vehicle to which it or a part of it is fitted, or in which it or a part of it is used, that the system is or is not properly functioning; and

(c) is capable of—

(i) accurately monitoring and recording the work times and rest times of the driver of the fatigue-regulated heavy vehicle to which it or a part of it is fitted, or in which it or a part of it is used; and

(ii) accurately recording any other information the driver is required by this Law to record in a work diary; and

(d) if the system or a part of it is to be fitted to a fatigue-regulated heavy vehicle and is to be used by more than 1 driver of the vehicle, is capable of ensuring the following—

(i) all of the information mentioned in paragraph (c) can be accurately monitored or recorded for each of the drivers;

(ii) the details recorded by, or in relation to, 1 of the drivers are readily distinguishable from the details recorded by, or in relation to, the other drivers;

(iii) the name of the driver in relation to whom details are recorded is shown whenever the details are accessed;

(iv) 1 of the drivers can not record any information, that the driver is required by this Law to record in a work diary, in the system for any of the other drivers; and

(e) has a mechanism to ensure the driver of the fatigue-regulated heavy vehicle to which it or a part of it is fitted, or in which it or a part of it is used, can not alter any information the driver records in the system once the driver has had an opportunity to confirm the accuracy of the information; and

(f) if the system is designed to enable the driver of the fatigue-regulated heavy vehicle to which it or a part of it is fitted, or in which it or a part of it is used, to send information to the driver's record keeper—has a mechanism that readily indicates to the driver that the information has, or has not, been sent to the record keeper; and

(g) is capable of readily reproducing, on being accessed by the record keeper for the driver of the fatigue-regulated heavy vehicle to which it or a part of it is fitted, or in which it or a part of it is used, the information that the system contains; and

(h) is capable of readily reproducing, on being accessed by an authorised officer while the vehicle to which it or a part of it is fitted, or in which it or a part of it is used, is on a road, the information the system contains in a form that—

(i) is readily accessible by the officer; and

(ii) is reasonably capable of being understood by the officer; and

(iii) can be used as evidence.

(3) In deciding whether or not to grant the approval, the Regulator must have regard to the approved guidelines for granting electronic recording system approvals.

(4) An approved electronic recording system may be, or be a part of, an approved intelligent transport system.

314 Steps after decision to grant approval

(1) If the Regulator grants an approval under section 313, the Regulator must give the applicant—

(a) a numbered certificate of approval; and

(b) an electronic work diary label the holder can use to create a copy for attaching to a device that is or is part of the electronic recording system the subject of the approval.

(2) If the Regulator imposes conditions on the approval, the certificate of approval given to the applicant must state the conditions.

(3) If the Regulator imposes conditions on the approval not sought by the applicant, the Regulator must give the applicant an information notice for the decision to impose the conditions.

315 Steps after decision to refuse application

If the Regulator decides not to grant an application for an electronic recording system approval, the Regulator must give the applicant an information notice for the decision.

316 Effect of approval

(1) An electronic recording system approval granted under this Subdivision applies to any system identical to the system given to the Regulator for approval.

(2) The conditions imposed on the approval under section 313, or Subdivision 3, apply to each identical system to which the approval applies.

Subdivision 2 Provisions about electronic work diary labels

317 Placing electronic work diary label on device

(1) A person may place on any device that is, or is part of, an approved electronic recording system an electronic work diary label relating to the approval.

Note—

Under the definition of *electronic work diary* in section 191, placing an electronic work diary label on a device that is, or is part of, an approved electronic recording system and is fitted to or used in a fatigue-regulated heavy vehicle makes the device an electronic work diary for this Law.

See also section 319.

(2) A person must not place an electronic work diary label on a device unless the device is, or is part of, an approved electronic recording system to which the label relates.

Maximum penalty—$6000.

(3) A person must not place any other label on a device indicating the device is, or is part of, an approved electronic recording system, unless the device is, or is part of, an approved electronic recording system.

Maximum penalty for subsection (3)—$6000.

318 Particular label indicates device is an approved electronic recording system

(1) This section applies if a device has attached to it an electronic work diary label.

(2) The existence of the electronic work diary label on the device is evidence the device is, or is part of, an approved electronic recording system.

319 Effect of electronic work diary label on device

(1) This section applies if a device has attached to it a label that is, or appears to be, an electronic work diary label.

(2) For this Law, a person is entitled to rely on the label as indicating the device is, or is part of, an approved electronic recording system unless the person knows, or ought reasonably to know, the device is neither an approved electronic recording system nor a part of an approved electronic recording system.

Example for subsection (2)—

The record keeper for the driver of a fatigue-regulated heavy vehicle gives the driver a device to which an electronic work diary label is attached for recording information required to be included in the driver's work diary under this Law. The driver may rely on the label as indicating the device is, or is part of, an approved electronic recording system meaning the driver may record the required information in the device on the basis it is an electronic work diary. However, the driver may not rely on the label if the driver knows, or ought reasonably to know the device is not, or is not part of, an approved electronic recording system.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

320 Prohibition on using device as electronic work diary if it is not, and is not a part of, an approved electronic recording system

(1) A person must not use as an electronic work diary for the purposes of this Law a device that has attached to it an electronic work diary label if the person knows, or ought reasonably to know, the device is neither an approved electronic recording system, nor a part of an approved electronic recording system, to which the label relates.

Maximum penalty—$6000.

(2) A person must not use as an electronic work diary for the purposes of this Law a device that has attached to it any other label indicating the device is, or is part of, an approved electronic recording system, if the person knows, or ought reasonably to know, the device is neither an approved electronic recording system, nor a part of an approved electronic recording system.

Maximum penalty—$6000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

Subdivision 3 Amendment or cancellation of approval

321 Amendment or cancellation of approval on application

(1) The holder of an electronic recording system approval may apply to the Regulator for an amendment or cancellation of the approval.

(2) The application must—

(a) be in writing; and

(b) if the application is for an amendment of the approval, state clearly the amendment sought and outline the reasons for the application; and

(c) be accompanied by the certificate of approval for the approval.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

(4) The Regulator must decide the application as soon as practicable after receiving it.

(5) If the Regulator decides to grant the application—

(a) the Regulator must give the applicant notice of the decision; and

(b) the amendment or cancellation takes effect—

(i) when notice of the decision is given to the applicant; or

(ii) if a later time is stated in the notice, at the later time; and

(c) if the Regulator amended the approval, the Regulator must give the applicant a replacement certificate of approval for the approval as amended.

(6) If the Regulator decides not to amend or cancel the approval as sought by the applicant, the Regulator must—

(a) give the applicant an information notice for the decision; and

(b) return the certificate of approval for the approval to the applicant.

(7) In this section—

certificate of approval, for an electronic recording system approval, means the certificate of approval issued by the Regulator under section 314 for the approval.

322 Amendment or cancellation of approval on Regulator's initiative

(1) Each of the following is a ground for amending or cancelling an electronic recording system approval—

(a) the approval was granted because of a document or representation that was—

(i) false or misleading; or

(ii) obtained or made in an improper way;

(b) the circumstances in which the Regulator may grant an approval of that kind to the holder of the approval are no longer satisfied.

(2) If the Regulator considers a ground exists to amend or cancel an electronic recording system approval (the ***proposed action***), the Regulator must give the holder of the approval a notice—

(a) stating the proposed action; and

(b) stating the ground for the proposed action; and

(c) outlining the facts and circumstances forming the basis for the ground; and

(d) if the proposed action is to amend the approval (including a condition of the approval)—stating the proposed amendment; and

(e) inviting the holder to make, within a stated time of at least 14 days after the notice is given to the holder, written representations about why the proposed action should not be taken.

(3) If, after considering all written representations made under subsection (2)(e), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the approval—amend the approval, including, for example, by imposing additional conditions on the approval, in a

way that is not substantially different from the proposed action; or

(b) if the proposed action was to cancel the approval—

(i) amend the approval, including, for example, by imposing additional conditions on the approval; or

(ii) cancel the approval.

(4) The Regulator must give the holder an information notice for the decision.

(5) The amendment or cancellation takes effect—

(a) when the information notice is given to the holder; or

(b) if a later time is stated in the information notice, at the later time.

323 Minor amendment of approval

The Regulator may, by notice given to the holder of an electronic recording system approval, amend the approval—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the holder's interests.

324 Requirements if approval amended

(1) This section applies if, under this Subdivision—

(a) the Regulator amends an electronic recording system approval to change the conditions about the use or maintenance of the electronic recording system the subject of the approval; and

(b) in the Regulator's opinion, the amendment will, or is likely to, significantly affect the way the electronic recording system the subject of the approval is to be used.

(2) The Regulator may, by notice, direct the holder of the approval to give each person to whom the holder has supplied an electronic recording system the subject of the approval, or a device forming part of the system, a notice stating the amended conditions of the approval.

(3) If the Regulator gives the holder of the approval a direction under subsection (2), the holder must comply with the direction.

Maximum penalty—$6000.

(4) With the Regulator's written consent, a person may comply with subsection (3) by publishing the amended conditions, and any further details stated by the Regulator, using at least 2 of the following methods—

(a) by notice published in a newspaper stated by the Regulator;

(b) by notice published in a journal or newsletter stated by the Regulator;

(c) on a website stated by the Regulator.

(5) If, under subsection (3), the holder of the approval gives a person a notice stating the amended conditions of the approval, the person must give a copy of the notice to each other person to whom the person has supplied an electronic recording system the subject of the approval, or a device forming part of the system.

Example for subsection (5)—

The holder of an approval is a manufacturer and the manufacturer has supplied an electronic recording system the subject of the approval to an operator of a fatigue-regulated heavy vehicle who has supplied the system to the vehicle's driver. If, under subsection (3), the manufacturer gives the operator a notice stating the amended conditions of the approval, the operator must, under subsection (5), give the driver a copy of the notice.

Maximum penalty—$6000.

(6) Nothing in this section prevents the Regulator from publishing details of the amendment by whatever means the Regulator thinks appropriate.

Example—

The Regulator may publish the amended conditions in the Commonwealth Gazette or on a website.

(7) In this section—

amended conditions, of an electronic recording system approval that has been amended under this Division, means the conditions of the approval as they apply after the amendment.

325 Requirements if approval cancelled

(1) This section applies if, under this Subdivision, the Regulator notifies the holder of an electronic recording system approval that the approval has been cancelled.

(2) The holder of the approval must remove from any device that is, or is part of, an electronic recording system in the holder's possession any electronic work diary label relating to the approval.

Maximum penalty—$6000.

(3) The Regulator may, by notice, direct the holder of the approval to give each person to whom the holder has supplied a device that is, or is part of, an electronic recording system the subject of the approval a notice stating that—

(a) the approval has been cancelled; and

(b) any electronic work diary label relating to the approval on any device that is, or is part of, the electronic recording system still in the other person's possession must be removed.

(4) If the Regulator gives the holder of the approval a direction under subsection (3), the holder must comply with the direction.

Maximum penalty—$6000.

(5) With the Regulator's written consent, a person may comply with subsection (4) by publishing details of the cancellation, and any further details stated by the Regulator, using at least 2 of the following methods—

(a) by notice published in a newspaper stated by the Regulator;

(b) by notice published in a journal or newsletter stated by the Regulator;

(c) on a website stated by the Regulator.

(6) If, under subsection (4), the holder of the approval gives a person a notice that the approval has been cancelled, the person must give a notice to each other person to whom the person has supplied an electronic recording system the subject of the approval, or a device forming part of the system, stating that—

(a) the approval has been cancelled; and

(b) any electronic work diary label relating to the approval on any device that is, or is part of, an electronic recording system still in the other person's possession must be removed.

Example for subsection (6)—

The holder of an approval is a manufacturer and the manufacturer has supplied a device that is, or is part of, an electronic recording system the subject of the approval to an operator of a fatigue-regulated heavy vehicle who has supplied the device to the vehicle's driver. If, under subsection (4), the manufacturer gives the operator a notice stating the approval has been cancelled and any electronic work diary label relating to the approval on any device that is, or is part of, an electronic recording system still in the operator's possession must be removed, the operator must give the driver a notice stating the approval has been cancelled and any electronic work diary label relating to the approval on any device that is, or is part of, an electronic recording system still in the driver's possession must be removed.

Maximum penalty—$6000.

(7) Nothing in this section prevents the Regulator from publishing details of the cancellation by whatever means the Regulator thinks appropriate.

Example—

The Regulator may publish the cancellation in the Commonwealth Gazette or on a website.

(8) A person who is aware that an electronic recording system approval has been cancelled must remove from any device that is, or is part of, an electronic recording system in the person's possession any electronic work diary label relating to the approval.

Maximum penalty—$6000.

(9) In this section—

holder, of an electronic recording system approval that has been cancelled, means the person who, immediately before the cancellation took effect, held the approval.

Division 8 Exemptions from work diary requirements

Subdivision 1 Exemption for emergency services

326 Emergency services exemption

(1) A person who is acting for an emergency service and who has time-critical duties on the way to, or during, an emergency is exempted in the course of carrying out the duties from compliance with Division 2.

(2) A person who is acting for an emergency service and who is returning from attending an emergency is exempted from compliance with Division 2 if the person reasonably believes the noncompliance does not present an unreasonable danger to other road users.

(3) In this section—

emergency means an event, or an anticipated event, that—

(a) endangers, or may endanger, life, property or the environment; or

(b) has disrupted, or may disrupt, communications, energy supply, water supply or sewerage services; or

(c) is declared to be an emergency or disaster by—

(i) the Commonwealth or a State or Territory; or

(ii) a Commonwealth or State or Territory authority responsible for managing responses to emergencies or disasters.

Examples of an emergency—

fire, explosion or natural disaster

emergency service means an entity that has a statutory responsibility to respond to an emergency and includes the following—

(a) an ambulance service;

(b) a fire brigade, including a volunteer fire brigade;

(c) a police force or police service;

(d) a disaster or emergency organisation of the Commonwealth or a State or Territory.

Subdivision 2 Exemptions by Commonwealth Gazette notice

327 Regulator's power to exempt particular drivers from work diary requirements

(1) The Regulator may, by Commonwealth Gazette notice complying with section 331, exempt, for a period of not more than 3 years, drivers of fatigue-regulated heavy vehicles

carrying out a class of work from the requirement to comply with Subdivisions 1 to 5 of Division 2 for the work.

(2) An exemption under subsection (1) is a ***work diary exemption (notice)***.

328 Restriction on grant of work diary exemption (notice)

(1) The Regulator may grant a work diary exemption (notice) only if the Regulator is satisfied—

(a) requiring the drivers to whom the exemption is to apply to comply with Subdivisions 1 to 5 of Division 2 would be an unreasonable restriction on operations conducted by the drivers; and

(b) the class of work to which the exemption is to apply will not pose—

(i) a significant risk to public safety; or

(ii) a significant risk of the drivers to whom the exemption is to apply driving on a road while impaired by fatigue.

(2) In deciding whether or not to grant a work diary exemption (notice), the Regulator must have regard to the approved guidelines for granting work diary exemptions.

329 Conditions of work diary exemption (notice)

A work diary exemption (notice) may be subject to any conditions the Regulator considers appropriate, including, for example—

(a) conditions about recording information about the work to which the exemption applies; and

(b) a condition that the driver of a fatigue-regulated heavy vehicle who is operating under the exemption must keep in the driver's possession a copy of—

(i) the Commonwealth Gazette notice for the exemption; or

(ii) an information sheet about the exemption published by the Regulator on the Regulator's website.

330 Period for which work diary exemption (notice) applies

A work diary exemption (notice)—

(a) takes effect—

(i) when the Commonwealth Gazette notice for the exemption is published; or

(ii) if a later time is stated in the Commonwealth Gazette notice, at the later time; and

(b) applies for the period stated in the Commonwealth Gazette notice.

331 Requirements about Commonwealth Gazette notice

(1) A Commonwealth Gazette notice for a work diary exemption (notice) must state the following—

(a) the class of work to which the exemption applies;

(b) that drivers of fatigue-regulated heavy vehicles who carry out the class of work are exempt from the requirement to comply with Subdivisions 1 to 5 of Division 2 for the work;

(c) the conditions of the exemption;

(d) the period for which the exemption applies.

(2) The Regulator must publish a copy of the Commonwealth Gazette notice on the Regulator's website.

332 Amendment or cancellation of work diary exemption (notice)

(1) This section applies if the Regulator is satisfied the circumstances in which the Regulator may grant a work diary exemption (notice) are no longer satisfied.

(2) The Regulator may amend or cancel the work diary exemption (notice) by complying with subsections (3) to (5).

(3) The Regulator must publish a notice in the Commonwealth Gazette, in a newspaper circulating generally throughout each relevant participating jurisdiction and on the Regulator's website—

(a) stating that the Regulator believes the circumstances in which the Regulator may grant the work diary exemption (notice) are no longer satisfied; and

(b) outlining the facts and circumstances forming the basis for the belief; and

(c) stating the action the Regulator is proposing to take under this section (the ***proposed action***); and

(d) inviting persons who will be affected by the proposed action to make, within a stated time of at least 14 days after the Commonwealth Gazette notice is published, written representations about why the proposed action should not be taken.

(4) If, after considering all written representations made under subsection (3)(d), the Regulator still considers the circumstances in which the Regulator may grant the work diary exemption (notice) are no longer satisfied, the Regulator may—

(a) if the proposed action was to amend the exemption—amend the exemption in a way that is not substantially different from the proposed action, including, for example, by—

(i) amending the class of work to which the exemption applies; or

(ii) amending the conditions of the exemption; or

(b) if the proposed action was to cancel the exemption—

(i) amend the exemption, including, for example, by amending the exemption in a way mentioned in paragraph (a)(i) or (ii); or

(ii) cancel the exemption.

(5) Notice of the amendment or cancellation must be published—

(a) in—

(i) the Commonwealth Gazette; and

(ii) a newspaper circulating generally throughout each relevant participating jurisdiction; and

(b) on the Regulator's website; and

(c) in any other newspaper the Regulator considers appropriate.

Example for paragraph (c)—

If the work diary exemption (notice) relates to a particular part of a participating jurisdiction, the Regulator may consider it appropriate to publish the notice in a newspaper circulating generally in the part.

(6) The amendment or cancellation takes effect—

(a) 28 days after the Commonwealth Gazette notice is published under subsection (5); or

(b) if a later time is stated in the Commonwealth Gazette notice, at the later time.

(7) In this section—

relevant participating jurisdiction, for a work diary exemption (notice), means a participating jurisdiction in which the whole or part of an area or route to which the exemption applies is situated.

Subdivision 3 Exemptions by permit

333 Regulator's power to exempt driver of fatigue-regulated heavy vehicle from work diary requirement

(1) The Regulator may, by giving a person a permit as mentioned in section 338, exempt, for a period of not more than 3 years, a driver of a fatigue-regulated heavy vehicle from the requirement to comply with Subdivisions 1 to 5 of Division 2.

(2) An exemption under subsection (1) is a ***work diary exemption (permit)***.

334 Application for work diary exemption (permit)

(1) The driver of a fatigue-regulated heavy vehicle may apply to the Regulator for a work diary exemption (permit).

(2) The application must—

(a) be in the approved form; and

(b) state the following—

(i) the period for which the exemption is sought;

(ii) any conditions for the exemption sought by the applicant; and

(c) nominate a person (the ***nominee***) to make written work records for the driver; and

(d) be accompanied by the nominee's written agreement to the nomination; and

(e) be accompanied by the prescribed fee for the application.

(3) An employer of the driver of a fatigue-regulated heavy vehicle may make an application under subsection (1) on behalf of the driver.

(4) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

335 Restriction on grant of work diary exemption (permit)

(1) The Regulator may grant a work diary exemption (permit) only if the Regulator is satisfied—

(a) the driver can not make records in the driver's work diary because of the driver's inadequate English literacy; and

(b) the nominee for the driver will be able to make records that are no less complete or accurate than records made under Subdivisions 1 to 5 of Division 2.

(2) In deciding whether or not to grant a work diary exemption (permit), the Regulator must have regard to the approved guidelines for granting work diary exemptions.

(3) In this section—

nominee, for the driver of a fatigue-regulated heavy vehicle, means the person nominated, in the application for the work diary exemption (permit), by the driver to make written work records for the driver.

336 Conditions of work diary exemption (permit)

A work diary exemption (permit) may be subject to any conditions the Regulator considers appropriate, including, for example, conditions about—

(a) the information to be included in records about the work carried out by the driver of a fatigue-regulated heavy vehicle to whom the exemption applies; and

(b) how the records are to be made.

337 Period for which work diary exemption (permit) applies

(1) A work diary exemption (permit) applies for the period stated in the permit for the exemption.

(2) The period may be less than the period sought by the applicant for the work diary exemption (permit).

338 Permit for work diary exemption (permit) etc.

(1) If the Regulator grants a work diary exemption (permit) to a person, the Regulator must give the person—

(a) a permit for the exemption; and

(b) if the Regulator has imposed conditions on the exemption under section 336 or has granted the exemption for a period less than the period of not more than 3 years sought by the person—an information notice for the decision to impose the conditions or grant the exemption for the shorter period.

(2) A permit for a work diary exemption (permit) must state the following—

(a) the name of the driver of a fatigue-regulated heavy vehicle to whom the permit is given;

(b) the name of the nominee for the driver;

(c) the conditions of the exemption;

(d) the period for which the exemption applies.

(3) In this section—

nominee, for the driver of a fatigue-regulated heavy vehicle, means the person nominated, in the application for the work diary exemption (permit), by the driver to make written work records for the driver.

339 Refusal of application for work diary exemption (permit)

If the Regulator refuses an application for a work diary exemption (permit), the Regulator must give the applicant an information notice for the decision to refuse the application.

340 Amendment or cancellation of work diary exemption (permit) on application

(1) The holder of a permit for a work diary exemption (permit) may apply to the Regulator for an amendment or cancellation of the exemption.

(2) The application must—

(a) be in the approved form; and

(b) if the application is for an amendment—state clearly the amendment sought and the reasons for the amendment; and

(c) if the application is for an amendment of the person nominated by the holder to make written work records for the holder—be accompanied by the nominee's written agreement to the nomination; and

(d) be accompanied by the permit.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

(4) The Regulator must decide the application as soon as practicable after receiving it.

(5) If the Regulator decides to grant the application—

(a) the Regulator must give the applicant notice of the decision; and

(b) the amendment or cancellation takes effect—

(i) when notice of the decision is given to the applicant; or

(ii) if a later time is stated in the notice, at the later time; and

(c) if the Regulator amends the exemption, the Regulator must give the applicant a replacement permit for the exemption as amended.

(6) If the Regulator decides not to amend or cancel the work diary exemption (permit), as sought by the applicant, the Regulator must—

(a) give the applicant an information notice for the decision; and

(b) return the permit for the exemption to the applicant.

341 Amendment or cancellation of work diary exemption (permit) on Regulator's initiative

(1) Each of the following is a ground for amending or cancelling a work diary exemption (permit)—

(a) the exemption was granted because of a document or representation that was—

(i) false or misleading; or

(ii) obtained or made in an improper way;

(b) the person to whom the exemption is granted has contravened this Law or a corresponding fatigue law;

(c) the nominee has contravened a condition of the exemption;

(d) since the exemption was granted, there has been a change in the circumstances that were relevant to the Regulator's decision to grant the exemption and, had the changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption, or would have granted the exemption subject to conditions or different conditions.

(2) If the Regulator considers a ground exists to amend or cancel a work diary exemption (permit) (the ***proposed action***), the

Regulator must give the holder of the permit for the exemption a notice—

(a) stating the proposed action; and

(b) stating the ground for the proposed action; and

(c) outlining the facts and circumstances forming the basis for the ground; and

(d) if the proposed action is to amend the exemption (including a condition of the exemption)—stating the proposed amendment; and

(e) inviting the holder to make, within a stated time of at least 14 days after the notice is given to the holder, written representations about why the proposed action should not be taken.

(3) If, after considering all written representations made under subsection (2)(e), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the exemption—amend the exemption, including, for example, by imposing additional conditions on the exemption, in a way that is not substantially different from the proposed action; or

(b) if the proposed action was to cancel the exemption—

(i) amend the exemption, including, for example, by imposing additional conditions on the exemption; or

(ii) cancel the exemption.

(4) The Regulator must give the holder an information notice for the decision.

(5) The amendment or cancellation takes effect—

(a) when the information notice is given to the holder; or

(b) if a later time is stated in the information notice, at the later time.

(6) In this section—

nominee, for the person to whom a work diary exemption (permit) is granted, means the person stated in the permit for the exemption as the person nominated by the person to make written work records for the person.

342 Minor amendment of work diary exemption (permit)

The Regulator may, by notice given to the holder of a permit for a work diary exemption (permit), amend the exemption—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the holder's interests.

343 Return of permit

(1) If a person's work diary exemption (permit) is amended or cancelled under this Subdivision, the Regulator may, by notice given to the person, require the person to return the person's permit for the exemption to the Regulator.

(2) The person must comply with the notice within 7 days after the notice is given to the person or, if a longer period is stated in the notice, within the longer period.

Maximum penalty—$2000.

(3) If the exemption has been amended, the Regulator must give the person a replacement permit for the exemption as amended.

344 Replacement of defaced etc. permit

(1) If a person's permit for a work diary exemption (permit) is defaced, destroyed, lost or stolen, the person must, as soon as reasonably practicable after becoming aware of the matter, apply to the Regulator for a replacement permit.

Maximum penalty—$2000.

(2) If the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen, the Regulator must give the person a replacement permit as soon as practicable.

(3) If the Regulator decides not to give a replacement permit to the person, the Regulator must give the person an information notice for the decision.

Subdivision 4 Operating under work diary exemption

345 Contravening conditions of work diary exemption

A person must not contravene a condition of a work diary exemption.

Maximum penalty—$6000.

346 Keeping relevant document while operating under work diary exemption (notice)

(1) This section applies if a work diary exemption (notice) is subject to the condition that the driver of a fatigue-regulated heavy vehicle who is operating under the exemption must keep a relevant document in the driver's possession.

(2) A driver of the fatigue-regulated heavy vehicle who is operating under the work diary exemption (notice) must comply with the condition.

Maximum penalty—$2000.

(3) In this section—

relevant document, for a work diary exemption (notice), means a copy of—

(a) the Commonwealth Gazette notice for the exemption; or

(b) an information sheet about the exemption published by the Regulator on the Regulator's website.

347 Keeping copy of permit while operating under work diary exemption (permit)

The driver of a fatigue-regulated heavy vehicle who is operating under a work diary exemption (permit) must keep the permit for the exemption in the driver's possession.

Maximum penalty—$2000.

Division 9 Requirements about odometers

348 Owner must maintain odometer

(1) An owner of a fatigue-regulated heavy vehicle must maintain an odometer fitted to the vehicle in a way complying with the *Vehicle Standard (Australian Design Rule 18/03—Instrumentation) 2006* of the Commonwealth.

Maximum penalty—$4000.

(2) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.

(3) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

349 Driver must report malfunctioning odometer

(1) This section applies if the driver of a fatigue-regulated heavy vehicle becomes aware or has reason to suspect an odometer fitted to the vehicle is malfunctioning or has malfunctioned.

(2) The driver must inform the following persons of the matter within 2 business days—

(a) each owner of the vehicle;

(b) the driver's employer if the driver is an employed driver;

(c) each operator of the vehicle.

Maximum penalty—$4000.

(3) Subsection (2) does not apply to the driver of a fatigue-regulated heavy vehicle in relation to a malfunction of an odometer if another driver of the vehicle has complied with the subsection in relation to the malfunction.

(4) If the driver of a fatigue-regulated heavy vehicle is convicted of an offence against subsection (2) (the ***relevant offence***), each of the following persons is also taken to have committed the offence—

(a) an employer of the driver if the driver is an employed driver;

(b) a prime contractor of the driver if the driver is a self-employed driver;

(c) an operator of the vehicle if the driver is making a journey for the operator;

(d) a scheduler for the vehicle.

Maximum penalty—an amount equal to the maximum penalty for the relevant offence.

(5) A person charged with an offence against subsection (4) does not have the benefit of the mistake of fact defence for the offence.

(6) However, in a proceeding for an offence against subsection (4), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

350 What owner must do if odometer malfunctioning

(1) This section applies if an owner of a fatigue-regulated heavy vehicle is informed under section 349 of malfunctioning or suspected malfunctioning of the vehicle's odometer.

(2) The owner must, as soon as reasonably practicable after being informed of the matter, ensure the odometer is examined and brought into working order.

Maximum penalty—$4000.

(3) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

351 What employer or operator must do if odometer malfunctioning

(1) This section applies if an employer of the driver of a fatigue-regulated heavy vehicle or an operator of a fatigue-regulated heavy vehicle is informed under section 349 of malfunctioning or suspected malfunctioning of the vehicle's odometer.

(2) The employer or operator must not drive, or permit another person to drive, the fatigue-regulated heavy vehicle unless the owner of the vehicle has complied with section 350.

Maximum penalty—$4000.

(3) A person charged with an offence against subsection (2) does not have the benefit of the mistake of fact defence for the offence.

(4) However, in a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

Chapter 7 Intelligent access

Part 7.1 Preliminary

352 Main purposes of Ch 7

(1) The main purposes of this Chapter are—

(a) to ensure the integrity of systems used for compliance with intelligent access conditions; and

(b) to provide for appropriate collection, keeping and handling of intelligent access information.

(2) The purpose mentioned in subsection (1)(a) is achieved by—

(a) requiring particular entities to report relevant contraventions for intelligent access vehicles; and

(b) requiring particular entities to report tampering or suspected tampering with, or malfunctioning of, approved intelligent transport systems; and

(c) prohibiting persons from tampering with approved intelligent transport systems; and

(d) giving particular entities functions and powers to audit the activities of intelligent access service providers.

(3) The purpose mentioned in subsection (1)(b) is achieved by—

(a) allowing entities to collect, hold, use and disclose intelligent access information for only limited purposes and subject to restrictions; and

(b) requiring entities with monitoring or auditing functions to ensure intelligent access information collected is accurate, complete and up to date; and

(c) requiring entities who collect intelligent access information to protect the information and destroy it when it is no longer required by the entities; and

(d) providing for persons about whom an entity holds personal information to have access to the information and have it corrected in appropriate circumstances.

353 Application of Ch 7

(1) This Chapter applies if the Regulator has imposed on a mass or dimension exemption the following conditions (***intelligent access conditions***)—

(a) a condition about the areas or routes to which the exemption applies;

(b) conditions about the use of a heavy vehicle on a road under the exemption, including, for example, conditions about one or more of the following—

(i) the maximum permissible mass of the vehicle, or the vehicle together with its load, while it is being used on the road under the exemption;

(ii) the times when the vehicle may be used on the road under the exemption;

(iii) the maximum speed at which the vehicle may be driven on the road under the exemption;

(c) conditions that—

(i) a heavy vehicle's compliance with the conditions mentioned in paragraphs (a) and (b) is monitored

by an approved intelligent transport system used by an intelligent access service provider; and

(ii) any noncompliance reports made by the system are sent to the Regulator within a stated period.

(2) This Chapter also applies if the use of a heavy vehicle under an HML authority is subject to the conditions (also ***intelligent access conditions***) that—

(a) either or both of the following is monitored by an approved intelligent transport system used by an intelligent access service provider—

(i) the roads on which the vehicle is used under the higher mass limits;

(ii) the vehicle's compliance with conditions about the use of a heavy vehicle on a road under the higher mass limits, including, for example, conditions about one or more of the following—

(A) the times when the vehicle may be driven on the road under the higher mass limits;

(B) the maximum speed at which the vehicle may be driven on the road under the higher mass limits; and

(b) any noncompliance reports made by the system are sent to the Regulator within a stated period.

354 Definitions for Ch 7

In this Chapter—

approved intelligent transport system means an intelligent transport system approved by TCA for use by an intelligent access service provider to monitor the relevant monitoring matters for an intelligent access vehicle.

higher mass limits means the higher mass limits applying under the mass requirements.

HML authority means a declaration made, or permit granted, under the national regulations allowing a heavy vehicle to be used on a road under the higher mass limits.

intelligent access agreement means an agreement between the operator of a heavy vehicle and an intelligent access service provider under which the service provider agrees to monitor, by using an approved intelligent transport system, the relevant monitoring matters for the vehicle.

intelligent access audit means the process of doing 1 or more of the following—

(a) reviewing intelligent access information held by an intelligent access service provider to assess whether the information is accurate, complete and up to date;

(b) reviewing the processes by which intelligent access information held by an intelligent access service provider is generated, recorded, stored, displayed, analysed, transmitted and reported;

(c) examining how intelligent access information held by an intelligent access service provider is used and disclosed by the service provider;

(d) examining an approved intelligent transport system.

intelligent access conditions has the meaning given by section 353.

intelligent access information means information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system.

intelligent access service provider means a person certified by TCA as a service provider for monitoring, by using an approved intelligent transport system, the relevant monitoring matters for an intelligent access vehicle.

intelligent access vehicle means a heavy vehicle—

(a) to which a mass or dimension exemption that is subject to intelligent access conditions applies, or that is being used under the higher mass limits under an HML

authority that is subject to intelligent access conditions; and

(b) that is equipped for monitoring, by an approved intelligent transport system operated by an intelligent access service provider, the relevant monitoring matters for the vehicle; and

(c) that is covered by an intelligent access agreement.

law enforcement purposes means the purposes of investigating or prosecuting an offence against an Australian road law.

malfunction, in relation to an approved intelligent transport system, means the system—

(a) ceases to work at all, or works only intermittently; or

(b) does not perform a function relating to monitoring the relevant monitoring matters for an intelligent access vehicle; or

(c) performs a function mentioned in paragraph (b)—

(i) only intermittently; or

(ii) in a way that the results of it doing so are inaccurate or unreliable, including intermittently inaccurate or unreliable.

noncompliance report means a report made by an approved intelligent transport system that reports either or both of the following—

(a) a relevant contravention for an intelligent access vehicle;

(b) apparent tampering with, or malfunctioning of, the system.

personal information means personal information that is intelligent access information or otherwise collected for the purposes of this Chapter.

Note—

See also definition *personal information* in section 5.

relevant contravention means—

(a) for an intelligent access vehicle used under a mass or dimension exemption—the vehicle's contravention of conditions mentioned in section 353(1)(a) or (b) applying to the vehicle; or

(b) for an intelligent access vehicle used under the higher mass limits—

(i) the vehicle's use under the higher mass limits on a road to which the higher mass limits do not apply; or

(ii) the vehicle's contravention of a condition about the use of the vehicle on a road under the higher mass limits.

relevant monitoring matters means—

(a) for a heavy vehicle used under a mass or dimension exemption—the vehicle's compliance with conditions mentioned in section 353(1)(a) or (b) applying to the vehicle; or

(b) for a heavy vehicle used under the higher mass limits—the matters mentioned in section 353(2)(a)(i) or (ii) for the vehicle.

tamper, with an approved intelligent transport system, means engage in conduct that has the result that—

(a) the system is changed; or

(b) the system is installed or used in a way that is not in accordance with the conditions of its approval by TCA; or

(c) any operating software that the system uses internally is changed.

Part 7.2 Duties and obligations of operators of intelligent access vehicles

355 Offence to give false or misleading information to intelligent access service provider

(1) The operator of an intelligent access vehicle commits an offence if—

(a) the operator gives information to an intelligent access service provider with whom the operator has entered into an intelligent access agreement for the vehicle; and

(b) the information is relevant to the use of the vehicle; and

(c) the operator knows, or ought reasonably to know, the information is false or misleading in a material particular.

Maximum penalty—$6000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

(2) Subsection (1) does not apply if the operator gives the information in writing and, when giving the information—

(a) tells the intelligent access service provider, to the best of the operator's ability, how it is false or misleading; and

(b) if the operator has, or can reasonably obtain, the correct information—gives the correct information in writing.

(3) Without limiting subsection (1)(b), information about the intelligent access conditions applying to an intelligent access vehicle is relevant to the use of the vehicle.

(4) The operator of a heavy vehicle commits an offence if—

(a) the operator gives information to an intelligent access service provider; and

(b) the operator intends that the intelligent access service provider will enter into an intelligent access agreement with the operator in reliance on the information; and

(c) the operator knows, or ought reasonably to know, the information is false or misleading in a material particular.

Maximum penalty—$6000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

(5) Subsection (4) does not apply if the operator gives the information in writing and, when giving the information—

(a) tells the intelligent access service provider, to the best of the operator's ability, how it is false or misleading; and

(b) if the operator has, or can reasonably obtain, the correct information—gives the correct information in writing.

(6) In a proceeding for an offence against subsection (1) or (4), it is enough for a charge to state that the information given was 'false or misleading' to the operator's knowledge, without specifying whether it was false or whether it was misleading.

356 Advising vehicle driver of collection of information by intelligent access service provider

(1) The operator of an intelligent access vehicle must take all reasonable steps to give the vehicle's driver the following information, before the vehicle begins a journey—

(a) that the vehicle will be monitored by an intelligent access service provider;

(b) that this Chapter provides for the collection of information by the intelligent access service provider;

(c) the information that will be collected by the intelligent access service provider;

(d) the purposes for which the information will be collected;

(e) the entities to whom the information collected may be disclosed;

(f) that, under this Chapter, the driver has rights of access to the information or to have the information changed to ensure it is accurate, complete and up to date;

(g) how the rights mentioned in paragraph (f) can be exercised;

(h) the name and address of the intelligent access service provider.

Maximum penalty—$6000.

(2) The operator of an intelligent access vehicle is taken to comply with subsection (1) if the operator—

(a) gives the intelligent access vehicle's driver a notice stating the information mentioned in the subsection, including, for example, by placing it in the vehicle's driving cabin in a clearly visible position; or

(b) includes the information mentioned in the subsection in a written contract of employment between the operator and the intelligent access vehicle's driver.

(3) The national regulations may prescribe—

(a) a form of notice that may be used under subsection (2)(a); and

(b) for subsection (2)(b), a standard form of words that may be used as part of a written contract of employment.

357 Reporting system malfunctions to Regulator

(1) If an operator of an intelligent access vehicle becomes aware that a part of an approved intelligent transport system fitted to the vehicle is malfunctioning or has malfunctioned, the operator must immediately report the matter to the Regulator in person or by radio, telephone, fax or email.

Maximum penalty—$3750.

(2) The operator must keep, for at least 4 years, a written record of a report of a malfunction under subsection (1), containing the following particulars—

(a) the type of malfunction to which the report relates;

(b) the date and time the operator became aware of the malfunction;

(c) the location of the vehicle when the operator became aware of the malfunction;

(d) the date and time the report was made;

(e) the location of the vehicle when the report was made;

(f) the way, in person or by radio, telephone, fax or email, that the report was made;

(g) the name of the operator or, if someone else made the report on behalf of the operator, the name of the person who made the report;

(h) the name of the individual to whom the report was made.

Maximum penalty—$3750.

358 Advising driver of driver's obligations about reporting system malfunctions

(1) The operator of an intelligent access vehicle must take all reasonable steps to tell the vehicle's driver before the vehicle begins a journey—

(a) about the vehicle driver's obligation under section 359; and

(b) how the vehicle's driver can make the reports required by that obligation.

Maximum penalty—$6000.

(2) The operator of an intelligent access vehicle is taken to comply with subsection (1) if the operator—

(a) gives the vehicle's driver a notice stating the information mentioned in the subsection, including, for example, by placing it in the vehicle's driving cabin in a clearly visible position; or

(b) includes the information mentioned in the subsection in a written contract of employment between the operator and the vehicle's driver.

(3) The national regulations may prescribe—

(a) a form of notice that may be used under subsection (2)(a); and

(b) for subsection (2)(b), a standard form of words that may be used as part of a written contract of employment.

Part 7.3 Obligations of drivers of intelligent access vehicles

359 Reporting system malfunctions to operator

(1) If the driver of an intelligent access vehicle becomes aware that a part of an approved intelligent transport system fitted to the vehicle is malfunctioning or has malfunctioned, the driver must immediately report the malfunction to the vehicle's operator in person or by radio, telephone, fax or email.

Maximum penalty—$3750.

(2) The driver must keep, for at least 4 years, a written record of a report of a malfunction under subsection (1), containing the following particulars—

(a) the type of malfunction to which the report relates;

(b) the date and time the driver became aware of the malfunction;

(c) the location of the vehicle when the driver became aware of the malfunction;

(d) the date and time the report was made;

(e) the location of the vehicle when the report was made;

(f) the way, in person or by radio, telephone, fax or email, that the report was made;

(g) the driver's name;

(h) the name of the individual to whom the report was made.

Maximum penalty—$3750.

(3) Subsection (1) does not apply to the driver of a heavy vehicle in relation to a malfunction of a part of an approved intelligent transport system if another driver of the vehicle has complied with the subsection in relation to the malfunction.

Part 7.4 Powers, duties and obligations of intelligent access service providers

360 Powers to collect and hold intelligent access information

An intelligent access service provider may collect and hold intelligent access information for monitoring the relevant monitoring matters for an intelligent access vehicle.

361 Collecting intelligent access information

(1) An intelligent access service provider must take all reasonable steps to ensure the intelligent access information the service provider collects—

(a) is necessary for the purpose for which it is collected or a directly related purpose; and

(b) is not excessive for that purpose; and

(c) is accurate, complete and up to date.

Maximum penalty—$3750.

(2) An intelligent access service provider must take all reasonable steps to ensure the collection of intelligent access information by the service provider does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates.

Maximum penalty—$3750.

362 Keeping records of intelligent access information collected

(1) An intelligent access service provider must keep, in a way complying with subsection (2), records of the intelligent access information collected by the service provider.

Maximum penalty—$6000.

(2) Records kept under subsection (1) must be organised in a way that allows the records to be conveniently and properly audited by an intelligent access auditor.

363 Protecting intelligent access information

An intelligent access service provider must take all reasonable steps to protect intelligent access information collected by the service provider against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

Maximum penalty—$6000.

364 Making individuals aware of personal information held

(1) An intelligent access service provider must prepare, and make publicly available, a document setting out the service provider's policies on the management of personal information held by the service provider.

Examples of how a document is made publicly available—

- making a document available at the service provider's office
- making a document available on the service provider's website

Maximum penalty—$6000.

(2) If asked by an individual about whom an intelligent access service provider holds personal information, the service provider must, within 28 days after receiving the request, give the individual the following information if the service provider can reasonably give the information—

(a) the kind of information the service provider holds about the individual;

(b) the purpose for which the information is held;

(c) the way in which the service provider collects, holds, uses and discloses the information;

(d) the entities to whom the information may be disclosed;

(e) that, under this Chapter, the individual has rights of access to the information or to have the information changed to ensure it is accurate, complete and up to date;

(f) how the rights mentioned in paragraph (e) can be exercised.

Maximum penalty—$6000.

(3) Subsection (2) does not require an intelligent access service provider to inform an individual that a report under section 373 or 374 exists or has been made.

365 Giving individuals access to their personal information

(1) An intelligent access service provider must, if asked by an individual about whom the service provider holds personal information, give the individual access to the information without cost or undue delay.

Maximum penalty—$6000.

(2) Subsection (1) does not require an intelligent access service provider to give an individual access to a report made under section 373 or 374 or information showing that a report of that kind exists or has been made.

366 Correcting errors etc.

(1) This section applies if an individual about whom an intelligent access service provider holds personal information asks the service provider to make a particular change to the personal information.

(2) The intelligent access service provider must make the change if the service provider is satisfied the change is appropriate to ensure the personal information is accurate, complete and up to date.

Maximum penalty—$3750.

(3) If the intelligent access service provider is not satisfied as mentioned in subsection (2), the service provider may refuse to comply with the request.

(4) If, under subsection (3), an intelligent access service provider refuses to comply with an individual's request under subsection (1), the service provider must—

(a) give the individual a notice stating—

(i) the service provider's reasons for refusing; and

(ii) that the individual may ask the service provider to attach to or include with the personal information the individual's request or a record of it; and

(b) if asked by the individual, attach to or include with the personal information the request or a record of the request.

Maximum penalty for subsection (4)—$3750.

367 General restriction on use and disclosure of intelligent access information

An intelligent access service provider must not use or disclose intelligent access information other than as required or authorised under this Law or another law.

Maximum penalty—$6000.

368 Giving intelligent access auditor access to records

An intelligent access service provider must give an intelligent access auditor access to a record kept by the service provider for the purposes of this Chapter.

Maximum penalty—$6000.

369 Powers to use and disclose intelligent access information

(1) An intelligent access service provider may use intelligent access information for monitoring the relevant monitoring matters for an intelligent access vehicle.

(2) An intelligent access service provider may disclose intelligent access information to the Regulator or an authorised officer for compliance purposes.

(3) An intelligent access service provider may disclose intelligent access information about an operator of an intelligent access vehicle to the operator.

(4) Subsection (3) does not apply to the following—

(a) a noncompliance report about an intelligent access vehicle operated by the operator;

(b) information that a noncompliance report has been made about an intelligent access vehicle operated by the operator;

(c) information from which it could reasonably be inferred that a noncompliance report has been made about an intelligent access vehicle operated by the operator.

(5) An intelligent access service provider may, with the written consent of an operator of an intelligent access vehicle, disclose intelligent access information about the operator to a person other than the operator for any purpose if the information—

(a) does not identify any individual other than the operator; and

(b) contains nothing by which the identity of any individual, other than the operator, can reasonably be found out.

(6) An intelligent access service provider may use or disclose intelligent access information that is personal information with the written consent of the individual to whom the personal information relates.

(7) This section is subject to section 375.

370 Keeping record of use or disclosure of intelligent access information

(1) If an intelligent access service provider uses or discloses intelligent access information, the service provider must, within 7 days after the use or disclosure, make a record of the use or disclosure—

(a) containing the information mentioned in subsection (2); and

(b) in a form that ensures the record is readily accessible by an intelligent access auditor at the place where it is kept.

Maximum penalty—$6000.

(2) The record must contain the following information—

(a) the intelligent access service provider's name or, if someone else used or disclosed the intelligent access information on behalf of the service provider, the name of the person who used or disclosed the intelligent access information;

(b) the date of the use or disclosure;

(c) for a use of intelligent access information by or on behalf of the intelligent access service provider, a brief description of how the information was used;

(d) for a disclosure of intelligent access information by or on behalf of the intelligent access service provider, the entity to whom the information was disclosed;

(e) the provision of this Law or another law the intelligent access service provider believes authorises the use or disclosure;

(f) if the use or disclosure is authorised only under a particular document (including, for example, a warrant, a certificate or a consent), a copy of the document.

(3) An intelligent access service provider must keep a record made under this section for at least 2 years.

Maximum penalty for subsection (3)—$6000.

371 Keeping noncompliance report etc.

(1) This section applies if a noncompliance report is made by an approved intelligent transport system operated by an intelligent access service provider.

(2) The intelligent access service provider must keep the following for at least 4 years after the noncompliance report is made—

(a) a copy of the report;

(b) the information relied on to make the report.

Example of information that could be relied on to make a noncompliance report—

GPS information about a vehicle's position at a particular time

Maximum penalty—$6000.

372 Destroying intelligent access information etc.

(1) An intelligent access service provider must take all reasonable steps—

(a) to destroy intelligent access information collected by the provider 1 year after the information is collected by the service provider; and

(b) to destroy a record the service provider is required to keep under section 370 within 1 year after the service provider is no longer required to keep the record under that section.

Maximum penalty—$6000.

(2) This section does not apply to a noncompliance report or information the intelligent service provider is required to keep under section 371.

373 Reporting relevant contraventions to Regulator

(1) This section applies if an intelligent access service provider knows of a relevant contravention for an intelligent access vehicle.

(2) The intelligent access service provider must, within 7 days, give the Regulator a report about the relevant contravention in the approved form.

Maximum penalty—$6000.

(3) For subsection (1), an intelligent access service provider is taken to know of a relevant contravention for an intelligent access vehicle if the service provider's monitoring equipment has detected the contravention.

374 Reporting tampering or suspected tampering with approved intelligent transport system to Regulator

(1) If an intelligent access service provider knows, or has reasonable grounds to suspect, an approved intelligent transport system has been tampered with, the service provider must report the matter to the Regulator—

(a) within 7 days; and

(b) in the approved form.

Maximum penalty—$6000.

(2) For subsection (1), an intelligent access service provider does not know, or have reasonable grounds to suspect, an approved intelligent transport system has been tampered with merely because the service provider has—

(a) accessed a report made by the system (including a noncompliance report) indicating that apparent tampering with the system has been detected electronically; or

(b) analysed information generated by the system.

375 Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system

(1) If an intelligent access service provider knows, or has reasonable grounds to suspect, an approved intelligent transport system has been tampered with, the service provider must not disclose to any entity other than the Regulator the following—

(a) information that the service provider has that knowledge or suspicion;

(b) information from which it could reasonably be inferred that the service provider has that knowledge or suspicion.

Maximum penalty—$6000.

(2) For subsection (1), an intelligent access service provider does not know, or have reasonable grounds to suspect, an approved intelligent transport system has been tampered with merely because the service provider has—

(a) accessed a report made by the system (including a noncompliance report) indicating that apparent tampering with the system has been detected electronically; or

(b) analysed information generated by the system.

(3) If an intelligent access service provider has made a report to the Regulator under section 374 of apparent or suspected tampering, the service provider must not disclose to any entity other than the Regulator the following—

(a) information that the report has been made;

(b) information from which it could reasonably be inferred that the service provider has made the report.

Maximum penalty—$6000.

(4) Subsection (1) or (3) does not apply if the disclosure of the information to which the subsection applies is authorised under another law.

Part 7.5 Functions, powers, duties and obligations of TCA

376 Contravention of particular provisions not an offence

TCA does not commit an offence only by contravening any of the following provisions—

(a) section 379(1) or (2);

(b) section 380;

(c) section 381(1) or (2);

(d) section 382(1);

(e) section 383(2) or (4);

(f) section 386;

(g) section 387(1) or (3);

(h) section 388;

(i) section 389(1);

(j) section 390(1);

(k) section 391(1) or (3).

377 Functions of TCA

TCA has the following functions for the purposes of this Chapter—

(a) approving intelligent transport systems for use by intelligent access service providers to monitor the relevant monitoring matters for an intelligent access vehicle;

(b) certifying persons to be service providers for monitoring, by using an approved intelligent transport system, the relevant monitoring matters for an intelligent access vehicle;

(c) auditing activities conducted by intelligent access service providers.

378 Powers to collect and hold intelligent access information

TCA may collect and hold intelligent access information—

(a) for the exercise of its functions mentioned in section 377; or

(b) for law enforcement purposes.

379 Collecting intelligent access information

(1) TCA must take all reasonable steps to ensure the intelligent access information it collects—

(a) is necessary for the purpose for which it is collected or a directly related purpose; and

(b) is not excessive for that purpose; and

(c) is accurate, complete and up to date.

(2) TCA must take all reasonable steps to ensure the collection of intelligent access information by it does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates.

380 Protecting intelligent access information collected

TCA must take all reasonable steps to protect intelligent access information collected by it against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

381 Making individuals aware of personal information held

(1) TCA must prepare, and make publicly available, a document setting out its policies on the management of personal information held by it.

Examples of how a document is made publicly available—

- making a document available at TCA's office
- making a document available on TCA's website

(2) If asked by an individual about whom TCA holds personal information, TCA must, within 28 days after receiving the request, give the individual the following information if it can reasonably give the information—

(a) the kind of information it holds about the individual;

(b) the purpose for which the information is held;

(c) the way in which it collects, holds, uses and discloses the information;

(d) the entities to whom the information may be disclosed;

(e) that, under this Chapter, the individual has rights of access to the information or to have the information changed to ensure it is accurate, complete and up to date;

(f) how the rights mentioned in paragraph (e) can be exercised.

(3) Subsection (2) does not require TCA to inform an individual that a report under section 373, 374, 390, 403 or 404 exists or has been made.

382 Giving individuals access to their personal information

(1) TCA must, if asked by an individual about whom TCA holds personal information, give the individual access to the information without cost or undue delay.

(2) Subsection (1) does not require TCA to give an individual access to a report made under section 373, 374, 390, 403 or 404 or information showing that a report of that kind exists or has been made.

383 Correcting errors etc.

(1) This section applies if an individual about whom TCA holds personal information asks TCA to make a particular change to the personal information.

(2) TCA must make the change if it is satisfied the change is appropriate to ensure the personal information is accurate, complete and up to date.

(3) If TCA is not satisfied as mentioned in subsection (2), it may refuse to comply with the request.

(4) If TCA refuses, under subsection (3), to comply with an individual's request, it must—

(a) give the individual a notice stating—

(i) TCA's reasons for refusing; and

(ii) that the individual may ask TCA to attach to or include with the personal information the individual's request or a record of it; and

(b) if asked by the individual, attach to or include with the personal information the request or a record of the request.

384 General restriction on use and disclosure of intelligent access information

TCA must not use or disclose intelligent access information other than as required or authorised under this Law or another law.

Maximum penalty—$6000.

385 Powers to use and disclose intelligent access information

(1) TCA may use or disclose intelligent access information—

(a) for the exercise of its functions mentioned in section 377; or

(b) for law enforcement purposes.

(2) TCA may disclose intelligent access information to the Regulator if it is satisfied the information is relevant to the Regulator's functions under this Law.

(3) TCA may disclose intelligent access information to an intelligent access auditor if it is satisfied the information is relevant to an intelligent access audit the auditor is conducting.

(4) TCA may disclose intelligent access information relating to a particular operator of an intelligent access vehicle to the operator.

(5) TCA may, with the written consent of an operator of an intelligent access vehicle, disclose intelligent access information about the operator to a person other than the operator for any purpose if the information—

(a) does not identify any individual other than the operator; and

(b) contains nothing by which the identity of any individual, other than the operator, can reasonably be found out.

(6) TCA may use or disclose intelligent access information for research purposes if the information contains no personal information.

(7) TCA may use or disclose intelligent access information that is personal information with the written consent of the individual to whom the personal information relates.

(8) This section is subject to section 391.

386 Restriction about intelligent access information that may be used or disclosed

TCA may use or disclose information only if TCA is reasonably satisfied, having regard to the purpose for which the information is to be used or disclosed, the information is accurate, complete and up to date.

387 Keeping record of use or disclosure of intelligent access information

(1) If TCA uses or discloses intelligent access information, TCA must, within 7 days after the use or disclosure, make a record of the use or disclosure—

(a) containing the information mentioned in subsection (2); and

(b) in a form that ensures the record is readily accessible by an authorised officer at the place where it is kept.

(2) The record must contain the following information—

(a) the name of the person who used or disclosed the intelligent access information on behalf of TCA;

(b) the date of the use or disclosure;

(c) for a use of intelligent access information by or on behalf of TCA, a brief description of how the information was used;

(d) for a disclosure of intelligent access information by or on behalf of TCA, the entity to whom the information was disclosed;

(e) the provision of this Law or another law TCA believes authorises the use or disclosure;

(f) if the use or disclosure is authorised only with a particular document (including, for example, a warrant, a certificate or a consent), a copy of the document.

(3) TCA must keep a record made under this section for at least 2 years.

388 Keeping noncompliance reports

TCA must keep any noncompliance report received by it for at least 4 years after its receipt.

389 Destroying intelligent access information or removing personal information from it

(1) TCA must take all reasonable steps to destroy intelligent access information collected by it—

(a) generally—1 year after the information is collected; or

(b) if, at the end of the period mentioned in paragraph (a), the information is required for law enforcement purposes—immediately after the information ceases to be required for law enforcement purposes.

(2) TCA is taken to have complied with subsection (1) for intelligent access information if it permanently removes

anything by which an individual can be identified from the information.

(3) This section does not apply to a noncompliance report TCA is required to keep under section 388.

390 Reporting tampering or suspected tampering with, or malfunction or suspected malfunction of, approved intelligent transport system to Regulator

(1) If TCA knows, or has reasonable grounds to suspect, a part of an approved intelligent transport system fitted to an intelligent access vehicle has been tampered with or has malfunctioned, TCA must report the matter to the Regulator within 7 days.

(2) For subsection (1), TCA does not know, or have reasonable grounds to suspect, a part of an approved intelligent transport system has been tampered with or has malfunctioned merely because it has—

(a) accessed a report made by the system (including a noncompliance report) indicating that apparent tampering with, or malfunctioning of, the part has been detected electronically; or

(b) analysed information generated by the system.

391 Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system

(1) If TCA knows, or has reasonable grounds to suspect, a part of an approved intelligent transport system fitted to an intelligent access vehicle has been tampered with, TCA must not disclose the following to any entity other than the Regulator—

(a) information that TCA has that knowledge or suspicion;

(b) information from which it could reasonably be inferred that TCA has that knowledge or suspicion.

(2) For subsection (1), TCA does not know or have reasonable grounds to suspect a part of an approved intelligent transport system has been tampered with merely because it has—

(a) accessed a report made by the system (including a noncompliance report) indicating that apparent tampering with the part has been detected electronically; or

(b) analysed information generated by the system.

(3) If TCA has made a report of apparent or suspected tampering to the Regulator under section 390, TCA must not disclose to any entity other than the Regulator the following—

(a) information that the report has been made;

(b) information from which it could reasonably be inferred that TCA has made the report.

(4) Subsection (1) or (3) does not apply if the disclosure of the information to which the subsection applies is authorised under another law.

Part 7.6 Powers, duties and obligations of intelligent access auditors

392 Powers to collect and hold intelligent access information

An intelligent access auditor may collect and hold intelligent access information for conducting an intelligent access audit.

393 Collecting intelligent access information

(1) An intelligent access auditor must take all reasonable steps to ensure intelligent access information the auditor collects—

(a) is necessary for the purpose for which it is collected or a directly related purpose; and

(b) is not excessive for that purpose; and

(c) is accurate, complete and up to date.

Maximum penalty—$3750.

(2) An intelligent access auditor must take all reasonable steps to ensure the collection of intelligent access information by the auditor does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates.

Maximum penalty—$3750.

394 Protecting intelligent access information collected

An intelligent access auditor must take all reasonable steps to protect intelligent access information collected by the auditor against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

Maximum penalty—$6000.

395 Making individuals aware of personal information held

(1) If asked by an individual about whom an intelligent access auditor holds personal information, the auditor must, within 28 days after receiving the request, give the individual the following information if the auditor can reasonably give the information—

(a) the kind of information the auditor holds about the individual;

(b) the purpose for which the information is held;

(c) the entities to whom the information may be disclosed;

(d) that, under this Chapter, the individual has rights of access to the information or to have the information changed to ensure it is accurate, complete and up to date;

(e) how the rights mentioned in paragraph (d) can be exercised.

Maximum penalty—$6000.

(2) Subsection (1) does not require an intelligent access auditor to inform an individual that a report under section 373, 374, 390, 403 or 404 exists or has been made.

396 Giving individuals access to their personal information

(1) An intelligent access auditor must, if asked by an individual about whom the auditor holds personal information, give the individual access to the information without cost or undue delay.

Maximum penalty—$6000.

(2) Subsection (1) does not require an intelligent access auditor to give an individual access to a report made under section 373, 374, 390, 403 or 404.

397 Correcting errors etc.

(1) This section applies if an individual about whom an intelligent access auditor holds personal information asks the auditor to make a particular change to the personal information.

(2) The intelligent access auditor must make the change if the auditor is satisfied the change is appropriate to ensure the personal information is accurate, complete and up to date.

Maximum penalty—$3750.

(3) If the intelligent access auditor is not satisfied as mentioned in subsection (2), the auditor may refuse to comply with the request.

(4) If, under subsection (3), an intelligent access auditor refuses to comply with an individual's request, the auditor must—

(a) give the individual a notice stating—

(i) the auditor's reasons for refusing; and

(ii) that the individual may ask the auditor to attach to or include with the personal information the individual's request or a record of it; and

(b) if asked by the individual, attach to or include with the personal information the request or a record of the request.

Maximum penalty for subsection (4)—$3750.

398 General restriction on use and disclosure of intelligent access information

An intelligent access auditor must not use or disclose intelligent access information other than as required or authorised under this Law or another law.

Maximum penalty—$6000.

399 Powers to use and disclose intelligent access information

(1) An intelligent access auditor may use and disclose intelligent access information for—

(a) conducting an intelligent access audit; or

(b) reporting, to TCA, any of the following—

(i) a relevant contravention for an intelligent access vehicle;

(ii) tampering or suspected tampering with an approved intelligent transport system by an operator of an intelligent access vehicle;

(iii) tampering or suspected tampering with an approved intelligent transport system by an intelligent access service provider;

(iv) a failure by an intelligent access service provider to comply with the service provider's obligations under this Chapter.

(2) An intelligent access auditor may disclose intelligent access information to the Regulator if the auditor is reasonably satisfied the information is relevant to the Regulator's functions under this Law.

(3) An intelligent access auditor may disclose intelligent access information to TCA if the auditor is reasonably satisfied the information is relevant to TCA's functions under this Chapter.

(4) An intelligent access auditor may disclose intelligent access information relating to a particular operator of an intelligent access vehicle to the operator.

(5) An intelligent access auditor may use and disclose intelligent access information that is personal information with the written consent of the individual to whom the personal information relates.

(6) This section is subject to section 405.

400 Restriction about intelligent access information that may be used or disclosed

An intelligent access auditor must not use or disclose intelligent access information unless the auditor is reasonably satisfied, having regard to the purpose for which the information is to be used or disclosed, the information is accurate, complete and up to date.

Maximum penalty—$6000.

401 Keeping record of use or disclosure of intelligent access information

(1) If an intelligent access auditor uses or discloses intelligent access information, the auditor must, within 7 days after the use or disclosure, make a record of the use or disclosure—

(a) containing the information mentioned in subsection (2); and

(b) in a form that ensures the record is readily accessible by an authorised officer at the place where it is kept.

Maximum penalty—$6000.

(2) The record must contain the following information—

(a) the intelligent access auditor's name or, if someone else used or disclosed the intelligent access information on behalf of the auditor, the name of the person who used or disclosed the intelligent access information;

(b) the date of the use or disclosure;

(c) for a use of intelligent access information by or on behalf of the auditor, a brief description of how the information was used;

(d) for a disclosure of intelligent access information by or on behalf of the auditor, the entity to whom the information was disclosed;

(e) the provision of this Law or another law the auditor believes authorises the use or disclosure;

(f) if the use or disclosure is authorised only under a particular document (including, for example, a warrant, a certificate or a consent), a copy of the document.

Maximum penalty—$6000.

(3) An intelligent access auditor must keep a record made under this section for at least 2 years.

Maximum penalty for subsection (3)—$6000.

402 Destroying intelligent access information or removing personal information from it

(1) An intelligent access auditor must take all reasonable steps to destroy intelligent access information held by the auditor that is no longer needed for an intelligent access audit conducted by the auditor.

Maximum penalty—$6000.

(2) An intelligent access auditor is taken to have complied with subsection (1) for intelligent access information if the auditor permanently removes anything by which an individual can be identified from the information.

403 Reporting contraventions by intelligent access service providers to TCA

If an intelligent access auditor knows, or has reasonable grounds to suspect, an intelligent access service provider has contravened an obligation under this Chapter, the auditor must, as soon as practicable, report the matter to TCA.

Maximum penalty—$6000.

404 Reporting tampering or suspected tampering with approved intelligent transport system to Regulator or TCA

If an intelligent access auditor knows, or has reasonable grounds to suspect, an approved intelligent transport system has been tampered with, the auditor must, as soon as practicable, report the matter—

(a) for tampering or suspected tampering by an operator of an intelligent access vehicle—to the Regulator; or

(b) for tampering or suspected tampering by an intelligent access service provider—to TCA.

Maximum penalty—$6000.

405 Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system

(1) If an intelligent access auditor knows, or has reasonable grounds to suspect, an approved intelligent transport system has been tampered with, the auditor must not disclose the following to any entity other than the Regulator or TCA—

(a) information that the auditor has that knowledge or suspicion;

(b) information from which it could reasonably be inferred that the auditor has that knowledge or suspicion.

Maximum penalty—$6000.

(2) If an intelligent access auditor has made a report to the Regulator or TCA under section 404 of apparent or suspected tampering, the auditor must not disclose the following to any entity other than the Regulator or TCA—

(a) information that the report has been made;

(b) information from which it could reasonably be inferred that the auditor has made the report.

Maximum penalty—$6000.

(3) Subsection (1) or (2) does not apply if the disclosure of the information to which the subsection applies is authorised under another law.

Part 7.7 Other provisions

406 Offence to tamper with approved intelligent transport system

(1) A person commits an offence if—

(a) the person tampers with an approved intelligent transport system; and

(b) the person does so with the intention of causing the system to—

(i) fail to generate, record, store, display, analyse, transmit or report intelligent access information; or

(ii) fail to generate, record, store, display, analyse, transmit or report intelligent access information correctly.

Maximum penalty—$6000.

(2) A person commits an offence if—

(a) the person tampers with an approved intelligent transport system; and

(b) the person is negligent or reckless as to whether, as a result of the tampering, the system may—

(i) fail to generate, record, store, display, analyse, transmit or report intelligent access information; or

(ii) fail to generate, record, store, display, analyse, transmit or report intelligent access information correctly.

Maximum penalty—$3750.

(3) In this section—

fail—

(a) means does not perform as intended in relation to accuracy, timeliness, reliability, verifiability or any other performance requirement or standard; and

(b) includes fail permanently, fail temporarily, fail on a particular occasion and fail in particular circumstances.

407 Regulator may issue intelligent access identifiers

(1) The Regulator may issue a distinguishing number for an intelligent access vehicle that indicates the vehicle is an intelligent access vehicle (an ***intelligent access identifier***).

(2) The intelligent access identifier may consist of numbers or letters or a combination of numbers and letters.

(3) If an intelligent access identifier is, or becomes, known to an entity that has the ability to associate it with a particular individual, the entity must treat the identifier as personal

information for the purposes of this Chapter or a law relating to privacy.

Chapter 8 Accreditation

Part 8.1 Preliminary

408 Purpose of Ch 8

The purpose of accreditation under this Law is to allow operators of heavy vehicles who implement management systems that achieve the objectives of particular aspects of this Law to be subject to alternative requirements under this Law, in relation to the aspects, that are more suited to the operators' business operations.

409 Definitions for Ch 8

In this Chapter—

AFM fatigue management system, for an operator of a heavy vehicle, means the operator's management system for ensuring compliance with the AFM standards and business rules, including by—

(a) recording the name, current driver licence number and contact details of each driver who is currently operating under the operator's AFM accreditation; and

(b) ensuring each of the drivers is in a fit state—

(i) to safely perform required duties; and

(ii) to meet any specified medical requirements; and

(c) ensuring each of the drivers—

(i) has been inducted into the system; and

(ii) has been informed of the AFM hours applying under the operator's AFM accreditation; and

(d) ensuring anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of the drivers—

(i) has been inducted into the system; and

(ii) has been informed of the AFM hours applying under the operator's AFM accreditation.

AFM standards and business rules means the standards and business rules for advanced fatigue management approved by the responsible Ministers.

Note—

A copy of the AFM standards and business rules is published on the Regulator's website.

approved, by the responsible Ministers, means approved by the responsible Ministers under section 595.

approved auditor means an auditor of a class approved by the responsible Ministers.

Note—

Details of the approved classes are published on the Regulator's website.

BFM fatigue management system, for an operator of a heavy vehicle, means the operator's management system for ensuring compliance with the BFM standards and business rules, including by—

(a) recording the name, current driver licence number and contact details of each driver who is currently operating under the operator's BFM accreditation; and

(b) ensuring each of the drivers is in a fit state—

(i) to safely perform required duties; and

(ii) to meet any specified medical requirements; and

(c) ensuring each of the drivers—

(i) has been inducted into the system; and

(ii) has been informed of the BFM hours; and

(d) ensuring anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of the drivers—

(i) has been inducted into the system; and

(ii) has been informed of the BFM hours.

BFM standards and business rules means the standards and business rules for basic fatigue management approved by the responsible Ministers.

Note—

A copy of the BFM standards and business rules is published on the Regulator's website.

maintenance management standards and business rules means the standards and business rules for heavy vehicle maintenance management approved by the responsible Ministers.

Note—

A copy of the maintenance management standards and business rules is published on the Regulator's website.

maintenance management system, for an operator of a heavy vehicle, means the operator's management system for ensuring compliance with the maintenance management standards and business rules, including by—

(a) identifying each heavy vehicle currently being operated in accordance with the management system; and

(b) for each heavy vehicle being operated in accordance with the management system, having measures for the following—

(i) daily checks of the condition of the vehicle, and its components and equipment, for each day on which the vehicle is driven on a road;

(ii) recording and reporting vehicle faults;

(iii) identifying, assessing and rectifying all identified faults;

(iv) periodic maintenance of the vehicle; and

(c) keeping records relating to the operation of the management system.

mass management standards and business rules means the standards and business rules for heavy vehicle mass management approved by the responsible Ministers.

Note—

A copy of the mass management standards and business rules is published on the Regulator's website.

mass management system, for an operator of a heavy vehicle, means the operator's management system for ensuring compliance with the mass management standards and business rules, including by—

(a) identifying each heavy vehicle currently being operated in accordance with the management system; and

(b) for each heavy vehicle being operated in accordance with the management system, having measures for the following—

(i) weighing the vehicle and its load before it starts a journey, or starts a part of a journey after the vehicle's load is changed;

(ii) recording each measurement made under subparagraph (i) in a form that allows the record to be readily available for inspection by an approved auditor;

(iii) ensuring the vehicle's suspension system accords with the specifications given by its manufacturer or a qualified mechanical engineer; and

(c) keeping records relating to the operation of the management system.

relevant management system means—

(a) for maintenance management accreditation—a maintenance management system; or

(b) for mass management accreditation—a mass management system; or

(c) for BFM accreditation—a BFM fatigue management system; or

(d) for AFM accreditation—an AFM fatigue management system.

relevant standards and business rules means—

(a) for maintenance management accreditation—the maintenance management standards and business rules; or

(b) for mass management accreditation—the mass management standards and business rules; or

(c) for BFM accreditation—the BFM standards and business rules; or

(d) for AFM accreditation—the AFM standards and business rules.

Part 8.2 Grant of heavy vehicle accreditation

410 Regulator's power to grant heavy vehicle accreditation

The Regulator may grant an operator of a heavy vehicle—

(a) an accreditation exempting, for a period of not more than 3 years, the vehicle from the requirement to be inspected before the vehicle may be registered under this Law (***maintenance management accreditation***); or

(b) an accreditation allowing, for a period of not more than 3 years, the vehicle to operate at concessional mass

limits or higher mass limits applying under the mass requirements (***mass management accreditation***); or

(c) an accreditation allowing, for a period of not more than 3 years, drivers of the vehicle to operate under BFM hours (***BFM accreditation***); or

(d) an accreditation allowing, for a period of not more than 3 years, drivers of the vehicle to operate under AFM hours (***AFM accreditation***).

411 Application for heavy vehicle accreditation

(1) An operator of a heavy vehicle may apply to the Regulator for heavy vehicle accreditation under this Law.

(2) The application must be—

(a) in the approved form; and

(b) accompanied by the following—

(i) a statement by the applicant that the applicant has a relevant management system for ensuring compliance with the relevant standards and business rules;

(ii) a statement from an approved auditor that the auditor considers the applicant's relevant management system will ensure compliance with the relevant standards and business rules;

(iii) any other information required for the application under the relevant standards and business rules;

(iv) the prescribed fee for the application.

(3) The application must also be accompanied by a declaration by the applicant, declared to be made after having taken all reasonable steps to find out the following information, of the applicant's knowledge of that information—

(a) whether, in the 5 years immediately before the application was made, the applicant or an associate of

the applicant has been convicted of any of the following offences and, if so, details of the conviction—

(i) an offence against this Law or a previous corresponding law;

(ii) an offence involving fraud or dishonesty punishable on conviction by imprisonment of 6 months or more, whether committed in this jurisdiction or elsewhere;

(b) whether the applicant or an associate of the applicant has had the applicant's or associate's accreditation under this Chapter or a previous corresponding law, amended, suspended or cancelled under this Chapter or that law and, if so, details of the amendment, suspension or cancellation.

(4) Subsection (3)(b) does not require the applicant to declare information about an amendment, suspension or cancellation of an accreditation that happened because of a conviction if the operator is not required to declare the information about the conviction under subsection (3)(a).

(5) The Regulator may, by notice given to the applicant, require the applicant—

(a) to give the Regulator any additional information the Regulator reasonably requires to decide the application; or

(b) to verify by statutory declaration any information relating to the application given to the Regulator.

412 Obtaining criminal history information about applicant

(1) The Regulator may, by notice, ask an applicant for heavy vehicle accreditation under this Law for written consent for the Regulator to obtain the applicant's prescribed criminal history.

(2) If the applicant does not consent, or withdraws his or her consent, to the Regulator obtaining the applicant's prescribed

criminal history, the application is taken to have been withdrawn.

(3) If the applicant gives written consent to the Regulator obtaining the applicant's prescribed criminal history, the Regulator may ask a police commissioner for a written report about the applicant's prescribed criminal history.

(4) The request may include the following—

(a) the applicant's name and any other name the Regulator believes the applicant may use or may have used;

(b) the applicant's date and place of birth, gender and address.

(5) The police commissioner must give the requested report to the Regulator.

(6) In this section—

prescribed criminal history, of an applicant for heavy vehicle accreditation under this Law, means information about each conviction of the applicant, within the 5 years immediately before the application was made, of—

(a) an offence against this Law or a previous corresponding law; or

(b) an offence involving fraud or dishonesty punishable on conviction by imprisonment of 6 months or more, whether committed in this jurisdiction or elsewhere.

413 Restriction on grant of heavy vehicle accreditation

(1) The Regulator may grant an applicant heavy vehicle accreditation only if the Regulator is satisfied—

(a) the applicant has in place, or will have in place if the accreditation is granted, a relevant management system for operations to be carried out under the accreditation; and

(b) the applicant is able to comply with this Law, having regard to—

(i) the information provided to the Regulator under this Part; and

(ii) the matters to which the Regulator may or must have regard under subsection (4); and

(c) the applicant is a suitable person to be granted the accreditation, having regard to—

(i) the information provided to the Regulator under this Part; and

(ii) the matters to which the Regulator may or must have regard under subsection (4); and

(d) for AFM accreditation—

(i) the driver fatigue management practices stated in the applicant's AFM fatigue management system, together with the maximum work times and minimum rest times that are to apply to drivers operating under the accreditation would, if complied with, safely manage the risk of driver fatigue; and

(ii) the applicant and drivers operating under the accreditation are likely to follow the driver fatigue management practices consistently and effectively; and

(iii) the drivers operating under the accreditation are likely to comply with the maximum work times and minimum rest times that are to apply to the drivers under the accreditation.

(2) In considering the maximum work times and minimum rest times that are to apply to drivers operating under an AFM accreditation, the Regulator—

(a) must be satisfied the maximum work times and minimum rest times appear to provide a safe balance between work, rest, risk management and fatigue countermeasures; and

(b) must not set maximum work times and minimum rest times the Regulator considers would be unsafe, having regard to the applicant's AFM fatigue management system and any relevant body of fatigue knowledge.

(3) The Regulator may grant an AFM accreditation setting maximum work times and minimum rest times different to the maximum work times and minimum rest times sought by the applicant.

(4) In deciding an application for a heavy vehicle accreditation, the Regulator—

(a) may have regard to anything the Regulator considers relevant including—

(i) the results of any audits carried out on the applicant's relevant management system, or proposed relevant management system; and

(ii) for assessing an applicant's AFM fatigue management system—any relevant body of fatigue knowledge; and

(b) must have regard to the approved guidelines for granting heavy vehicle accreditations under this Law.

414 Conditions of heavy vehicle accreditation

(1) A heavy vehicle accreditation granted under this Law is subject to the condition that the operator who holds the accreditation must comply with the relevant standards and business rules.

(2) A heavy vehicle accreditation granted under this Law may be subject to any other conditions the Regulator considers appropriate, including, for example—

(a) a condition that a named person can not operate under the operator's accreditation for a stated period; and

(b) a condition that a named employee or associate of the operator can not be involved in the operator's relevant management system at all or for a stated period; and

(c) a condition requiring additional records to be kept, and audits to be performed, to ensure practices (for example, driver fatigue management practices) applying under the accreditation are followed consistently and effectively.

415 Period for which heavy vehicle accreditation applies

(1) A heavy vehicle accreditation granted under this Law applies for the period stated in the accreditation certificate for the accreditation.

(2) The period may be less than the period sought by the applicant for the heavy vehicle accreditation.

416 Accreditation certificate for heavy vehicle accreditation etc.

(1) If the Regulator grants a heavy vehicle accreditation under this Law to an operator of a heavy vehicle, the Regulator must give the operator—

(a) an accreditation certificate in the approved form; and

(b) if prescribed circumstances apply to the grant of the accreditation—an information notice for the prescribed circumstances.

(2) An accreditation certificate for a heavy vehicle accreditation must state the following—

(a) the name of the operator who has been granted the accreditation;

(b) the number identifying the accreditation;

(c) any conditions imposed on the accreditation by the Regulator;

(d) for an AFM accreditation, the maximum work times and minimum rest times that apply to drivers of fatigue-regulated heavy vehicles operating under the accreditation;

(e) the period for which the accreditation applies.

(3) In this section—

prescribed circumstances, for a heavy vehicle accreditation, means the Regulator has—

(a) imposed a condition on the accreditation that was not sought by the applicant for the accreditation; or

(b) granted the accreditation for a period less than the period of not more than 3 years sought by the applicant for the accreditation; or

(c) for AFM accreditation, granted the AFM accreditation setting maximum work times and minimum rest times different to the maximum work times and minimum rest times sought by the applicant for the accreditation.

417 Refusal of application for heavy vehicle accreditation

If the Regulator refuses an application for heavy vehicle accreditation, the Regulator must give the applicant an information notice for the decision to refuse the application.

418 Accreditation labels for maintenance management accreditation and mass management accreditation

(1) If the Regulator grants maintenance management accreditation or mass management accreditation to an operator of a heavy vehicle, the Regulator must give the operator an accreditation label for each relevant vehicle for the accreditation.

(2) If the operator amends the relevant management system to identify a new relevant vehicle for the accreditation—

(a) the operator may ask the Regulator for an accreditation label for the new relevant vehicle; and

(b) the Regulator must give the accreditation label to the operator.

(3) In this section—

accreditation label, for a relevant vehicle for a maintenance management accreditation or mass management accreditation, means a label stating the number identifying the accreditation for attaching to the vehicle.

relevant vehicle, for a maintenance management accreditation or mass management accreditation, means a vehicle identified in the relevant management system as currently being operated in accordance with the management system.

Part 8.3 Operating under heavy vehicle accreditation

419 Compliance with conditions of BFM accreditation or AFM accreditation

The holder of a BFM accreditation or AFM accreditation must comply with the conditions of the accreditation.

Maximum penalty—$6000.

420 Driver must carry accreditation details

(1) The driver of a heavy vehicle who is operating under a heavy vehicle accreditation must keep in the driver's possession—

(a) a copy of the accreditation certificate for the accreditation; and

(b) a document, signed by the operator of the vehicle who holds the accreditation, stating that the driver—

(i) is operating under the operator's heavy vehicle accreditation; and

(ii) has been inducted into the operator's relevant management system; and

(iii) meets the requirements relating to drivers operating under the operator's heavy vehicle accreditation (if any); and

(c) for a driver operating under AFM accreditation, a document stating the AFM hours applying under the accreditation.

Example for paragraph (c)—

The driver records a statement of the AFM hours applying under the AFM accreditation in the driver's electronic work diary (which is a document).

Maximum penalty—$2000.

(2) Subsection (1) applies even if the driver and operator are the same person.

(3) If the driver of a heavy vehicle commits an offence against subsection (1), the operator of the vehicle is also taken to have committed the offence.

Maximum penalty—$2000.

(4) A person charged with an offence against subsection (3) does not have the benefit of the mistake of fact defence for the offence.

(5) However, in a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence.

Note—

See Divisions 1 and 2 of Part 10.4 for the reasonable steps defence.

(6) In a proceeding for an offence against subsection (3)—

(a) whether or not the driver has been or will be proceeded against, or convicted of, the offence against subsection (1) is irrelevant; and

(b) evidence a court has convicted the driver of the offence against subsection (1) is evidence the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction; and

(c) evidence a fine sought by an infringement notice for the offence against subsection (1) has been paid is evidence the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

421 Driver must return particular documents if stops operating under accreditation etc.

(1) This section applies if—

(a) the driver of a heavy vehicle is operating under a heavy vehicle accreditation; and

(b) the operator of the heavy vehicle has given the driver a document for the purposes of section 420(1); and

(c) the driver—

(i) stops operating under the operator's heavy vehicle accreditation; or

(ii) no longer meets the requirements relating to drivers operating under the operator's heavy vehicle accreditation (if any).

(2) The driver must return the document to the operator as soon as reasonably practicable.

Maximum penalty—$2000.

422 General requirements applying to operator with heavy vehicle accreditation

(1) This section applies to an operator of a heavy vehicle who holds a heavy vehicle accreditation.

(2) The operator must ensure each driver who operates under the accreditation—

(a) is inducted into the operator's relevant management system; and

(b) at all times, meets the requirements relating to drivers operating under the accreditation (if any).

Maximum penalty—$6000.

(3) If the accreditation is AFM accreditation, the operator must also ensure each driver who operates under the accreditation is informed of the AFM hours applying under the accreditation.

Maximum penalty—$6000.

(4) The operator must keep—

(a) the accreditation certificate for the operator's heavy vehicle accreditation; and

(b) a current list of drivers operating under the operator's heavy vehicle accreditation; and

(c) records demonstrating the operator has complied with—

(i) if the operator's heavy vehicle accreditation is AFM accreditation—subsections (2) and (3); or

(ii) otherwise—subsection (2).

Maximum penalty—$6000.

(5) The operator must keep a document required to be kept under subsection (4) for the following period—

(a) for an accreditation certificate—while the operator's heavy vehicle accreditation is current;

(b) for each list made under subsection (4)(b)—at least 3 years after the list is made;

(c) for each record made under subsection (4)(c)—at least 3 years after the record is made.

Maximum penalty—$6000.

(6) The operator must keep a document required to be kept under subsection (4) in a way that ensures it is—

(a) readily accessible by an authorised officer at the place where the document is kept; and

(b) reasonably capable of being understood by the authorised officer; and

(c) capable of being used as evidence.

Maximum penalty—$2000.

(7) The Regulator may, by notice, require the operator to give the Regulator, in the form and within the time required by the Regulator—

(a) a copy of the list mentioned in subsection (4)(b); and

(b) details of any change to the list.

(8) The operator must comply with a requirement made under subsection (7), unless the operator has a reasonable excuse.

Maximum penalty—$2000.

(9) Subsections (4) to (6) do not apply in relation to—

(a) an accreditation certificate given to the Regulator under section 424 or 428, unless the Regulator has returned it or given the operator a replacement accreditation certificate; or

(b) an accreditation certificate that has been defaced, destroyed, lost or stolen, unless the Regulator has given the operator a replacement accreditation certificate.

Note—

See section 429 for the requirement to apply to the Regulator for a replacement accreditation certificate for a defaced, destroyed, lost or stolen accreditation certificate.

423 Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation

(1) This section applies if—

(a) an operator of a heavy vehicle holds a heavy vehicle accreditation; and

(b) the accreditation is amended or suspended, or the operator ceases to hold the accreditation.

(2) The operator must as soon as practicable after the amendment, suspension or cessation happens give notice of the amendment, suspension or cessation to any driver of, or

scheduler for, a heavy vehicle who may be affected by the amendment, suspension or cessation.

Maximum penalty—$6000.

(3) If the driver of a heavy vehicle is given a notice under subsection (2), the driver must, as soon as reasonably practicable, return to the operator any document relevant to the notice given to the driver by the operator for the purposes of section 420(1).

Maximum penalty—$2000.

Part 8.4 Amendment or cancellation of heavy vehicle accreditation

424 Amendment or cancellation of heavy vehicle accreditation on application

(1) A person may apply to the Regulator for an amendment or cancellation of the person's heavy vehicle accreditation granted under this Law.

(2) The application must—

(a) be in writing; and

(b) if the application is for an amendment—state clearly the amendment sought and the reasons for the amendment; and

(c) be accompanied by the accreditation certificate for the accreditation.

(3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.

(4) The Regulator must decide the application as soon as practicable after receiving it.

(5) If the Regulator decides to grant the application—

(a) the Regulator must give the applicant notice of the decision; and

(b) the amendment or cancellation takes effect—

(i) when notice of the decision is given to the applicant; or

(ii) if a later time is stated in the notice, at the later time; and

(c) if the Regulator amended the accreditation, the Regulator must give the applicant a replacement accreditation certificate for the accreditation as amended.

(6) If the Regulator decides not to amend or cancel the accreditation as sought by the applicant, the Regulator must—

(a) give the applicant an information notice for the decision; and

(b) return the accreditation certificate to the applicant.

425 Amendment, suspension or cancellation of heavy vehicle accreditation other than on application

(1) Each of the following is a ground for amending, suspending or cancelling a heavy vehicle accreditation granted under this Law—

(a) the accreditation was granted because of a document or representation that was—

(i) false or misleading; or

(ii) obtained or made in an improper way;

(b) the holder of the accreditation has contravened a condition of the accreditation;

(c) the holder of the accreditation, or an associate of the holder, has been convicted of—

(i) an offence against this Law or a previous corresponding law; or

(ii) an offence involving fraud or dishonesty punishable on conviction by imprisonment of 6 months or more, whether committed in this jurisdiction or elsewhere;

(d) the circumstances in which the Regulator may grant accreditation of that kind to the holder of the accreditation are no longer satisfied;

(e) for a maintenance management accreditation or mass management accreditation—

(i) public safety has been endangered, or is likely to be endangered, because of the accreditation; or

(ii) road infrastructure has been damaged, or is likely to be damaged, because of the accreditation;

(f) for a BFM accreditation or AFM accreditation—public safety has been endangered, or is likely to be endangered, because of the accreditation;

(g) the Regulator considers it necessary in the public interest.

(2) If the Regulator considers a ground exists to amend, suspend or cancel a heavy vehicle accreditation granted under this Law (the ***proposed action***), the Regulator must give the holder of the accreditation a notice—

(a) stating the proposed action; and

(b) stating the ground for the proposed action; and

(c) outlining the facts and circumstances forming the basis for the ground; and

(d) if the proposed action is to amend the accreditation (including a condition of the accreditation)—stating the proposed amendment; and

(e) if the proposed action is to suspend the accreditation—stating the proposed suspension period; and

(f) inviting the holder to make, within a stated time of at least 14 days after the notice is given to the holder, written representations about why the proposed action should not be taken.

(3) If, after considering all written representations made under subsection (2)(f), the Regulator still considers a ground exists to take the proposed action, the Regulator may—

(a) if the proposed action was to amend the accreditation—amend the accreditation, including, for example, by imposing additional conditions on the accreditation, in a way that is not substantially different from the proposed action; or

(b) if the proposed action was to suspend the accreditation—suspend the accreditation for no longer than the period stated in the notice; or

(c) if the proposed action was to cancel the accreditation—

(i) amend the accreditation, including, for example, by imposing additional conditions on the accreditation; or

(ii) suspend the accreditation for a period; or

(iii) cancel the accreditation.

(4) The Regulator must give the holder an information notice for the decision.

(5) The decision takes effect—

(a) when the information notice is given to the holder; or

(b) if a later time is stated in the information notice, at the later time.

426 Immediate suspension of heavy vehicle accreditation

(1) This section applies if the Regulator considers—

(a) a ground exists to suspend or cancel a heavy vehicle accreditation granted under this Law; and

(b) it is necessary to suspend the accreditation immediately to prevent or minimise serious harm to public safety.

(2) Despite section 425, the Regulator may, by notice given to the holder, immediately suspend the heavy vehicle accreditation until the earlier of the following—

(a) the Regulator amends, suspends or cancels the accreditation under section 425;

(b) the Regulator cancels the suspension;

(c) the end of 56 days after the day the notice is given to the holder.

427 Minor amendment of heavy vehicle accreditation

The Regulator may, by notice given to the holder of a heavy vehicle accreditation granted under this Law, amend the accreditation—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the holder's interests.

Part 8.5 Other provisions about heavy vehicle accreditations

428 Return of accreditation certificate

(1) If a person's heavy vehicle accreditation granted under this Law is amended, suspended or cancelled, the Regulator may,

by notice, require the person to return the person's accreditation certificate to the Regulator.

(2) The person must comply with the notice within 7 days after the notice is given to the person or, if a longer period is stated in the notice, within the longer period.

Maximum penalty—$2000.

(3) If the heavy vehicle accreditation has been amended, the Regulator must give the person a replacement accreditation certificate for the accreditation as amended.

(4) If the heavy vehicle accreditation has been suspended, the Regulator must give the person the accreditation certificate for the accreditation or, if the accreditation has also been amended, a replacement accreditation certificate for the accreditation as amended, as soon as practicable after the suspension ends.

429 Replacement of defaced etc. accreditation certificate

(1) If a person's accreditation certificate for a heavy vehicle accreditation granted under this Law is defaced, destroyed, lost or stolen, the person must, as soon as reasonably practicable after becoming aware of the matter, apply to the Regulator for a replacement accreditation certificate.

Maximum penalty—$2000.

Note—

See section 422 for the requirement to keep an accreditation certificate for a heavy vehicle accreditation while the accreditation is current.

(2) If the Regulator is satisfied the accreditation certificate has been defaced, destroyed, lost or stolen, the Regulator must give the person a replacement accreditation certificate as soon as practicable.

(3) If the Regulator decides not to give the person a replacement accreditation certificate, the Regulator must give the person an information notice for the decision.

430 Offences relating to auditors

(1) A person must not falsely represent that the person is an approved auditor.

Maximum penalty—$6000.

(2) An approved auditor must not falsely represent that the person has audited an operator's relevant management system.

Maximum penalty—$6000.

(3) A person must not falsely represent the opinion of an approved auditor in relation to an operator's relevant management system.

Maximum penalty—$6000.

Chapter 9 Enforcement

Part 9.1 General matters about authorised officers

Division 1 Functions

431 Functions of authorised officers

An authorised officer has the following functions under this Law—

(a) to monitor, investigate and enforce compliance with this Law;

(b) to monitor or investigate whether an occasion has arisen for the exercise of powers under this Law;

(c) to facilitate the exercise of powers under this Law.

Division 2 Appointment

432 Application of Div 2

This Division does not apply to an authorised officer who is a police officer.

433 Appointment and qualifications

(1) The Regulator may, by instrument, appoint any of the following individuals as an authorised officer for this Law—

(a) an employee of the State;

(b) an employee of a local government authority;

(c) an individual of a class prescribed by the national regulations.

(2) However, the Regulator may appoint a person as an authorised officer only if the Regulator is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

434 Appointment conditions and limit on powers

(1) An authorised officer holds office on any conditions stated in—

(a) the officer's instrument of appointment; or

(b) a notice signed by the Regulator given to the officer; or

(c) the national regulations.

(2) The instrument of appointment, a signed notice given to the authorised officer, or the national regulations may limit the officer's powers.

435 When office ends

(1) The office of a person as an authorised officer ends if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the office ends;

(c) the officer's resignation under section 436 takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

(3) In this section—

condition of office means a condition under which the authorised officer holds office.

436 Resignation

(1) An authorised officer may resign by signed notice given to the Regulator.

(2) However, if holding office as an authorised officer is a condition of the officer holding another office, the officer may not resign as an authorised officer without resigning from the other office.

Division 3 Identity cards

437 Application of Div 3

This Division does not apply to an authorised officer who is a police officer.

438 Issue of identity card

(1) The Regulator must issue an identity card to each authorised officer.

(2) The identity card must—

(a) contain a recent photo of the authorised officer; and

(b) contain a copy of the authorised officer's signature; and

(c) identify the person as an authorised officer for this Law; and

(d) state the identification number allocated to the authorised officer; and

(e) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Law and other purposes.

439 Production or display of identity card

(1) In exercising a power in relation to a person in the person's presence, an authorised officer must—

(a) produce the officer's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 444(1)(b) or 446(1)(b) or (d).

440 Return of identity card

If the office of a person as an authorised officer ends, the person must return the person's identity card to the Regulator within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—$2000.

Division 4 Miscellaneous provisions

441 References to exercise of powers

If—

(a) a provision of this Chapter refers to the exercise of a power by an authorised officer; and

(b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised officers' powers under this Chapter or a warrant, to the extent the powers are relevant.

442 Reference to document includes reference to reproduction from electronic document

A reference in this Chapter to a document includes a reference to an image or writing—

(a) produced from an electronic document; or

(b) not yet produced, but reasonably capable of being produced from an electronic document, with or without the aid of another article or device.

Part 9.2 Powers in relation to places

Division 1 Preliminary

443 Definitions for Pt 9.2

In this Part—

place of business, of a responsible person for a heavy vehicle, means a place—

(a) at or from which the person carries on a business; or

(b) occupied by the person in connection with a business carried on by the person; or

(c) that is the registered office of the person if the person is a body corporate.

relevant place—

(a) means—

(i) a place of business of a responsible person for a heavy vehicle; or

(ii) the relevant garage address of a heavy vehicle; or

(iii) the base of the driver or drivers of a heavy vehicle; or

(iv) a place where records required to be kept under this Law or a heavy vehicle accreditation are located or are required to be located under this Law or a heavy vehicle accreditation; but

(b) does not include a place or part of a place mentioned in paragraph (a) where a person lives.

Division 2 Entry of relevant places for monitoring purposes

444 Power to enter relevant place

(1) An authorised officer may, for monitoring purposes, enter a relevant place if—

(a) an occupier of the place consents under Division 4 to the entry and section 452 has been complied with for the occupier; or

(b) the place is—

(i) open for carrying on a business; or

(ii) otherwise open for entry; or

(iii) required to be open for inspection under this Law.

(2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

(3) Subsection (1)(b) does not authorise an authorised officer, without the occupier's consent or a warrant, to enter a relevant place that is unattended, unless the officer reasonably believes the place is attended.

(4) An authorised officer may open unlocked doors and other unlocked panels and things at a place for gaining entry to the place under subsection (1).

(5) This section does not authorise an authorised officer to use force for exercising a power under this section.

445 General powers after entering relevant place

(1) If an authorised officer enters a relevant place under this Division, the officer may, for monitoring purposes, do any of the following (each a ***general power***)—

(a) inspect any part of the place or a vehicle at the place;

(b) inspect a relevant document at the place;

(c) copy, or take an extract from, a relevant document at the place;

(d) produce an image or writing at the place from an electronic relevant document at the place or, if it is not practicable to produce the image or writing at the place, take a thing containing the electronic relevant document to another place to produce the image or writing;

(e) look for, and inspect, a relevant device at the place;

(f) take an extract from a relevant device at the place, including, for example—

(i) by taking a copy of, or an extract from, a readout or other data obtained from the device; or

(ii) by accessing and downloading information from the device;

(g) exercise a power in relation to a heavy vehicle at the place that the authorised officer may exercise under section 469;

(h) take to, into or onto the place and use any persons, equipment, materials, vehicles or other things the officer reasonably requires for exercising the officer's powers under this section.

(2) The authorised officer may take a necessary step to allow the exercise of a general power, including, for example—

(a) open an unlocked door or an unlocked panel or thing at the place; and

(b) move but not take away anything that is not locked up or sealed.

(3) For exercising a power under subsection (1)(c) or (f), the authorised officer may use photocopying equipment at the place free of charge.

Note—

See also sections 491 and 492 for use of particular equipment at a place, or in a vehicle, entered under this Chapter.

(4) If the authorised officer takes from the place a thing containing an electronic relevant document to produce an image or writing from the document, the image or writing must be produced, and the thing must be returned to the place, as soon as practicable.

(5) However, if the authorised officer entered the place under section 444(1)(a), the officer's powers under this section are subject to the conditions of the consent.

(6) This section does not authorise an authorised officer to use force for exercising a power under this section.

(7) In this section—

electronic relevant document means a relevant document that is an electronic document.

relevant device means a device relating to a heavy vehicle and required to be installed, used or maintained under this Law or a heavy vehicle accreditation.

Example of a device that may be a relevant device—

a weighing, measuring, recording or monitoring device

relevant document means a document relating to a heavy vehicle and required to be kept under this Law or a heavy vehicle accreditation.

Division 3 Entry of places for investigation purposes

446 General power to enter places

(1) An authorised officer may, for investigation purposes, enter a place if—

(a) an occupier of the place consents under Division 4 to the entry and section 452 has been complied with for the occupier; or

(b) it is a public place and the entry is made when it is open to the public; or

(c) the entry is authorised under a warrant and, if there is an occupier at the place, section 458 has been complied with for the occupier; or

(d) it is a relevant place and is—

(i) open for carrying on a business; or

(ii) otherwise open for entry; or

(iii) required to be open for inspection under this Law; or

(e) the entry is authorised under section 447 or 448.

(2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

(3) If the power to enter is under a warrant—

(a) the authorised officer may use force that is reasonably necessary for gaining entry to the place; and

(b) the power to enter is subject to the terms of the warrant.

(4) Subsection (1)(d) does not authorise an authorised officer, without the occupier's consent or a warrant, to enter—

(a) a place that is unattended, unless the officer reasonably believes the place is attended; or

(b) a place, or part of a place, where a person lives.

(5) An authorised officer may open unlocked doors and other unlocked panels and things at a place for gaining entry to the place under subsection (1).

(6) This section does not authorise an authorised officer to use force for exercising a power under this section unless the power is exercised under a warrant.

447 Power to enter a place if evidence suspected to be at the place

(1) This section applies if an authorised officer reasonably believes that—

(a) either—

(i) a heavy vehicle is or has been at a place; or

(ii) transport documentation or journey documentation is at a place; and

(b) there may be at the place evidence of an offence against this Law that may be concealed or destroyed unless the place is immediately entered and searched.

(2) The authorised officer may enter the place if it is—

(a) open for carrying on a business; or

(b) otherwise open for entry; or

(c) required to be open for inspection under this Law.

(3) Subsection (2) does not authorise an authorised officer to enter—

(a) a place that is unattended, unless the officer reasonably believes the place is attended; or

(b) a place, or part of a place, where a person lives.

(4) An authorised officer may open unlocked doors and other unlocked panels and things at a place for gaining entry to the place under subsection (2).

(5) An authorised officer may use force that is reasonably necessary for gaining entry to a place mentioned in subsection (2)(c) but may not use force against a person.

(6) This section does not authorise an authorised officer to use force for exercising a power under this section other than as provided by subsection (5).

448 Power to enter particular places if incident involving death, injury or damage

(1) An authorised officer, without an occupier's consent or a warrant, may enter a place at any time if the officer reasonably believes—

(a) an incident involving the death of, or injury to, a person or damage to property involves or may have involved a heavy vehicle; and

(b) the incident may have involved an offence against this Law; and

(c) there is a connection between the place and the heavy vehicle; and

(d) there may be at the place evidence of the offence mentioned in paragraph (b) that may be concealed or destroyed unless the place is immediately entered and searched.

(2) For subsection (1), there is a connection between a place and a heavy vehicle if—

(a) the place is the vehicle's garage address or, if the vehicle is a combination, the garage address of a heavy vehicle in the combination; or

(b) the vehicle is, or within the past 72 hours has been, located at the place; or

(c) the place is, or may be, otherwise directly or indirectly connected with the vehicle or any part of its equipment or load.

(3) This section does not authorise an authorised officer, without the occupier's consent or a warrant, to enter—

(a) a place that is unattended, unless the officer reasonably believes the place is attended; or

(b) a place, or part of a place, where a person lives.

(4) An authorised officer may open unlocked doors and other unlocked panels and things at a place for gaining entry to the place under subsection (1).

(5) This section does not authorise an authorised officer to use force for exercising a power under this section.

449 General powers after entering a place

(1) If an authorised officer enters a place under section 446(1)(a), (c), (d) or (e), the officer may, for investigation purposes, do any of the following (each a ***general power***)—

(a) search any part of the place or a vehicle at the place, including—

(i) searching any part of the place or a vehicle at the place for evidence of an offence against this Law; and

(ii) searching any part of the place or a vehicle at the place for a document, device or other thing relating to a heavy vehicle or any part of its equipment or load;

(b) inspect, examine or film any part of the place or anything at the place;

(c) take a thing, or a sample of or from a thing, at the place for examination;

(d) place an identifying mark in or on anything at the place;

(e) take an extract from a document, device or other thing at the place, including, for example—

(i) by taking a copy of, or an extract from, a readout or other data obtained from a device or other thing at the place; or

(ii) by accessing and downloading information from a device or other thing at the place;

Example of device or other thing—

an intelligent transport system

(f) copy a document at the place, or take a document at the place to another place to copy it;

Examples of documents for paragraphs (e) and (f)—

- a document required to be kept at the place under this Law or a heavy vehicle accreditation
- transport documentation
- journey documentation
- a document the authorised officer reasonably believes provides, or may provide on further inspection, evidence of an offence against this Law

(g) produce an image or writing at the place from an electronic document at the place or, if it is not

practicable to produce the image or writing at the place, take a thing containing the electronic document to another place to produce the image or writing;

(h) exercise a power in relation to a heavy vehicle at the place that the authorised officer may exercise under Part 9.3;

(i) take to, into or onto the place and use any persons, equipment, materials, vehicles or other things the officer reasonably requires for exercising the officer's powers under this section.

(2) The authorised officer may take a necessary step to allow the exercise of a general power, including, for example—

(a) open an unlocked door or an unlocked panel or thing at the place; and

(b) move but not take away anything that is not locked up or sealed; and

(c) if the authorised officer entered the place under section 446(1)(c), use the force that is reasonably necessary for the exercise of the power.

(3) If an authorised officer takes, or authorises another person to take, a thing or sample for examination under subsection (1)(c), the officer must—

(a) give a receipt for the thing or sample to—

(i) the person in possession of the thing or sample or the thing from which the sample was taken; or

(ii) the person in charge of the place from which the thing or sample was taken; and

(b) at the end of 6 months after the thing or sample was taken, return it to the person who appears to be an owner of it, a person to whom a receipt was given under paragraph (a) for it, or a person in charge of the place from which it was taken, unless the thing or sample—

(i) has been seized under section 497; or

(ii) does not have any intrinsic value.

Note—

See section 507(1) for what happens if a thing or sample can not be returned to its owner or the owner can not be found.

(4) However, if for any reason it is not practicable to comply with subsection (3)(a), the authorised officer must leave the receipt at the place in a conspicuous position and in a reasonably secure way.

(5) For exercising a power under subsection (1)(f), the authorised officer may use photocopying equipment at the place free of charge.

Note—

See also sections 491 and 492 for use of particular equipment at a place, or in a vehicle, entered under this Chapter.

(6) If the authorised officer takes a document from the place to copy it, the document must be copied and returned to the place as soon as practicable.

(7) If the authorised officer takes from the place a thing containing an electronic document to produce an image or writing from the document, the image or writing must be produced, and the thing must be returned to the place, as soon as practicable.

(8) However—

(a) if the authorised officer entered the place under section 446(1)(a), the officer's powers under this section are subject to the conditions of the consent; and

(b) if the authorised officer entered the place under section 446(1)(c), the officer's powers under this section are subject to the terms of the warrant.

Division 4 Procedure for entry by consent

450 Application of Div 4

This Division applies if an authorised officer intends to ask an occupier of a place for consent to the officer or another authorised officer entering the place under section 444(1)(a) or 446(1)(a).

451 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, the authorised officer may, without the occupier's consent or a warrant—

(a) enter land around a building or other structure at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the officer reasonably believes members of the public ordinarily are allowed to enter when they wish to contact the occupier.

452 Matters authorised officer must tell occupier

Before asking for the consent, the authorised officer must give a reasonable explanation to the occupier about the following—

(a) the purpose of the entry;

(b) that the occupier is not required to consent;

(c) that the consent may be given subject to conditions and may be withdrawn at any time;

(d) any other powers intended to be exercised to achieve the purpose of the entry.

453 Consent acknowledgement

(1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.

(2) The acknowledgement must state—

(a) the purpose of the entry, including the powers intended to be exercised to achieve the purpose of the entry; and

(b) that the following has been explained to the occupier—

(i) the purpose of the entry, including the powers intended to be exercised to achieve the purpose of the entry;

(ii) that the occupier is not required to consent; and

(c) that the occupier gives the authorised officer consent to enter the place and exercise the powers; and

(d) the time and day the consent was given; and

(e) any conditions of the consent.

(3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.

(4) However, if it is impractical for the authorised officer to give the occupier a copy of the acknowledgement immediately, the officer must give the copy as soon as practicable.

(5) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Division 5 Entry under warrant

454 Application for warrant

(1) An authorised officer may apply to an authorised warrant official for a warrant for a place.

(2) The authorised officer must prepare a written application stating the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The authorised warrant official may refuse to consider the application until the authorised officer gives the official all the information the official requires about the application in the way the official requires.

Example—

The authorised warrant official may require additional information supporting the written application to be given by statutory declaration.

455 Issue of warrant

(1) The authorised warrant official may issue the warrant for the place only if the official is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 72 hours, a particular thing or activity that may provide evidence of an offence against this Law.

(2) The warrant must state the following—

(a) the place to which the warrant applies;

(b) that a stated authorised officer or any authorised officer may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry to the place; and

(ii) exercise the authorised officer's powers;

(c) particulars of the offence that the authorised warrant official considers appropriate in the circumstances;

(d) the name of the person suspected of having committed the offence unless the name is unknown or the authorised warrant official considers it inappropriate to state the name;

(e) the evidence that may be seized under the warrant;

(f) the hours of the day or night when the place may be entered;

(g) the authorised warrant official's name;

(h) the date and time of the warrant's issue;

(i) the day, within 14 days after the warrant's issue, the warrant ends.

456 Application by electronic communication and duplicate warrant

(1) An application under section 454 may be made by radio, telephone, fax, email, videoconferencing or another form of electronic communication if the authorised officer reasonably believes it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the officer's remote location.

(2) The application—

(a) may not be made before the authorised officer prepares the written application under section 454(2); but

(b) may be made before the written application is sworn.

(3) The authorised warrant official may issue the warrant (the ***original warrant***) only if the official is satisfied—

(a) it was necessary to make the application under subsection (1); and

(b) the way the application was made under subsection (1) was appropriate.

(4) After the authorised warrant official issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the official must immediately give a copy of the warrant to the officer; or

(b) otherwise—

(i) the official must tell the authorised officer the information mentioned in section 455(2); and

(ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in section 455(2) provided by the official.

(5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(6) The authorised officer must, at the first reasonable opportunity, send to the authorised warrant official—

(a) the written application complying with section 454(2) and (3); and

(b) if the officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.

(7) The authorised warrant official must keep the original warrant and, on receiving the documents under subsection (6)—

(a) attach the documents to the original warrant; and

(b) file the original warrant and documents in the relevant court.

(8) Despite subsection (5), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This section does not limit section 454.

457 Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with this Division;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 456(5).

458 Procedure for entry

(1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this Division.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing—

(i) for an authorised officer who is a police officer—an identity card or other document evidencing the officer's appointment as a police officer; or

(ii) for an authorised officer who is not a police officer—the identity card issued to the officer under this Law or another document evidencing the officer's appointment as an authorised officer;

(b) give the person a copy of the warrant;

(c) tell the person the officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the officer reasonably believes that entry to the place is required to ensure the execution of the warrant is not frustrated.

(4) Subsection (2)(a)(i) does not apply to a police officer in uniform.

(5) In this section—

warrant includes a duplicate warrant mentioned in section 456(5).

Part 9.3 Powers in relation to heavy vehicles

Division 1 Preliminary

459 Application of Pt 9.3

Unless otherwise stated in this Part, this Part applies to a heavy vehicle—

(a) on a road; or

(b) in or at a public place; or

(c) in or at a place owned or occupied by a road authority or by another public authority; or

(d) in or at a place entered by an authorised officer under Part 9.2.

460 Persons who are drivers for this Part

In this Part, a reference to the driver of a heavy vehicle includes a reference to a person in, on or in the vicinity of the vehicle, who appears to be the vehicle's driver.

Division 2 Stopping, not moving or not interfering with heavy vehicle etc.

461 Direction to stop heavy vehicle to enable exercise of other powers

(1) To enable an authorised officer to exercise a power under this Law, the officer may direct the driver of a heavy vehicle to stop the vehicle.

Example—

An authorised officer may direct the driver of a heavy vehicle to stop the vehicle so that the authorised officer can enter and inspect it under section 469 or enter and search it under section 470.

(2) The direction may be given orally or in any other way, including, for example, by way of a sign or electronic or other signal.

(3) The direction may require the heavy vehicle to be—

(a) stopped immediately; or

(b) stopped at a place indicated by the authorised officer as the nearest place for it to be safely stopped.

(4) A person given a direction under subsection (1) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(5) An authorised officer giving a direction under this section must clearly identify himself or herself as an authorised officer exercising the officer's powers.

Examples—

1 If the authorised officer is standing at the side of the road, he or she may use a sign to identify himself or herself as an authorised officer exercising powers.

2 If the authorised officer is in a moving vehicle, he or she may use a loud hailer to identify himself or herself as an authorised officer exercising powers.

(6) When the heavy vehicle stops, the authorised officer must immediately produce for the inspection of the vehicle's driver—

(a) for an authorised officer who is a police officer—an identity card or other document evidencing the officer's appointment as a police officer; or

(b) for an authorised officer who is not a police officer—the identity card issued to the officer under this Law or another document evidencing the officer's appointment as an authorised officer.

(7) Subsection (6)(a) does not apply to a police officer in uniform.

(8) In this section—

stop a heavy vehicle means to stop the vehicle and keep it stationary.

462 Direction not to move or interfere with heavy vehicle etc. to enable exercise of other powers

(1) To enable an authorised officer to exercise a power under this Law, the officer may direct the driver of a heavy vehicle or any other person not to—

(a) move the vehicle; or

(b) interfere with the vehicle or any equipment in it; or

(c) interfere with the vehicle's load.

(2) The direction may be given orally or in any other way, including, for example, by way of a sign or electronic or other signal.

(3) A person given a direction under subsection (1) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—$6000.

Division 3 Moving heavy vehicle

463 Definition for Div 3

In this Division—

unattended, for a heavy vehicle, means—

(a) there is no-one in or near the vehicle who appears to be its driver; or

(b) there is a person in or near the vehicle who appears to be its driver but the person is—

(i) unwilling, or not qualified or fit, to drive the vehicle; or

(ii) not authorised by the operator of the vehicle to drive it; or

(iii) subject to a direction under section 472.

464 Requirement to give offence warning

(1) This section applies to an authorised officer giving a direction to a person under this Division.

(2) When giving the direction, the authorised officer must give the person an offence warning for the direction unless it is not practicable to give the warning having regard to the way the direction is given.

Example of when it may not be practicable to give an offence warning—

The direction is given by way of a signal.

465 Direction to move heavy vehicle to enable exercise of other powers

(1) To enable an authorised officer to exercise a power under this Law, the officer may direct the driver or operator of a heavy vehicle that is stationary or has been stopped under section 461 to move the vehicle, or cause it to be moved, to a stated reasonable place within a 30km radius from—

(a) where the vehicle was stationary or stopped; or

(b) if the direction is given within the course of the vehicle's journey—any point along the forward route of the journey.

Example—

An authorised officer may direct the driver of a heavy vehicle to move the vehicle onto a weighing or testing device.

(2) The direction may be made orally or in any other way, including, for example—

(a) for a direction given to the driver of a heavy vehicle—by way of a sign or electronic or other signal; or

(b) for a direction given to the operator of a heavy vehicle—by radio, telephone, fax or email.

(3) A person given a direction under subsection (1) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(4) Without limiting what may be a reasonable excuse for subsection (3), in a proceeding for an offence against the subsection, it is a defence for the person charged to prove that—

(a) it was not possible to move the heavy vehicle because it was broken down; and

(b) the breakdown happened for a physical reason beyond the person's control; and

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

466 Direction to move heavy vehicle if causing harm etc.

(1) This section applies if an authorised officer reasonably believes a stationary heavy vehicle is—

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

(b) obstructing traffic.

(2) The authorised officer may direct the driver or operator of the heavy vehicle to do either or both of the following—

(a) move the vehicle, or cause it to be moved, to the extent necessary to avoid the harm or obstruction;

(b) do, or cause to be done, anything else the officer reasonably requires to avoid the harm or obstruction.

(3) The direction may be made orally or in any other way, including, for example—

(a) for a direction given to the driver of a heavy vehicle—by way of a sign or electronic or other signal; or

(b) for a direction given to the operator of a heavy vehicle—by radio, telephone, fax or email.

(4) A person given a direction under subsection (2) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(5) Without limiting what may be a reasonable excuse for subsection (4), in a proceeding for an offence against the subsection, it is a defence for the person charged to prove that—

(a) it was not possible to move the heavy vehicle because it was broken down; and

(b) the breakdown happened for a physical reason beyond the person's control; and

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

467 Moving unattended heavy vehicle on road to exercise another power

(1) This section applies if an authorised officer—

(a) reasonably believes a heavy vehicle on a road is unattended; and

(b) intends to exercise a power under this Law in relation to the heavy vehicle; and

(c) reasonably believes it is necessary to move the heavy vehicle to enable the exercise of the power.

(2) To the extent reasonably necessary to enable the exercise of the power, the authorised officer—

(a) may move the heavy vehicle; or

(b) authorise someone else (the ***assistant***) to move the heavy vehicle.

Example—

by driving, pushing or towing the heavy vehicle

(3) The authorised officer or assistant may enter the heavy vehicle to enable the authorised officer or assistant to move it.

(4) Despite subsection (2), the authorised officer—

(a) may only drive the heavy vehicle if the officer is qualified and fit to drive it; and

(b) may only authorise the assistant to drive the heavy vehicle if the assistant is qualified and fit to drive it.

(5) It is immaterial that—

(a) the assistant is not the operator of the heavy vehicle; or

(b) the authorised officer or assistant is not authorised by the operator to drive the heavy vehicle.

(6) The authorised officer or assistant may—

(a) open unlocked doors and other unlocked panels and things in the heavy vehicle; and

(b) use the force that is reasonably necessary to—

(i) gain access to the heavy vehicle, its engine or other mechanical components to enable it to be moved; or

(ii) enable the heavy vehicle to be towed.

(7) Subsection (6)(b) does not authorise the authorised officer or assistant to use force against a person.

468 Moving unattended heavy vehicle on road if causing harm etc.

(1) This section applies if an authorised officer reasonably believes—

(a) a heavy vehicle on a road is unattended; and

(b) the heavy vehicle is—

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

(ii) obstructing traffic.

(2) The authorised officer may move or authorise someone else (the ***assistant***) to move the heavy vehicle or, if it is a combination, any component vehicle of the combination, to the extent it is reasonably necessary to avoid the harm or obstruction.

Example—

by driving, pushing or towing the vehicle

(3) The authorised officer or assistant may—

(a) enter the heavy vehicle to enable the authorised officer or assistant to move it; and

(b) for a combination—separate any or all of the component vehicles of the combination for the purpose of moving 1 or more of them.

(4) The authorised officer or assistant may drive the heavy vehicle even if the officer or assistant is not qualified to drive it if the authorised officer reasonably believes there is no-one else in or near the vehicle who is more capable of driving it and fit and willing to drive it.

(5) It is immaterial that—

(a) the assistant is not the operator of the heavy vehicle; or

(b) the authorised officer or assistant is not authorised by the operator to drive the heavy vehicle.

(6) In driving the heavy vehicle under subsection (4), the authorised officer or assistant is exempt from a provision of an Australian road law to the extent the provision would require the authorised officer or assistant to be qualified to drive the vehicle.

(7) The authorised officer or assistant may use the force that is reasonably necessary to do anything that is reasonably necessary to avoid the harm or obstruction.

(8) Subsection (7) does not authorise the authorised officer or assistant to use force against a person.

Division 4 Inspecting and searching heavy vehicles

469 Power to enter and inspect heavy vehicles for monitoring purposes

(1) An authorised officer may enter and inspect a heavy vehicle for monitoring purposes.

(2) Without limiting subsection (1), the authorised officer may—

(a) inspect, examine or film any part of the heavy vehicle or the goods component of its load; and

(b) without limiting paragraph (a), look for, check the details of, or film a number plate, label or other thing required to be displayed on the heavy vehicle under this Law; and

(c) inspect a relevant document in the heavy vehicle; and

(d) copy, or take an extract from, a relevant document in the heavy vehicle; and

(e) produce an image or writing in or near the vehicle from an electronic relevant document in the vehicle or, if it is not practicable to produce the image or writing in or near the vehicle, take a thing containing the electronic relevant document somewhere else to produce the image or writing; and

(f) take an extract of relevant information from a device or other thing found in the heavy vehicle, including, for example—

(i) by taking a copy of, or an extract from, a readout or other data obtained from the device or other thing; or

(ii) by accessing and downloading relevant information from the device or other thing.

Example of device or other thing—

an intelligent transport system

(3) The authorised officer may take a necessary step to allow the exercise of a power under subsection (1) or (2), including, for example—

(a) open an unlocked door or an unlocked panel or thing on the heavy vehicle; and

(b) move but not take away anything that is not locked up or sealed.

(4) However, this section does not authorise an authorised officer to use force for exercising a power under this section.

(5) If the authorised officer takes from the heavy vehicle a thing containing an electronic relevant document to produce an image or writing from the document, the image or writing must be produced, and the thing must be returned to the vehicle, as soon as practicable.

(6) In this section—

electronic relevant document means a relevant document that is an electronic document.

relevant document means a document relating to a heavy vehicle and required to be kept under this Law or a heavy vehicle accreditation, including, for example, a document required to be kept in the possession of the driver of a heavy vehicle.

relevant information means information relating to a heavy vehicle required to be kept under this Law or a heavy vehicle accreditation.

470 Power to enter and search heavy vehicle involved, or suspected to be involved, in an offence etc.

(1) An authorised officer may, using necessary and reasonable help and force, enter and search a heavy vehicle for investigation purposes if the officer reasonably believes—

(a) the vehicle is being, or has just been, used to commit an offence against this Law; or

(b) the vehicle, or a thing in the vehicle, may provide evidence of an offence against this Law that is being, or has just been, committed; or

(c) the vehicle has been or may have been involved in an incident involving the death of, or injury to, a person or damage to property.

(2) The authorised officer may form the necessary belief—

(a) during or after an inspection of the heavy vehicle under Part 9.2 or section 469; or

(b) independently of an inspection of the heavy vehicle under Part 9.2 or section 469.

(3) Without limiting subsection (1), the authorised officer may—

(a) search any part of the heavy vehicle or the goods component of its load for evidence of an offence against this Law; and

(b) inspect, examine or film any part of the heavy vehicle or the goods component of its load; and

(c) without limiting paragraph (b), look for, check the details of, or film a number plate, label or other thing required to be displayed on the heavy vehicle under this Law; and

(d) search for and inspect a document, device or other thing in the heavy vehicle; and

(e) take an extract from a document, device or other thing in the heavy vehicle, including, for example—

(i) by taking a copy of, or an extract from, a readout or other data obtained from a device or other thing in the vehicle; or

(ii) by accessing and downloading information from a device or other thing in the vehicle; and

Examples of device or other thing—

an intelligent transport system

(f) copy a document in the heavy vehicle, or take a document in the heavy vehicle somewhere else to copy it; and

Examples of documents for paragraphs (e) and (f)—

- a document required to be kept in the vehicle under this Law or a heavy vehicle accreditation
- transport documentation
- journey documentation

- a document the authorised officer reasonably believes provides, or may provide on further inspection, evidence of an offence against this Law

(g) produce an image or writing in or near the vehicle from an electronic document in the vehicle or, if it is not practicable to produce the image or writing in or near the vehicle, take a thing containing the electronic document somewhere else to produce the image or writing; and

(h) take the persons, equipment or materials the officer reasonably requires into or onto the heavy vehicle.

(4) If the authorised officer takes a document from the heavy vehicle to copy it, the document must be copied and returned to the vehicle as soon as practicable.

(5) If the authorised officer takes from the heavy vehicle a thing containing an electronic document to produce an image or writing from the document, the image or writing must be produced, and the thing must be returned to the vehicle, as soon as practicable.

(6) The authorised officer may not exercise powers under this section in relation to the following things found in a heavy vehicle—

(a) personal items used by the vehicle's driver or someone else necessary for the normal use of the vehicle;

(b) a document that is not—

(i) a document issued or given, or required to be kept, under this Law or a heavy vehicle accreditation; or

(ii) transport documentation; or

(iii) journey documentation.

Division 5 Other powers in relation to all heavy vehicles

471 Starting or stopping heavy vehicle engine

(1) To enable an authorised officer to effectively exercise a power under this Law in relation to a heavy vehicle, the officer may enter the vehicle and start or stop its engine (***take the prescribed action***) or authorise someone else (the ***assistant***) to enter the vehicle and take the prescribed action if—

(a) a person fails to comply with a requirement made by an authorised officer under section 521 to take the prescribed action; or

(b) no responsible person for the heavy vehicle is available or willing to take the prescribed action; or

(c) the authorised officer reasonably believes there is no-one else in or near the vehicle who is more capable of taking the prescribed action and is fit and willing to do so.

(2) The authorised officer or assistant may use the force that is reasonably necessary to enter the heavy vehicle and take the prescribed action.

(3) Subsection (2) does not authorise the authorised officer or assistant to use force against a person.

(4) It is immaterial that—

(a) the assistant is not the operator of the heavy vehicle; or

(b) the authorised officer or assistant is not—

(i) authorised by the operator to take the prescribed action; or

(ii) qualified to take the prescribed action.

(5) This section does not authorise the authorised officer or assistant to drive the heavy vehicle.

(6) In taking the prescribed action, the authorised officer or assistant is exempt from a provision of an Australian road law to the extent the provision would require the authorised officer or assistant to be qualified to take the prescribed action.

472 Direction to leave heavy vehicle

(1) This section applies if—

(a) the driver of a heavy vehicle fails to comply with a direction given by an authorised officer under this Chapter; or

(b) an authorised officer reasonably believes the driver of a heavy vehicle is not qualified, fit or authorised by the operator to drive the vehicle in order to comply with a direction the authorised officer may give under this Chapter.

(2) The authorised officer may direct the driver to do 1 or more of the following—

(a) to vacate the driver's seat;

(b) to leave the heavy vehicle;

(c) not to occupy the driver's seat until permitted by an authorised officer;

(d) not to enter the heavy vehicle until permitted by an authorised officer.

(3) The authorised officer may direct any other person accompanying the driver of the heavy vehicle to do either or both of the following—

(a) to leave the vehicle;

(b) not to enter the vehicle until permitted by an authorised officer.

(4) A direction under subsection (2) or (3) may be made orally or in any other way, including, for example, by way of a sign or electronic or other signal.

(5) A person given a direction under subsection (2) or (3) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—$6000.

(6) When giving a direction to a person under subsection (2) or (3), the authorised officer must give the person an offence warning for the direction unless it is not practicable to give the warning having regard to the way the direction is given.

Example of when it may not be practicable to give an offence warning—

The direction is given by way of a signal.

Division 6 Further powers in relation to heavy vehicles concerning heavy vehicle standards

473 Definitions for Div 6

In this Division—

defective heavy vehicle means a heavy vehicle that—

(a) contravenes the heavy vehicle standards; or

(b) has a part that—

(i) does not perform its intended function; or

(ii) has deteriorated to an extent that it can not be reasonably relied on to perform its intended function.

defective vehicle label means a label—

(a) for attaching to a heavy vehicle to which a major defect notice applies; and

(b) stating—

(i) the vehicle's registration number or, if the vehicle is not registered, a temporary identification number

marked on the vehicle by the authorised officer issuing the notice; and

(ii) that the vehicle must not be used on a road other than to move it to a stated location in a stated way; and

(iii) the identification details for the authorised officer who issued the notice; and

(iv) the day and time the notice was issued; and

(v) the number of the notice.

identification details, for an authorised officer, means details to identify the authorised officer, including, for example—

(a) the officer's name; or

(b) an identification number allocated to the officer under this Law or another law.

major defect notice has the meaning given by section 474(2)(a).

minor defect notice has the meaning given by section 474(2)(b).

vehicle defect notice means a major defect notice or minor defect notice.

474 Issue of vehicle defect notice

(1) This section applies if an authorised officer who has inspected a heavy vehicle under this Law reasonably believes—

(a) the vehicle is a defective heavy vehicle; and

(b) the use of the vehicle on a road poses a safety risk.

(2) The authorised officer may issue the following notice in relation to the vehicle, in the way mentioned in subsection (3)—

(a) if the officer reasonably believes the safety risk is an imminent and serious safety risk—a notice stating the

vehicle must not be used on a road after the notice is issued other than to move it to a stated location in a stated way (a ***major defect notice***);

(b) if the officer reasonably believes the safety risk is not an imminent and serious safety risk—a notice stating the vehicle must not be used on a road after a stated time unless stated action required to stop the vehicle from being a defective heavy vehicle is taken (a ***minor defect notice***).

(3) The authorised officer may issue the vehicle defect notice by—

(a) if the driver of the heavy vehicle is present—giving the notice to the driver; or

(b) if the driver of the heavy vehicle is not present—attaching the notice to the vehicle.

(4) If the driver of a heavy vehicle for which a vehicle defect notice is issued under this section is not the operator of the vehicle, the driver must, as soon as practicable, give the vehicle defect notice to the operator.

Maximum penalty for subsection (4)—$3000.

475 Requirements about vehicle defect notice

A vehicle defect notice for a heavy vehicle must be in the approved form and state the following—

(a) that the vehicle is a defective heavy vehicle and details of how the vehicle is a defective heavy vehicle;

(b) for a notice given in circumstances mentioned in section 474(2)(a)—that the vehicle must not be used on a road after the notice is issued other than to move it to a location stated in the notice in the way stated in the notice;

(c) for a notice given in circumstances mentioned in section 474(2)(b)—that the vehicle must not be used on a road after a time stated in the notice unless action required to

stop the vehicle from being a defective heavy vehicle stated in the notice is taken;

(d) the name of the vehicle's driver if known by the authorised officer issuing the notice when the notice is issued or, if the driver is not present or the driver's name is not known by the authorised officer issuing the notice when the notice is issued, the term 'registered operator';

(e) details to identify the vehicle, including, for example—

(i) the vehicle's registration number or, if the vehicle is not registered, a temporary identification number marked on the vehicle by the authorised officer issuing the notice; and

(ii) the vehicle's make and category; and

(iii) the vehicle's VIN or, if there is no VIN, the vehicle's chassis number or engine number;

(f) the nature of the inspection that led to the notice being issued;

(g) whether an infringement notice was also given when the notice was issued;

(h) the identification details for the authorised officer who issued the notice;

(i) that, if the notice is not cleared by the Regulator under section 478, the vehicle's registration may be suspended and subsequently cancelled under this Law.

476 Defective vehicle labels

(1) If an authorised officer issues a major defect notice for a heavy vehicle, the authorised officer must attach a defective vehicle label to the vehicle.

(2) A person must not remove, deface or otherwise interfere with a defective vehicle label attached to a heavy vehicle under subsection (1).

Maximum penalty—$3000.

(3) Subsection (2) does not apply to a person removing a defective vehicle label under section 478(2) or 479(4).

477 Using defective heavy vehicles contrary to defect vehicle notice

A person must not use, or permit to be used, on a road a heavy vehicle in contravention of a vehicle defect notice.

Maximum penalty—$3000.

478 Clearance of vehicle defect notices

(1) A vehicle defect notice may be cleared by the Regulator if—

(a) the Regulator decides the vehicle is no longer a defective heavy vehicle; or

(b) the Regulator receives a notice, in the approved form, from an authorised officer stating that the heavy vehicle is no longer a defective heavy vehicle.

(2) If the Regulator clears a major defect notice applying to a heavy vehicle, the Regulator must arrange for the defective vehicle label for the vehicle to be removed from the vehicle.

479 Amendment or withdrawal of vehicle defect notices

(1) A vehicle defect notice issued by an authorised officer who is a police officer may be amended or withdrawn by any authorised officer who is a police officer.

(2) 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 not a police officer.

(3) If an authorised officer amends or withdraws a vehicle defect notice for a heavy vehicle, the officer must give notice of the amendment or withdrawal to the Regulator and the person to whom the vehicle defect notice was issued.

(4) If an authorised officer withdraws a major defect notice applying to a heavy vehicle, the Regulator must arrange for the defective vehicle label for the vehicle to be removed from the vehicle.

Division 7 Further powers in relation to heavy vehicles concerning mass, dimension or loading requirements

480 Application of Div 7

This Division applies to a heavy vehicle regardless of whether the vehicle is, has been, or becomes the subject of a direction or requirement given or made by an authorised officer under another provision of this Chapter.

481 Powers for minor risk breach of mass, dimension or loading requirement

(1) This section applies if an authorised officer reasonably believes a heavy vehicle—

(a) is the subject of 1 or more minor risk breaches of mass, dimension or loading requirements; and

(b) is not, or is no longer, also the subject of a substantial, or severe, risk breach of a mass, dimension or loading requirement.

(2) If the authorised officer reasonably believes it appropriate in the circumstances, the officer may direct the driver or operator of the heavy vehicle—

(a) to immediately rectify stated breaches of mass, dimension or loading requirements relating to the vehicle; or

(b) to move the vehicle, or cause it to be moved, to a stated place and not to move the vehicle, or cause it to be moved, from there until stated breaches of mass,

dimension or loading requirements relating to the vehicle are rectified.

Examples of circumstances for subsection (2)—

1 Rectification is reasonable and can be carried out easily.

2 Rectification is necessary in the public interest to avoid a safety risk, damage to road infrastructure or an adverse effect on public amenity.

(3) A place mentioned in subsection (2)(b) must be—

(a) a place the authorised officer reasonably believes is suitable for the purpose of complying with the direction; and

(b) within a 30km radius from—

(i) where the heavy vehicle is located when the direction is given; or

(ii) if the direction is given in the course of the heavy vehicle's journey—any point along the forward route of the journey.

(4) A direction given under subsection (2) must be in writing and may be given with or without conditions.

(5) Despite subsection (4), a direction to move a heavy vehicle may be given orally if the moving of the vehicle is carried out in the presence, or under the supervision, of an authorised officer.

(6) The person to whom a direction is given under this section must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(7) In this section—

stated means stated by the authorised officer.

482 Powers for substantial risk breach of mass, dimension or loading requirement

(1) This section applies if an authorised officer reasonably believes—

(a) a heavy vehicle is the subject of 1 or more substantial risk breaches of mass, dimension or loading requirements; and

(b) the heavy vehicle is not, or is no longer, also the subject of a severe risk breach of a mass, dimension or loading requirement.

(2) The authorised officer must direct the driver or operator of the heavy vehicle—

(a) not to move the vehicle until stated breaches of mass, dimension or loading requirements relating to the vehicle are rectified; or

(b) to move the vehicle, or cause it to be moved, to a stated reasonable place and not to move it, or cause it to be moved, from there until stated breaches of mass, dimension or loading requirements relating to the vehicle are rectified.

Examples of reasonable place for paragraph (b)—

- the intended destination of the heavy vehicle's journey
- a depot of the heavy vehicle or, if the heavy vehicle is a combination, a depot of a vehicle in the combination

(3) A direction given under subsection (2) must be in writing and may be given with or without conditions.

(4) Despite subsection (3), a direction to move a heavy vehicle may be given orally if the moving of the vehicle is carried out in the presence, or under the supervision, of an authorised officer.

(5) The person to whom a direction is given under this section must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(6) In this section—

stated means stated by the authorised officer.

483 Powers for severe risk breach of mass, dimension or loading requirement

(1) This section applies if an authorised officer reasonably believes a heavy vehicle is the subject of 1 or more severe risk breaches of mass, dimension or loading requirements.

(2) The authorised officer must direct the driver or operator of the heavy vehicle—

(a) not to move the heavy vehicle until stated breaches of mass, dimension or loading requirements relating to the vehicle are rectified; or

(b) if the prescribed circumstances exist—

(i) to move the vehicle, or cause it to be moved, to the nearest stated safe location; and

(ii) not to proceed from there until stated breaches of mass, dimension or loading requirements relating to the vehicle are rectified.

(3) A direction given under subsection (2) must be in writing and may be given with or without conditions.

(4) Despite subsection (3), a direction to move a heavy vehicle may be given orally if the moving of the vehicle is carried out in the presence, or under the supervision, of an authorised officer.

(5) The person to whom a direction is given under this section must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(6) Nothing in this section prevents an authorised officer from taking into account the safety of the heavy vehicle or any load in it if the officer reasonably believes the officer can do so

without prejudicing the safety of other property, people, the environment, road infrastructure or public amenity.

(7) In this section—

prescribed circumstances means—

(a) there is a risk of harm to public safety; or

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

risk of harm to public safety, in relation to a heavy vehicle—

(a) includes the risk of harm to the safety of people, or live animals, in the vehicle; but

(b) does not include the risk of harm to the safety of the vehicle or goods, other than a live animal, in the vehicle.

safe location means a location where the authorised officer reasonably believes the heavy vehicle will pose a reduced risk or no appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

Example of a safe location—

a depot of the heavy vehicle or, if the heavy vehicle is a combination, a depot of a vehicle in the combination

stated means stated by the authorised officer.

484 Operation of direction in relation to a combination

(1) This section applies if a direction is given under this Division in relation to a heavy combination.

(2) Subject to subsection (3), nothing in this Division prevents a component vehicle of the heavy combination from being separately driven or moved if—

(a) the component vehicle is not itself the subject of a contravention of a mass, dimension or loading requirement; and

(b) it is not otherwise unlawful for the component vehicle to be driven or moved.

(3) Subsection (2) does not apply if a condition of the direction prevents the component vehicle from being separately driven or moved.

Division 8 Further powers in relation to fatigue-regulated heavy vehicles

485 Application of Div 8

This Division applies to a fatigue-regulated heavy vehicle regardless of whether the vehicle is, has been, or becomes the subject of a direction or requirement given or made by an authorised officer under another provision of this Chapter.

486 Requiring driver to rest for contravention of maximum work requirement

(1) This section applies if an authorised officer reasonably believes—

(a) the driver of a fatigue-regulated heavy vehicle has contravened a maximum work requirement by working for a period in excess of the maximum work time allowed under the requirement; and

(b) the driver is impaired by fatigue or there is a risk the driver may be impaired by fatigue having regard to the nature of the contravention and how recently it happened.

(2) If the authorised officer reasonably believes the contravention is a critical risk breach or severe risk breach, the authorised officer must, by notice, require the driver—

(a) to immediately rest for a stated period in accordance with a minimum rest requirement applying to the driver; and

(b) to work for a stated shorter period when the driver next works to compensate for the excess period worked.

(3) If the authorised officer reasonably believes the contravention is a substantial risk breach or minor risk breach, the authorised officer may, by notice, require the driver—

(a) to immediately rest for a stated period in accordance with a minimum rest requirement applying to the driver; and

(b) to work for a stated shorter period when the driver next works to compensate for the excess period worked.

487 Requiring driver to rest for contravention of minimum rest requirement

(1) This section applies if an authorised officer reasonably believes—

(a) the driver of a fatigue-regulated heavy vehicle has contravened a minimum rest requirement by resting for a period shorter than the minimum rest time required under the requirement; and

(b) the driver is impaired by fatigue or there is a risk the driver may be impaired by fatigue having regard to the nature of the contravention and how recently it happened.

(2) If the authorised officer reasonably believes the contravention is a critical risk breach or severe risk breach, the authorised officer must, by notice, require the driver—

(a) to immediately rest for a stated period to compensate for the shortfall between the period of rest the driver had and the minimum rest time required under the minimum rest requirement; and

(b) if the driver has failed to have 1 or more night rest breaks required under a minimum rest requirement—to have 1 or more night rest breaks to compensate for the shortfall between the number of night rest breaks the driver had and the number of night rest breaks required under the minimum rest requirement.

(3) If the authorised officer reasonably believes the contravention is a substantial risk breach or minor risk breach, the authorised officer may, by notice, require the driver—

(a) to immediately rest for a stated period to compensate for the shortfall between the period of rest the driver had and the minimum rest time required under the minimum rest requirement; or

(b) to rest for an additional stated period, at the next rest break the driver is required to have under a maximum work requirement or minimum rest requirement, to compensate for the shortfall between the period of rest the driver had and the minimum rest time required under the minimum rest requirement; or

(c) if the driver has failed to have 1 or more night rest breaks required under a minimum rest requirement—to have 1 or more night rest breaks to compensate for the shortfall between the number of night rest breaks the driver had and the number of night rest breaks required under the minimum rest requirement.

488 Requiring driver to stop working if impaired by fatigue

(1) This section applies if an authorised officer reasonably believes the driver of a fatigue-regulated heavy vehicle is impaired by fatigue.

(2) The authorised officer may, by notice—

(a) require the driver to immediately stop work and not work again for a stated period; and

(b) if the officer has observed the driver driving in a way the officer considers on reasonable grounds to be dangerous, require the driver to also immediately stop being in control of the fatigue-regulated heavy vehicle.

(3) A stated period under subsection (2)(a) must be a reasonable period having regard to the following—

(a) the periods of rest the driver was required to have under minimum rest requirements applying to the driver during the 24 hours leading up to the notice being given;

(b) the periods of rest the authorised officer reasonably believes the driver has taken during the 24 hours leading up to the notice being given;

(c) the periods the driver was allowed to work under maximum work requirements applying to the driver during the 24 hours leading up to the notice being given;

(d) the periods the authorised officer reasonably believes the driver has worked during the 24 hours leading up to the notice being given;

(e) the degree to which the driver appears to be fatigued to the authorised officer;

(f) any other relevant matters.

(4) If the authorised officer gives a notice under subsection (2)(b), the authorised officer may authorise a person to move the fatigue-regulated heavy vehicle to a suitable rest place for fatigue-regulated heavy vehicles but only if the person is qualified and fit to drive the vehicle.

(5) The national regulations may prescribe the matters to which the authorised officer, or a court, must or may have regard when deciding whether or not a person was impaired by fatigue for this section.

489 Requiring driver to stop working if work diary not produced or unreliable

(1) This section applies if—

(a) an authorised officer has, under section 512, asked the driver of a fatigue-regulated heavy vehicle to produce a work diary the driver is required to keep under this Law; and

(b) either—

(i) the driver has failed to produce the diary without a reasonable excuse; or

(ii) the driver produces a document that the authorised officer reasonably believes is not the work diary the driver is required to keep under this Law; or

(iii) the authorised officer reasonably believes the work diary, or purported work diary, produced by the driver can not be relied on as an accurate record of the time the driver recently spent working or resting.

Examples for subparagraph (iii)—

- Information in the work diary appears to be incorrect.
- Particular information appears to be missing from the work diary.
- The work diary appears to have been tampered with.

(2) The authorised officer may, by notice, require the driver to immediately stop work and to not work again for a stated period of up to 24 hours.

490 Compliance with requirement under this Division

(1) A person given a notice under this Division must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(2) An authorised officer who gives a person a notice under section 486, 487 or 489 may, by stating it in the notice, allow the person to delay complying with the notice for a period of up to 1 hour if the authorised officer reasonably believes—

(a) the delay is necessary to allow the person time to drive the relevant fatigue-regulated heavy vehicle to the nearest suitable rest place for fatigue-regulated heavy vehicles and it is reasonably safe to allow the person to continue driving the vehicle to that place; or

(b) the delay is necessary to allow the person time to attend to, or to secure, the load on the relevant fatigue-regulated heavy vehicle before resting.

Part 9.4 Other powers

Division 1 Powers relating to equipment

491 Power to use equipment to access information

(1) This section applies if—

(a) a thing found at a place, or in a vehicle, entered by an authorised officer under this Chapter is, or includes, a disc, tape or other device used for storing information (the ***storage device***); and

(b) equipment at the place, or in the vehicle, may be used with the storage device to access information on the storage device; and

(c) the authorised officer reasonably believes information stored on the storage device may be relevant for deciding whether this Law is being complied with.

(2) The authorised officer, or a person helping the officer, may operate the equipment to access the information.

(3) A person may operate equipment under subsection (2) only if the person reasonably believes the operation can be carried out without damaging the equipment.

Note—

See section 496 for action an authorised officer may take if the officer, or a person helping the officer, finds a disc, tape or other device containing information the officer reasonably believes is relevant for deciding whether this Law has been contravened.

(4) In this section—

equipment, at a place or in a vehicle, includes equipment taken into the place or vehicle by the authorised officer.

492 Power to use equipment to examine or process a thing

(1) An authorised officer, or a person helping an authorised officer, may operate equipment at a place, or in a vehicle, entered under this Chapter to examine or process a thing found at the place, or in the vehicle, in order to decide whether it is a thing that may be seized under this Chapter.

(2) Also, for a heavy vehicle entered under section 470, an authorised officer, or a person helping the authorised officer, may, for deciding whether a thing may be seized under section 495—

(a) operate equipment in the vehicle to examine or process the thing; or

(b) move the thing to another place if it is not practicable to examine or process the thing where it is found, or the vehicle's driver consents in writing, and operate equipment at that place to examine or process the thing.

(3) However, subsections (1) and (2) only apply if the authorised officer or person reasonably believes—

(a) the equipment is suitable for exercising the power; and

(b) the power can be exercised without damaging the equipment or thing.

(4) In this section—

equipment, at a place or in a vehicle, includes equipment taken into the place or vehicle by the authorised officer.

Division 2 Seizure and embargo notices

Subdivision 1 Power to seize

493 Seizing evidence at a place that may be entered without consent or warrant

An authorised officer who enters a place the officer may enter under this Chapter without the consent of its occupier and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Law.

494 Seizing evidence at a place that may be entered only with consent or warrant

(1) This section applies if—

(a) an authorised officer is authorised to enter a place only with the consent of an occupier at the place or a warrant; and

(b) the authorised officer enters the place after obtaining the necessary consent or under a warrant.

(2) If the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place if—

(a) the officer reasonably believes the thing is evidence of an offence against this Law; and

(b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.

(3) If the authorised officer enters the place under a warrant, the officer may seize the evidence for which the warrant was issued.

(4) The authorised officer may also seize anything else at the place if the officer reasonably believes—

(a) the thing is evidence of an offence against this Law; and

(b) the seizure is necessary to prevent the thing being—

(i) hidden, lost or destroyed; or

(ii) used to continue, or repeat, the offence.

(5) The authorised officer may also seize a thing at the place if the officer reasonably believes it has just been used in committing an offence against this Law.

495 Seizing evidence in a heavy vehicle entered under s 470

An authorised officer who enters a heavy vehicle under section 470 may seize a thing in the heavy vehicle if the officer reasonably believes the thing is evidence of an offence against this Law.

496 Additional seizure power relating to information stored electronically

(1) This section applies if, under this Chapter, an authorised officer, or a person helping an authorised officer—

(a) enters a place or heavy vehicle; and

(b) finds a disc, tape or other device used for storing information (the ***original information storage device***) containing information the authorised officer reasonably believes is relevant for deciding whether this Law has been contravened.

(2) The authorised officer or person may—

(a) put the information in documentary form and seize the document; or

(b) copy the information from the original information storage device to another information storage device and seize the other information storage device; or

(c) seize the original information storage device and any equipment at the place or in the vehicle necessary for accessing the information contained in the device if—

(i) it is not practicable to take action, at the place or in the vehicle, under paragraph (a) or (b) in relation to the information; and

(ii) the officer or person reasonably believes the device and equipment can be seized without being damaged.

497 Seizing thing or sample taken for examination under s 449

An authorised officer who takes a thing or sample for examination under section 449(1)(c) may, after examining it, seize the thing or sample if—

(a) the officer reasonably believes the thing or sample is evidence of an offence against this Law; and

(b) had the officer had the reasonable belief when the thing or sample was taken, the officer could have seized the thing or the thing from which the sample was taken under section 493 to 496.

498 Seizure of property subject to security

(1) An authorised officer may seize a thing under this Chapter, and exercise powers relating to the thing, despite a lien or other security over it claimed by another person.

(2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person helping the officer.

Subdivision 2 Powers to support seizure

499 Requirement of person in control of thing to be seized

(1) To enable a thing to be seized under this Chapter, an authorised officer may require the person in control of it—

(a) to take it to a stated reasonable place by a stated reasonable time; and

(b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

(2) The requirement—

(a) must be made by notice; or

(b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.

(3) A person of whom a requirement is made under this section must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—$6000.

Subdivision 3 Safeguards for seized things or samples

500 Receipt for seized thing or sample

(1) This section applies if an authorised officer seizes a thing or sample under this Chapter unless—

(a) it is impracticable or unreasonable for the officer to account for the thing or sample given its condition, nature and value; or

(b) for a thing seized other than under section 497—the officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

(2) The authorised officer must, as soon as practicable after the thing or sample is seized, give the relevant person for the thing or sample a receipt that generally describes the thing or sample and its condition.

(3) However, for a thing seized other than under section 497, if a relevant person for the thing is not present when the thing is seized, the receipt may be given by leaving it in a conspicuous position and in a reasonably secure way at the place at which the thing was seized.

(4) The receipt may relate to more than 1 seized thing.

(5) An authorised officer may delay giving a receipt under this section for a thing seized other than under section 497 if the officer reasonably suspects doing so may frustrate or otherwise hinder an investigation by the officer under this Law.

(6) However, the delay under subsection (5) may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

(7) In this section—

relevant person means—

(a) for a thing or sample seized under section 497—

(i) an owner of the thing or sample; or

(ii) a person in possession of the thing, or the thing from which the sample was taken, before the thing or sample was taken for examination under section 449(1)(c); or

(b) for a thing seized under this Chapter other than under section 497—

(i) an owner of the thing; or

(ii) a person in possession of the thing before it was seized.

501 Access to seized thing

(1) Until a thing seized under this Chapter is forfeited or returned, the authorised officer who seized the thing must allow any owner of the thing—

(a) to inspect it at any reasonable time and from time to time; and

(b) if it is a document—to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

(3) The inspection or copying must be allowed free of charge.

502 Return of seized things or samples

(1) This section applies if—

(a) an authorised officer has seized a thing or sample under this Chapter; and

(b) the thing or sample is not forfeited under Division 3.

(2) The authorised officer must return the thing or sample to its owner—

(a) generally—at the end of 2 years after the seizure; or

(b) if a proceeding for an offence involving the thing or sample is started within 2 years after the seizure—at the end of the proceeding and any appeal from the proceeding.

(3) Despite subsection (2), if the thing or sample was seized as evidence of an offence against this Law, the authorised officer must return the thing or sample to its owner as soon as practicable if the officer is satisfied—

(a) its continued retention as evidence is no longer required; and

(b) its continued retention is not necessary to prevent the thing or sample being used to continue, or repeat, the offence; and

(c) it is lawful for the person to possess the thing or sample.

(4) Nothing in this section affects a lien or other security over a thing.

Subdivision 4 Embargo notices

503 Power to issue embargo notice

(1) This section applies if—

(a) an authorised officer may seize a thing under this Chapter; and

(b) the thing can not, or can not readily, be physically seized and removed.

(2) The authorised officer may issue a notice (an ***embargo notice***) under this section prohibiting any dealing with the thing or any part of it without the written consent of the Regulator or an authorised officer.

(3) The embargo notice—

(a) must be in the approved form; and

(b) must list the activities it prohibits; and

(c) must include a copy of section 504.

(4) The authorised officer may issue the embargo notice—

(a) by causing a copy of it to be served on the relevant entity; or

(b) if a relevant entity can not be located after all reasonable steps have been taken to do so, by fixing a copy of the notice on the thing the subject of the notice in a conspicuous position and in a reasonably secure way.

(5) In this section—

dealing, with a thing or part of a thing, includes—

(a) moving, selling, leasing or transferring the thing or part; and

(b) changing information on, or deleting information from, the thing or part.

relevant entity, for an embargo notice, means—

(a) the driver of the heavy vehicle to which the thing the subject of the notice relates; or

(b) the occupier of the place in which the thing the subject of the notice is located.

504 Noncompliance with embargo notice

(1) A person (the ***relevant person***) who knows an embargo notice relates to a thing must not—

(a) do anything the notice prohibits; or

(b) instruct someone else (the ***other person***) to do anything the notice prohibits—

(i) anyone from doing; or

(ii) the relevant person or other person from doing.

Maximum penalty—$8000.

(2) In a proceeding for an offence against subsection (1) to the extent it relates to a charge that the person charged with the offence (***defendant***) moved an embargoed thing, or a part of an embargoed thing, it is a defence for the defendant to prove that he or she—

(a) moved the embargoed thing, or part, to protect or preserve it; or

(b) notified the authorised officer who issued the embargo notice of the move and new location of the embargoed thing, or part, within 48 hours after the move.

(3) A person served with an embargo notice must take all reasonable steps to stop any other person from doing anything prohibited by the notice.

Maximum penalty—$8000.

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

505 Power to secure embargoed thing

(1) An authorised officer may take reasonable action to restrict access to an embargoed thing.

(2) For subsection (1), the authorised officer may, for example—

(a) seal the embargoed thing, or the entrance to the place where the embargoed thing is located, and mark the thing or place to show access to the thing or place is restricted; or

(b) for equipment—make it inoperable; or

Example—

dismantling equipment or removing a component of equipment without which the equipment can not be used

(c) require a person the authorised officer reasonably believes is in control of the embargoed thing, or the place where the embargoed thing is located, to do an act mentioned in paragraph (a) or (b) or anything else an authorised officer could do under subsection (1).

(3) A person of whom a requirement is made under subsection (2)(c) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$8000.

(4) If access to an embargoed thing is restricted under this section, a person must not tamper with the thing or with anything used to restrict access to the thing without—

(a) an authorised officer's approval; or

(b) a reasonable excuse.

Maximum penalty—$8000.

(5) If access to a place is restricted under this section, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

(a) an authorised officer's approval; or

(b) a reasonable excuse.

Maximum penalty—$8000.

(6) The restricted access to an embargoed thing, or a place where an embargoed thing is located, under this section applies only for the period the thing is an embargoed thing.

506 Withdrawal of embargo notice

(1) This section applies if—

(a) an authorised officer has issued an embargo notice for a thing; and

(b) the thing has not been forfeited under Division 3.

(2) The authorised officer must withdraw the embargo notice—

(a) generally—at the end of 3 months after it is issued; or

(b) if a Magistrates Court has made an order under subsection (5) extending the time for withdrawing the notice—at the end of the extended time; or

(c) if a proceeding for an offence involving the thing is started before the notice must be withdrawn under paragraph (a) or (b)—at the end of the proceeding and any appeal from the proceeding.

(3) Despite subsection (2), if the embargo notice is issued on the basis that the thing may provide evidence of an offence against this Law, the authorised officer must as soon as practicable withdraw the notice if the officer is satisfied—

(a) the thing is no longer required as evidence of an offence against this Law; and

(b) it is not necessary for the notice to continue to prevent the thing being used to continue, or repeat, the offence.

(4) An authorised officer may apply to a Magistrates Court within 3 months after the embargo notice is issued for an extension of the time by which the notice must be withdrawn under this section.

(5) The Magistrates Court may order the extension if it is satisfied the continued operation of the embargo notice is necessary for investigation purposes.

Division 3 Forfeiture and transfers

507 Power to forfeit particular things or samples

(1) If, under this Chapter, a thing or sample is taken for examination by an authorised officer or a person authorised by an authorised officer, or a thing is seized by an authorised officer, the Regulator may decide it is forfeited to the Regulator if an authorised officer—

(a) after making reasonable inquiries, can not find its owner; or

(b) after making reasonable efforts, can not return it to its owner.

(2) However, the authorised officer is not required to—

(a) make inquiries if it would be unreasonable to make inquiries to find the owner; or

(b) make efforts if it would be unreasonable to make efforts to return the thing or sample to its owner.

Example for paragraph (b)—

the owner of the thing or sample has migrated to another country

(3) Regard must be had to the thing's or sample's condition, nature and value in deciding—

(a) whether it is reasonable to make inquiries or efforts; and

(b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

508 Information notice for forfeiture decision

(1) If the Regulator decides under section 507(1) to forfeit a thing or sample, the Regulator must as soon as practicable give the person who was the owner of the thing or sample immediately before the forfeiture (the ***former owner***) an information notice for the decision.

(2) The information notice may be given by leaving it in a conspicuous position and in a reasonably secure way at—

(a) for a thing or sample taken for examination, whether or not it is seized under section 497—the place where the thing or sample was taken; or

(b) for thing seized under this Chapter other than under section 497—the place where the thing was seized.

(3) However, this section does not apply if the place mentioned in subsection (2)(a) or (b) for the thing or sample is—

(a) a public place; or

(b) a place where the notice is unlikely to be read by the former owner.

509 Forfeited or transferred thing or sample becomes property of the Regulator

A thing or sample becomes the property of the Regulator if—

(a) the thing or sample is forfeited to the Regulator under section 507(1); or

(b) the owner of the thing or sample and the Regulator agree, in writing, to the transfer of the ownership of the thing or sample to the Regulator.

510 How property may be dealt with

(1) This section applies if, under section 509, a thing or sample becomes the property of the Regulator.

(2) The Regulator may deal with the thing or sample as the Regulator considers appropriate, including, for example, by destroying it or giving it away.

(3) The Regulator must not deal with the thing or sample in a way that could prejudice the outcome of a review of the decision to forfeit the thing or sample, or an appeal against the decision on that review, under this Law.

(4) If the Regulator sells the thing or sample, the Regulator may, after deducting the costs of the sale, return the proceeds of the sale to the person who was the owner of the thing or sample immediately before the forfeiture.

Division 4 Information-gathering powers

511 Power to require name and address

(1) This section applies if an authorised officer—

(a) finds a person committing an offence against this Law; or

(b) finds a person in circumstances that lead the officer to reasonably suspect the person has just committed an offence against this Law; or

(c) has information that leads the officer to reasonably suspect a person has just committed an offence against this Law; or

(d) reasonably suspects a person is or was the driver of a heavy vehicle that has been or may have been involved in an incident involving the death of, or injury to, a person or damage to property; or

(e) reasonably suspects a person—

(i) is or may be a responsible person for a heavy vehicle; and

(ii) is or may be able to help in the investigation of an offence against this Law involving the heavy vehicle.

(2) The authorised officer may require the person to state the person's name and address.

(3) The authorised officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—

(a) be in possession of evidence of the correctness of the stated name or address; or

(b) otherwise be able to give the evidence.

(4) When making a requirement under subsection (2) or (3), the authorised officer must give the person an offence warning for the requirement.

(5) A person of whom a requirement is made under subsection (2) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$6000.

(6) If a requirement of a person is made under subsection (2) or (3) because of circumstances mentioned in subsection (1)(a), (b) or (c), a court can not convict the person of an offence against subsection (5) for the requirement unless the person is found guilty of the offence in relation to which the requirement was made.

(7) Also, in a proceeding for an offence of contravening a requirement made under subsection (2) to state a business address, it is a defence for the person charged to prove that—

(a) the person did not have a business address; or

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

(8) In this section—

address, of a person, includes the person's residential and business address and, for a person temporarily in this jurisdiction, includes the place where the person is living in this jurisdiction.

512 Power to require production of document etc. required to be in driver's possession

(1) This section applies if a heavy vehicle—

(a) is stationary on a road; or

(b) is in or at a place entered by an authorised officer under Part 9.2; or

(c) has been stopped under section 461.

(2) An authorised officer may, for compliance purposes, require the driver of the heavy vehicle to produce, for inspection by the officer—

(a) his or her driver licence; or

(b) a document, device or other thing the driver is required under this Law to keep in the driver's possession while driving the vehicle.

Examples for paragraph (b)—

a copy of a Commonwealth Gazette notice or permit, a work diary

(3) A person of whom a requirement is made under subsection (2) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$4500.

(4) It is not a reasonable excuse for the person to fail to comply with a requirement made under subsection (2)—

(a) that the person does not have the driver licence, document, device or other thing in his or her immediate possession; or

(b) that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.

(5) The authorised officer may—

(a) take a copy of, or an extract from, a document mentioned in subsection (2)(b); or

(b) produce an image or writing from a document mentioned in subsection (2)(b) that is an electronic document; or

(c) take an extract from a device or other thing mentioned in subsection (2)(b), including, for example—

(i) by taking a copy of, or an extract from, a readout or other data obtained from the device or other thing; or

(ii) by accessing and downloading information from the device or other thing; or

(d) seize a document, device or other thing mentioned in subsection (2)(b) if the authorised officer reasonably believes the document, device or other thing may provide evidence of an offence against this Law.

(6) If, under subsection (5), the authorised officer copies, takes an extract from, or produces an image or writing from, a document or an entry in a document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(7) A person of whom a requirement is made under subsection (6) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$4500.

(8) If a document, device or other thing is produced to an authorised officer under this section and it is not seized under subsection (5)(d), the officer must return it to the person who produced it—

(a) as soon as practicable after the officer inspects it; or

(b) if the officer takes a copy of, extract from, or produces an image or writing from, it under subsection (5)(a), (b) or (c), as soon as practicable after the copy or extract is taken or the image or writing is produced.

(9) However, if a requirement is made of the person under subsection (6) for a document, the authorised officer may keep the document until the person complies with the requirement.

513 Power to require production of documents etc. generally

(1) An authorised officer may require a responsible person for a heavy vehicle to make available for inspection by an authorised officer, or to produce to an authorised officer for inspection, at a reasonable time and place nominated by the officer—

(a) a document issued to the person under this Law; or

(b) a document, device or other thing required to be kept by the person under this Law or a heavy vehicle accreditation; or

(c) transport documentation in the person's possession or under the person's control; or

(d) a document in the person's possession or under the person's control relating to—

(i) the use, performance or condition of a heavy vehicle; or

(ii) the ownership, insurance, licensing or registration of a heavy vehicle; or

(iii) the load or equipment carried or intended to be carried by a heavy vehicle, including, for example, a document relating to insurance of the load or equipment; or

(e) a document in the person's possession or under the person's control showing that a heavy vehicle's garage address recorded in the vehicle register is the vehicle's actual garage address.

(2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$4500.

(3) Compliance with a requirement made under subsection (1) for an electronic document requires the making available or production of a clear written reproduction of the electronic document.

(4) It is not a reasonable excuse for the person to fail to comply with a requirement made under subsection (1) that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.

Note—

See, however, section 531 for the limitation on the use of particular documents or information in civil or criminal proceedings.

(5) The authorised officer may—

(a) take a copy of, or an extract from, a document mentioned in subsection (1); or

(b) produce an image or writing from a document mentioned in subsection (2) that is an electronic document; or

(c) take an extract from a device or other thing mentioned in subsection (1)(b), including, for example—

(i) by taking a copy of, or an extract from, a readout or other data obtained from the device or other thing; or

(ii) by accessing and downloading information from the device or other thing; or

(d) seize a document, device or other thing mentioned in subsection (1) if the authorised officer reasonably believes the document, device or other thing may provide evidence of an offence against this Law.

(6) If, under subsection (5), the authorised officer copies, takes an extract from, or produces an image or writing from, a document or an entry in a document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(7) A person of whom a requirement is made under subsection (6) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$4500.

(8) If a document, device or other thing is produced to an authorised officer under this section and it is not seized under subsection (5)(d), the officer must return it to the person who produced it—

(a) as soon as practicable after the officer inspects it; or

(b) if the officer takes a copy of, extract from, or produces an image or writing from, it under subsection (5)(a), (b) or (c), as soon as practicable after the copy or extract is taken or the image or writing is produced.

(9) However, if a requirement is made of the person under subsection (6) for a document, the authorised officer may keep the document until the person complies with the requirement.

514 Power to require information about heavy vehicles

(1) An authorised officer may, for compliance purposes, require a responsible person for a heavy vehicle to give the officer—

(a) information about the vehicle or any load or equipment carried or intended to be carried by the vehicle; or

(b) personal details known to the responsible person about any other responsible person for the vehicle.

(2) Without limiting subsection (1), a responsible person who is associated with a particular vehicle may be required to provide information about the current or intended journey of the vehicle, including, for example, the following—

(a) the location of the start or intended start of the journey;

(b) the route or intended route of the journey;

(c) the location of the destination or intended destination of the journey.

(3) When making a requirement under subsection (1) of a responsible person, an authorised officer must give the person an offence warning for the requirement.

(4) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$4500.

(5) Without limiting what may be a reasonable excuse for subsection (4), in a proceeding for an offence of contravening a requirement under subsection (1), it is a defence for the person charged to prove that the person did not know, and could not be reasonably expected to know or ascertain, the required information.

(6) It is not a reasonable excuse for a person to fail to comply with a requirement made under subsection (1) that complying with the requirement might tend to incriminate the person or make the individual liable to a penalty.

Note—

See, however, section 531 for the limitation on the use of particular documents or information in civil or criminal proceedings.

(7) In this section—

information includes electronically stored information.

personal details, about a responsible person, means—

(a) the person's name; or

(b) the person's residential address or business address.

responsible person, for a heavy vehicle, for the exercise of a power under this section in relation to a speeding offence, does not include—

(a) a person mentioned in section 5, definition *responsible person*, paragraph (i), (j), (k) or (n); or

Note—

Those paragraphs deal with persons who pack, load or unload goods or containers, and owners and operators etc. of weighbridges or weighbridge facilities.

(b) an employer, employee, agent or subcontractor of that person.

speeding offence means an offence committed by the driver of a heavy vehicle because the driver exceeded a speed limit applying to the driver.

Division 5 Improvement notices

515 Authorised officers to whom Division applies

(1) This Division applies to an authorised officer who is a police officer only if the police officer has the relevant police commissioner's written authority to issue improvement notices under this Division.

(2) This Division applies to an authorised officer who is not a police officer only if the officer's instrument of appointment provides that the authorised officer may issue improvement notices under this Division.

516 Improvement notices

(1) This section applies if an authorised officer reasonably believes a person has contravened, is contravening or is likely to contravene a provision of this Law.

(2) The authorised officer may give the person a notice (an ***improvement notice***) requiring the person to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention, within the period stated in the notice.

(3) The period stated in the improvement notice within which the person is required to comply with the notice must be at least 7 days after the notice is given unless the authorised officer is satisfied it is reasonable to require the person to comply with the notice in a shorter period because—

(a) it is reasonably practicable for the person to comply with the notice within the shorter period; and

(b) requiring the person to comply with the notice within the shorter period is not likely to involve—

(i) a higher cost to the person to comply with the notice; or

(ii) a more adverse effect on the person's business operations.

(4) The improvement notice must be in the approved form and state the following—

(a) that the authorised officer reasonably believes the person has contravened, is contravening or is likely to contravene a provision of this Law;

(b) the reasons for that belief;

(c) the provision of this Law in relation to which that belief is held;

(d) that the person must remedy the contravention or likely contravention, or the matters or activities occasioning

the contravention or likely contravention, within a stated period;

(e) the review and appeal information for the decision to give the notice;

(f) that the notice is given under this section.

(5) The improvement notice may state the way the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, are to be remedied.

517 Contravention of improvement notice

(1) A person given an improvement notice must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—$8000.

(2) In a proceeding for an offence against subsection (1), it is a defence for the person charged to prove that the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, were remedied within the period stated in the improvement notice, though in a way different to that stated in the notice.

(3) A person who is given an improvement notice in relation to a contravention of a provision of this Law can not be proceeded against for an offence constituted by the contravention unless—

(a) the person fails to comply with the improvement notice and does not have a reasonable excuse for the noncompliance; or

(b) the improvement notice is revoked under section 519.

518 Amendment of improvement notice

(1) An improvement notice given by an authorised officer who is a police officer may be amended by any authorised officer

who is a police officer and who has the relevant police commissioner's written authority to issue improvement notices under this Division.

(2) An improvement notice given by an authorised officer who is not a police officer may be amended by any authorised officer who is not a police officer.

(3) An amendment of an improvement notice given to a person is ineffective to the extent it purports to deal with a contravention of a different provision of this Law to that dealt with in the improvement notice when first given.

(4) If an authorised officer decides to amend an improvement notice given to a person, the officer must give the person notice of the amendment stating the following—

(a) the amendment;

(b) the reasons for the amendment;

(c) the review and appeal information for the decision to amend the improvement notice.

Note—

Section 23 of Schedule 1 allows for the amendment of an improvement notice.

519 Revocation of an improvement notice

(1) An improvement notice given to a person by an authorised officer who is a police officer may be revoked, by giving notice of the revocation to the person, by—

(a) the relevant police commissioner; or

(b) an authorised officer who—

(i) is a police officer; and

(ii) has the relevant police commissioner's written authority to issue improvement notices under this Division; and

(iii) is more senior in rank to the police officer who gave the notice to the person.

(2) An improvement notice given to a person by an authorised officer who is not a police officer may be revoked by the Regulator by giving notice of the revocation to the person.

(3) Section 23 of Schedule 1 does not apply in relation to the repeal of the improvement notice.

520 Clearance certificate

(1) An approved authorised officer may issue a certificate (a ***clearance certificate***) stating that all or stated requirements of an improvement notice have been complied with.

(2) If a person to whom an improvement notice is given receives a clearance certificate about the improvement notice, each requirement of the improvement notice that the certificate states has been complied with stops being operative.

(3) In this section—

approved authorised officer means—

(a) for an improvement notice given by an authorised officer who is a police officer—any authorised officer who is a police officer and who has the relevant police commissioner's written authority to issue improvement notices under this Division; or

(b) for an improvement notice given by an authorised officer who is not a police officer—any authorised officer who is not a police officer.

Division 6 Power to require reasonable help

521 Power to require reasonable help

(1) An authorised officer who enters a place under this Chapter may require an occupier of the place or a person at the place to

give the officer reasonable help to exercise a power under this Chapter.

(2) An authorised officer who is exercising a power under this Chapter in relation to a heavy vehicle on a road may require the vehicle's driver to give the officer reasonable help to exercise the power.

(3) Without limiting subsection (1) or (2), a requirement under the subsection may be that the occupier, person or driver—

(a) produce a document or give information to the authorised officer; or

Example—

The authorised officer wishes to obtain information relating to the purpose of the entry. Information of that type is stored or recorded on a computer at the place. The authorised officer may require the occupier to give reasonable help to produce a reproduction of the information from the computer.

(b) help the authorised officer to find and gain access to a document or information, including electronically stored information; or

Examples of documents or information—

- a document about the heavy vehicle's performance, specifications (including the dimensions and other physical attributes of the vehicle or its fittings), functional capabilities (including the vehicle's GVM, GCM and speed capabilities) or authorised operations required to be kept in the vehicle under this Law or a heavy vehicle accreditation
- a weighing document for a container loaded on to the heavy vehicle
- a telephone record

(c) help the authorised officer to weigh or measure—

(i) a heavy vehicle or a component of a heavy vehicle; or

(ii) the whole or part of a heavy vehicle's load or equipment; or

(d) help the authorised officer to start or stop the engine of a heavy vehicle under section 471.

(4) When making a requirement under subsection (1) or (2) of a person, the authorised officer must give the person an offence warning for the requirement.

(5) A person of whom a requirement is made under subsection (1) or (2) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—$9000.

(6) It is a reasonable excuse for an individual not to comply with a requirement made under subsection (1) or (2) if doing so—

(a) would require the individual to take action that is outside the scope of the business or other activities of the individual; or

(b) might tend to incriminate the individual or make the individual liable to a penalty.

(7) However, subsection (6)(b) does not apply if a document or information the subject of the requirement is required to be held or kept by the individual under this Law.

Note—

See, however, section 531 for the limitation on the use of particular documents or information in civil or criminal proceedings.

(8) If a requirement made under subsection (1) or (2) is that the occupier of, or person at, a place start or stop the engine of a heavy vehicle—

(a) it is immaterial that the occupier or person is not—

(i) the operator of the vehicle; or

(ii) authorised by the operator to drive the vehicle or start or stop its engine; or

(iii) qualified to drive the vehicle or start or stop its engine; and

(b) in starting or stopping the engine of the vehicle in compliance with the requirement, the occupier or person is exempt from a provision of an Australian road law to the extent the provision would require the occupier or person to be qualified to start or stop the engine.

Part 9.5 Provisions about exercise of powers

Division 1 Damage in exercising powers

522 Duty to minimise inconvenience or damage

(1) In exercising a power under this Law, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

(2) Subsection (1) does not provide for a statutory right of compensation other than as provided under Division 2.

Note—

Division 2 provides for compensation for costs, damage or loss incurred because of the exercise of a power by an authorised officer under this Chapter.

523 Restoring damaged thing

(1) This section applies if—

(a) an authorised officer damages something when exercising, or purporting to exercise, a power under this Law; or

(b) a person (the ***assistant***) acting under the direction or authority of an authorised officer damages something.

(2) The authorised officer must take all reasonable steps to restore the thing to the condition it was in immediately before the officer exercised the power, or the assistant took action under the officer's direction or authority.

524 Notice of damage

(1) This section applies if—

(a) an authorised officer damages something when exercising, or purporting to exercise, a power under this Law; or

(b) a person (the ***assistant***) acting under the direction or authority of an authorised officer damages something.

(2) However, this section does not apply to damage if the authorised officer reasonably believes—

(a) the thing has been restored to the condition it was in immediately before the officer exercised the power, or the assistant took action under the officer's direction or authority; or

(b) the damage is trivial; or

(c) there is no-one apparently in possession of the thing; or

(d) the thing has been abandoned.

(3) The authorised officer must give notice of the damage to the person who appears to the officer to be an owner, or person in control, of the thing.

(4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—

(a) leave the notice at the place where the damage happened; and

(b) ensure it is left in a conspicuous position and in a reasonably secure way.

(5) The notice must state—

(a) particulars of the damage; and

(b) that the person who suffered the damage may claim compensation under section 525.

(6) If the authorised officer believes the damage was caused by a latent defect in the thing or circumstances beyond the control of the officer or the assistant the officer may state the belief in the notice.

(7) The authorised officer may delay complying with subsection (3) or (4) if the officer reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the officer under this Law.

(8) The delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.

Division 2 Compensation

525 Compensation because of exercise of powers

(1) A person may claim compensation from the Regulator if the person incurs costs, damage or loss because of the exercise, or purported exercise, of a power by or for an authorised officer, including costs, damage or loss incurred because of compliance with a requirement made of the person under this Chapter.

(2) However, subsection (1) does not apply to costs, damage or loss incurred because of a lawful seizure or forfeiture.

(3) The compensation may be claimed and ordered in a proceeding—

(a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

(b) for an offence against this Law in relation to which the power was exercised or purportedly exercised.

(4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

(5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.

(6) The national regulations may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Division 3 Provision about exercise of particular powers

526 Duty to record particular information in driver's work diary

(1) This section applies if, under this Law, an authorised officer directs the driver of a fatigue-regulated heavy vehicle to stop the vehicle for compliance purposes.

(2) If, for the exercise or purported exercise of a power under this Law, the authorised officer detains the driver for 5 minutes or longer, the driver may ask the officer to record the following details in the driver's work diary—

(a) the officer's identifying details;

(b) the time, date and place at which the driver stopped the heavy vehicle in compliance with the officer's direction;

(c) the length of time the driver spent talking to the officer in the exercise or purported exercise of a power under this Law.

(3) The authorised officer must comply with the request.

(4) An authorised officer complies with subsection (2)(a) by recording either his or her name, or his or her identification number.

Part 9.6 Miscellaneous provisions

Division 1 Powers of Regulator

527 Regulator may exercise powers of authorised officers

(1) The Regulator may exercise a power that is conferred on authorised officers under this Law.

(2) Subsection (1) does not apply to a power that requires the physical presence of an authorised officer.

Division 2 Other offences relating to authorised officers

528 Obstructing authorised officer

(1) A person must not, unless the person has a reasonable excuse obstruct—

(a) an authorised officer, or someone helping an authorised officer, exercising a power under this Law; or

(b) an assistant mentioned in section 467, 468 or 471 exercising a power under that section.

Maximum penalty—$8000.

(2) If a person has obstructed an authorised officer, or a person helping an authorised officer, and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the officer considers the person's conduct an obstruction.

(3) If a person has obstructed an assistant mentioned in section 467, 468 or 471, and the assistant decides to proceed with the exercise of the power, the assistant must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the assistant considers the person's conduct an obstruction.

(4) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

529 Impersonating authorised officer

A person must not impersonate an authorised officer.

Maximum penalty—$10000.

Division 3 Other provisions

530 Multiple requirements

An authorised officer may—

(a) on the same occasion—

(i) give more than 1 direction to, or make more than 1 requirement of, a person under a provision of this Chapter; or

(ii) give a direction to, or make a requirement of, a person under a provision of this Chapter and give a direction to, or make a requirement of, the person under 1 or more other provisions of this Chapter; or

(b) give a direction to, or make a requirement of, a person under a provision and give a further direction to, or

make a further requirement of, the person under the same provision; or

(c) make a combination of directions or requirements under paragraph (a)(i) or (ii) or (b).

531 Evidential immunity for individuals complying with particular requirements

(1) Subsection (2) applies if—

(a) an individual gives an authorised officer a document or information in response to a requirement made by the officer under section 513(1)(c) to (e) or 514; or

(b) in response to a requirement made by an authorised officer under section 521, an individual gives the officer a document or information.

(2) Evidence of the document or information, and other evidence directly or indirectly derived from the document or information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

(3) Subsection (2) does not apply to a proceeding about the false or misleading nature of anything in the document or the information or in which the false or misleading nature of the document or information is relevant evidence.

Chapter 10 Sanctions and provisions about liability for offences

Part 10.1 Formal warnings

532 Formal warning

(1) This section applies if an authorised officer reasonably believes—

(a) a person has contravened this Law; and

(b) the person had taken reasonable steps to prevent the contravention and was unaware of the contravention; and

(c) the contravention may appropriately be dealt with by way of a warning under this section.

(2) The authorised officer may give the person a written warning.

(3) However, a warning must not be given for a contravention of a mass, dimension or loading requirement constituting a substantial risk breach or severe risk breach.

(4) Subject to subsection (6), if a warning is given to a person under this section for a contravention of this Law, the person can not be proceeded against for an offence against this Law constituted by the contravention.

(5) A warning given under this section may, within 21 days after it is given, be withdrawn by an approved authorised officer by giving the person to whom the warning was given notice of the withdrawal.

(6) After a warning given under this section is withdrawn under subsection (5), a proceeding may be taken against the person to whom the warning was given for the contravention for which the warning was given.

(7) In this section—

approved authorised officer means—

(a) for a warning given under this section by an authorised officer who is a police officer—an authorised officer who is a police officer and who has the relevant police commissioner's written authority to withdraw warnings given under this section; or

(b) for a warning given under this section by an authorised officer who is not a police officer—an authorised officer whose instrument of appointment provides that the authorised officer may withdraw warnings given under this section.

proceeding includes action by way of an infringement notice.

Part 10.2 Infringement penalties

533 Recording information about infringement penalties

(1) The Regulator may keep a record of—

(a) each infringement notice issued for the purposes of this Law; and

(b) the payment of a fine sought by an infringement notice by a person to whom the notice is issued for the purposes of this Law.

(2) Information in a record kept under subsection (1) may be used only—

(a) to accumulate aggregate data for research or education; or

(b) in a proceeding relating to the offence for which the infringement notice was issued, including, for example, an appeal against the conviction for the offence; or

(c) in a proceeding for an offence against this Law if the information is relevant to deciding whether the person

charged is, or is likely to become, a systematic or persistent offender of this Law for the purpose of issuing a supervisory intervention order or prohibition order.

Part 10.3 Court sanctions

Division 1 General provisions

534 Penalties court may impose

(1) A court that finds a person guilty of an offence against this Law may impose any 1 or more of the penalties provided for in this Part.

(2) Without limiting the court's discretion, when imposing 2 or more penalties under this Part, the court must take into account the combined effect of the penalties imposed.

(3) This Part does not limit the powers or discretion of the court under another law.

535 Matters court must consider when imposing sanction for noncompliance with mass, dimension or loading requirement

(1) The purpose of this section is to bring to a court's attention the implications and consequences of a contravention of a mass, dimension or loading requirement when deciding the kind and level of sanction to be imposed for the contravention.

(2) In deciding the sanction, including the level of a fine, to be imposed for the contravention, the court must consider the following matters—

(a) a minor risk breach of a mass, dimension or loading requirement involves either or both of the following—

(i) an appreciable risk of accelerated road wear;

(ii) an appreciable risk of unfair commercial advantage;

(b) a substantial risk breach of a mass, dimension or loading requirement involves 1 or more of the following—

(i) a substantial risk of accelerated road wear;

(ii) an appreciable risk of damage to road infrastructure;

(iii) an appreciable risk of increased traffic congestion;

(iv) an appreciable risk of diminished public amenity;

(v) a substantial risk of unfair commercial advantage;

(c) a severe risk breach of a mass, dimension or loading requirement involves 1 or more of the following—

(i) an appreciable risk of harm to public safety or the environment;

(ii) a serious risk of accelerated road wear;

(iii) a serious risk of damage to road infrastructure;

(iv) a serious risk of increased traffic congestion;

(v) a serious risk of diminished public amenity;

(vi) a serious risk of unfair commercial advantage.

(3) This section does not limit the matters the court may consider in deciding the sanction for the contravention.

(4) Nothing in this section authorises or requires the court to assign the contravention to a different risk category.

(5) Nothing in this section requires evidence to be adduced about a matter mentioned in subsection (2).

536 Court may treat noncompliance with mass, dimension or loading requirement as a different risk category

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

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

Division 2 Provisions about imposing fines

537 Body corporate fines under penalty provision

(1) This section applies to a provision of this Law that—

(a) prescribes a maximum fine for an offence; and

(b) does not expressly prescribe a maximum fine for a body corporate different to the maximum fine for an individual.

(2) The maximum fine is taken only to be the maximum fine for an individual.

(3) If a body corporate is found guilty of the offence, the court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.

538 Deciding whether offence is a first, second or subsequent offence

(1) This section applies in relation to an offence against a provision of this Law that provides different penalties for a first, second or subsequent offence against the provision.

(2) A person convicted of an offence against the provision is convicted of a second or subsequent offence against the provision if the act or omission leading to the conviction is different to the act or omission that led to a previous conviction of the person for an offence against the provision or a previous corresponding law.

(3) For subsection (2), the following are immaterial—

(a) the order in which the act or omission that led to the later conviction and the act or omission that led to the previous conviction were done or made;

(b) for an offence relating to a contravention of a mass, dimension or loading requirement, whether the contravention leading to the later conviction and the contravention leading to the previous conviction were of the same risk category or different risk categories.

(4) If the court convicts a person of an offence against the provision but is unable to decide whether the offence is a first offence, or a second or subsequent offence, against the provision for which the person has been convicted, the court may only impose a penalty for the offence as if it were the first offence.

Division 3 Commercial benefits penalty orders

539 Commercial benefits penalty order

(1) If a court convicts a person of an offence against this Law, the court may, on application by the prosecutor, make an order (a ***commercial benefits penalty order***) requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit—

(a) received or receivable, by the person or by an associate of the person, from the commission of the offence; and

(b) for a journey that was interrupted or not commenced because of action taken by an authorised officer in

connection with the commission of the offence—that would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.

(2) In estimating the gross commercial benefit, the court may take into account—

(a) benefits of any kind, whether or not monetary; and

(b) any other matters it considers relevant, including, for example—

(i) the value of any goods involved in the offence; and

(ii) the distance over which the goods were, or were to be, carried.

(3) However, in estimating the gross commercial benefit, the court must disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.

(4) Nothing in this section prevents the court from ordering payment of an amount that is less than the estimated gross commercial benefit.

Division 4 Cancelling or suspending registration

540 Power to cancel or suspend vehicle registration

(1) This section applies if a court convicts a person of—

(a) an offence against this Law relating to a contravention of a mass, dimension or loading requirement constituting a severe risk breach; or

(b) an offence against this Law other than an offence relating to a contravention of a mass, dimension or loading requirement.

(2) The court may make an order that the registration of a heavy vehicle in relation to which the offence was committed and of which the person is a registered operator is—

(a) cancelled; or

(b) suspended for a stated period.

(3) If the court makes an order under subsection (2) against a person, the court may also make an order that the person, or an associate of the person, is disqualified from applying for the registration of the heavy vehicle for a stated period.

(4) If the court considers that another person who is not present in court may be substantially affected by an order under subsection (2) or (3), the court may issue a summons to that person to show cause why the order should not be made.

Division 5 Supervisory intervention orders

541 Application of Div 5

This Division applies if a court—

(a) convicts a person (the ***convicted person***) of an offence against this Law; and

(b) considers the person to be, or likely to become, a systematic or persistent offender of this Law having regard to the circumstances of offences against this Law and previous corresponding laws for which the person has previously been convicted.

542 Court may make supervisory intervention order

(1) The court may, on application by the prosecutor or the Regulator, make an order (a ***supervisory intervention order***) requiring the convicted person, at the person's own expense and for a stated period of not more than 1 year, to do 1 or more of the following—

(a) stated things the court considers will improve the person's compliance with this Law, or stated aspects of this Law, including, for example—

(i) appointing staff to, or removing staff from, particular positions; or

(ii) training and supervising staff; or

(iii) obtaining expert advice about maintaining compliance with this Law, or stated aspects of this Law; or

(iv) installing equipment for monitoring or managing compliance with this Law, or stated aspects of this Law, including, for example, intelligent transport system equipment; or

(v) implementing practices, systems or procedures for monitoring or ensuring compliance with this Law, or stated aspects of this Law;

(b) implement stated practices, systems or procedures for monitoring or ensuring compliance with this Law, or stated aspects of this Law, subject to the direction of the Regulator or a person nominated by the Regulator;

(c) give compliance reports about the convicted person to the Regulator or the court (or both), in a stated way and for stated periods;

(d) appoint a person to have the following responsibilities—

(i) helping the convicted person to improve the convicted person's compliance with this Law or stated aspects of this Law;

(ii) monitoring the convicted person's compliance with this Law or stated aspects of this Law and with the order;

(iii) giving compliance reports about the convicted person to the Regulator or the court (or both), in a stated way and for stated periods.

(2) In this section—

compliance report, about a person in relation to whom a supervisory intervention order is made, means a report about the person's compliance with this Law, stated aspects of this Law, or the order, including, for example, a report containing stated information about—

(a) things done by the person to ensure compliance with this Law or stated aspects of this Law; and

(b) the effect of the things mentioned in paragraph (a).

543 Limitation on making supervisory intervention order

The court may make a supervisory intervention order only if the court is satisfied the order is capable of improving the convicted person's ability or willingness to comply with this Law having regard to—

(a) the offences against this Law or a previous corresponding law for which the person has previously been convicted; and

(b) any other offences for which the person has previously been convicted that the court considers relevant to the person's conduct in connection with road transport.

544 Supervisory intervention order may suspend other sanctions

(1) A supervisory intervention order may direct that any other penalty or sanction imposed for the offence to which it relates is suspended until the order ends unless the court decides there has been a substantial failure to comply with the order.

(2) For subsection (1), a court may decide that a failure to comply with a supervisory intervention order is a substantial failure if the failure causes, or creates a risk of, serious harm to public safety, the environment or road infrastructure.

545 Amendment or revocation of supervisory intervention order

A court that makes a supervisory intervention order may, on application by the Regulator or the person to whom the order applies, amend or revoke the order if the court is satisfied there has been a change in circumstances warranting the amendment or revocation.

546 Contravention of supervisory intervention order

A person to whom a supervisory intervention order applies must comply with the order, unless the person has a reasonable excuse.

Maximum penalty—$10000.

547 Effect of supervisory intervention order if prohibition order applies to same person

(1) This section applies if both a supervisory intervention order and a prohibition order is in force at the same time against the same person.

(2) The supervisory intervention order has no effect while the prohibition order has effect.

Division 6 Prohibition orders

548 Application of Div 6

This Division applies if a court—

(a) convicts a person (the ***convicted person***) of an offence against this Law; and

(b) considers the person to be, or likely to become, a systematic or persistent offender of this Law having regard to the circumstances of offences against this Law

and previous corresponding laws for which the person has previously been convicted.

549 Court may make prohibition order

(1) The court may, on application by the prosecutor or the Regulator, make an order (a ***prohibition order***) prohibiting the convicted person, for a stated period of not more than 1 year, from having a stated role or responsibility associated with road transport.

(2) However, the court can not make a prohibition order prohibiting the convicted person from driving a vehicle or having a vehicle registered or licensed under an Australian road law in the convicted person's name.

550 Limitation on making prohibition order

The court may make a prohibition order only if the court is satisfied the convicted person should not continue to have the role or responsibilities prohibited by the order, and that a supervisory intervention order is not appropriate, having regard to—

(a) the offences against this Law or a previous corresponding law for which the person has previously been convicted; and

(b) any other offences for which the person has previously been convicted that the court considers relevant to the person's conduct in connection with road transport.

551 Amendment or revocation of prohibition order

A court that makes a prohibition order may, on application by the Regulator or the person to whom the order applies, amend or revoke the order if the court is satisfied there has been a change in circumstances warranting the amendment or revocation.

552 Contravention of prohibition order

A person to whom a prohibition order applies must comply with the order, unless the person has a reasonable excuse.

Maximum penalty—$10000.

Division 7 Compensation orders

553 Court may make compensation order

(1) A court that convicts a person (the ***convicted person***) of an offence against this Law may make an order (a ***compensation order***) requiring the convicted person to pay the road manager for a road, by way of compensation, an amount the court considers appropriate for loss incurred, or likely to be incurred, by the road manager for damage caused to road infrastructure as a result of the offence.

(2) A compensation order may be made on the application of the prosecutor, the Regulator or the road manager.

(3) The court may make a compensation order in relation to damage the court considers, on the balance of probabilities, was caused or partly caused by the commission of the offence.

(4) The court may make a compensation order—

(a) when the court gives its sentence for the offence; or

(b) at a later time, but not after the end of the period within which a proceeding for the offence must start under this Law.

Note—

See section 647 for the period within which a proceeding for an offence against this Law must start.

554 Assessment of compensation

(1) In making a compensation order, the court may assess the amount of compensation required to be paid by the order in

the way it considers appropriate, including, for example, by reference to the estimated cost of remedying the damage.

(2) In assessing the amount of compensation, the court may have regard to—

(a) evidence adduced in connection with the prosecution of the offence; and

(b) any evidence not adduced in connection with the prosecution of the offence but adduced in connection with the making of the order; and

(c) if the road manager is a public authority—

(i) any certificate of the public authority stating that the authority is responsible for maintaining the road infrastructure in relation to which the order is sought; and

(ii) any other certificate of the public authority, including, for example, a certificate—

(A) estimating the monetary value of all or part of the road infrastructure in relation to which the order is sought; or

(B) estimating the monetary value of, or the cost of remedying, the damage to the road infrastructure in relation to which the order is sought; or

(C) estimating the extent to which the commission of the offence contributed to the damage to the road infrastructure in relation to which the order is sought; and

(d) any other matters the court considers relevant.

(3) A person who purportedly signs a certificate of a type mentioned in subsection (2)(c) on behalf of a public authority is presumed, unless the contrary is proved, to have been authorised by the public authority to sign the certificate on the public authority's behalf.

555 Use of certificates in assessing compensation

(1) If a public authority proposes to submit a certificate mentioned in section 554(2)(c) in a proceeding for the making of a compensation order, the public authority must give a copy of the certificate to the defendant at least 28 days before the day fixed for the hearing of the proceeding.

(2) A certificate of the public authority can not be used in a proceeding for the making of a compensation order unless the public authority has complied with subsection (1).

(3) A defendant who intends to challenge a matter stated in a certificate mentioned in section 554(2)(c) in a proceeding for the making of a compensation order must give the public authority notice of the intention to challenge the matter.

(4) The notice must be—

(a) signed by the defendant; and

(b) given at least 14 days before the day fixed for the hearing of the proceeding.

(5) A defendant can not challenge a matter stated in a certificate mentioned in section 554(2)(c) in a proceeding for the making of a compensation order unless—

(a) the defendant has complied with subsections (3) and (4); or

(b) the court gives leave to the defendant to challenge the matter, in the interests of justice.

556 Limits on amount of compensation

(1) If, in making a compensation order, the court is satisfied that the commission of the offence concerned contributed to damage to road infrastructure but that other factors not connected with the commission of the offence also contributed to the damage, the court must limit the amount of compensation payable under the order to the amount it assesses as being attributable to the defendant's conduct.

(2) The amount of compensation payable under a compensation order can not exceed the monetary jurisdictional limit of the court in civil proceedings.

(3) The court may not include in a compensation order any amount for—

(a) personal injury or death; or

(b) loss of income (whether suffered by the road manager or another entity); or

(c) damage to property that is not part of the road infrastructure concerned.

557 Costs

The court has the same power to award costs in relation to proceedings for the making of a compensation order as it has in relation to civil proceedings, and the relevant laws applying to costs in relation to civil proceedings before the court apply with any necessary changes to costs in relation to proceedings for the making of a compensation order.

558 Enforcement of compensation order and costs

A compensation order, and any award of costs in relation to a proceeding for the making of a compensation order, are taken to be, and are enforceable as, a judgment of the court sitting in civil proceedings.

559 Relationship with orders or awards of other courts and tribunals

(1) A compensation order may not be made in favour of a road manager for a road in relation to damage to road infrastructure if another court or tribunal has awarded compensatory damages or compensation in civil proceedings to the road manager in relation to the damage based on the same or similar facts.

(2) If a court purports to make a compensation order contrary to subsection (1)—

(a) the order is void to the extent it covers the same matters as the matters covered by the other award; and

(b) any payments made under the order to the extent to which it is void must be repaid by the road manager.

(3) The making of a compensation order in relation to damage to road infrastructure does not prevent another court or tribunal from later awarding damages or compensation in civil proceedings in relation to the damage based on the same or similar facts, but the court or tribunal must take the compensation order into account when making its award.

(4) Nothing in this Division affects or limits any liability to pay compensation under another law, other than as provided by this section.

Part 10.4 Provisions about liability

Division 1 Reasonable steps defence

560 Reasonable steps defence

If, in relation to a provision of this Law, a person has the benefit of the reasonable steps defence, it is a defence to a charge for an offence against the provision for the person charged to prove that—

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

(b) either—

(i) the person took all reasonable steps to prevent the contravention; or

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

Note—

Generally speaking, under various provisions of this Law, a person charged with an offence does not have the benefit of the mistake of fact defence if the person has the benefit of the reasonable steps defence for the offence.

Division 2 Matters relating to reasonable steps

561 Application of Div 2

This Division applies in relation to the following—

(a) a proceeding for an offence against a provision of this Law that may be committed by a person failing to take all reasonable steps;

(b) a proceeding for an offence against a provision of this Law in relation to which a person charged has the benefit of the reasonable steps defence.

562 Matters court may consider for deciding whether person took all reasonable steps—mass, dimension or loading offences

(1) In deciding whether things done or omitted to be done by a person charged with a mass, dimension or loading offence constitute reasonable steps, the court may have regard to the following—

(a) the circumstances of the alleged offence, including any risk category for the contravention constituting the offence;

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

(i) to accurately and safely weigh or measure the heavy vehicle or its load, or to safely restrain the load in the heavy vehicle;

(ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the heavy vehicle or its load might be calculated;

(iii) to manage, reduce or eliminate a potential contravention arising from the location of the heavy vehicle, or from the location of the load in the heavy vehicle, or from the location of goods in the load;

(iv) to manage, reduce or eliminate a potential contravention arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;

(v) to exercise supervision or control over others involved in activities leading to the contravention;

(c) the measures available and measures taken for any or all of the following—

(i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons for heavy vehicles;

(ii) to provide information, instruction, training and supervision to employees to enable compliance with this Law;

(iii) to maintain equipment and work systems to enable compliance with this Law;

(iv) to address and remedy similar compliance problems that may have happened in the past;

(d) whether the person charged had, either personally or through an employee or agent, custody or control of the heavy vehicle, its load, or any goods included or to be included in the load;

(e) the personal expertise and experience that the person charged had or ought reasonably to have had or that an employee or agent of the person charged had or ought reasonably to have had.

(2) This section does not limit the matters the court must or may consider when deciding whether things done or omitted to be done by a person charged with a mass, dimension or loading offence constitute reasonable steps.

(3) In this section—

mass, dimension or loading offence means an offence against Chapter 4.

563 Reliance on container weight declaration—offences about mass

(1) This section applies if the operator or driver of a heavy vehicle is charged with an offence involving a contravention of a mass requirement for the vehicle and is seeking to prove the reasonable steps defence in relation to the offence.

(2) To the extent the weight of a freight container together with its contents is relevant to the offence, the person charged can not rely on the weight stated in the relevant container weight declaration if the person knew or ought reasonably to have known that—

(a) the weight stated in the relevant container weight declaration was less than the actual weight; or

(b) the distributed weight of the container and its contents, together with either of the following would cause a contravention of a mass requirement applying to the heavy vehicle—

(i) the mass or location of any other load;

(ii) the mass of the vehicle or a component of it.

564 Matters court may consider for deciding whether person took all reasonable steps—speeding or fatigue management offences

(1) In deciding whether things done or omitted to be done by a person charged with a speeding offence or fatigue management offence constitute reasonable steps, the court may have regard to the following—

(a) the nature of the activity to which the contravention constituting the offence relates;

(b) the risks to public safety associated with the activity mentioned in paragraph (a);

(c) the likelihood of the risks mentioned in paragraph (b) arising;

(d) the degree of harm likely to result from the risks mentioned in paragraph (b) arising;

(e) the circumstances of the alleged offence, including, for a fatigue management offence, any risk category for the contravention constituting the offence;

(f) the measures available and measures taken—

(i) to prevent, eliminate or minimise the likelihood of a potential contravention happening; or

(ii) to eliminate or minimise the likelihood of risks to public safety arising from a potential contravention; or

(iii) to manage, minimise or eliminate risks to public safety arising from a potential contravention;

(g) the personal expertise and experience that the person charged had or ought reasonably to have had or that an employee or agent of that person had or ought reasonably to have had;

(h) the degree of ability the person charged, or an employee or agent of that person, had to take a measure mentioned in paragraph (f);

(i) the costs of measures mentioned in paragraph (f);

(j) the measures available and measures taken for any or all of the following—

(i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons for heavy vehicles;

(ii) to provide information, instruction, training and supervision to employees to enable compliance with this Law;

(iii) to maintain equipment and work systems to enable compliance with this Law;

(iv) to address and remedy similar compliance problems that may have happened in the past.

(2) In addition, in deciding whether things done or omitted to be done by a person charged with a fatigue management offence constitute reasonable steps, the court may have regard to any relevant body of fatigue knowledge.

(3) This section does not limit the matters the court must or may consider when deciding whether things done or omitted to be done by a person charged with a speeding offence or fatigue management offence constitute reasonable steps.

(4) In this section—

fatigue management offence means an offence against Chapter 6.

speeding offence means an offence against Part 5.2 or section 189.

565 When particular persons regarded to have taken all reasonable steps—speeding or fatigue management offences

(1) A party in the chain of responsibility for a heavy vehicle charged with a speeding offence or fatigue management offence is to be regarded as having taken all reasonable steps if the party did all of the following to prevent the act or omission that led to the contravention to which the offence relates—

(a) identified and assessed the aspects of the activities of the party, and relevant drivers for the party, that may lead to a relevant contravention by a relevant driver for the party;

(b) for each aspect identified and assessed under paragraph (a), identified and assessed—

(i) the risk of the aspect leading to a relevant contravention; and

(ii) if there is a substantial risk of the aspect leading to a relevant contravention—the measures the party may take to eliminate the risk or, if it is not reasonably possible to eliminate the risk, to minimise the risk;

(c) carried out the identification and assessment mentioned in paragraphs (a) and (b)—

(i) at least annually; and

(ii) after each event that indicated the way the activities the subject of the identification and assessment are being carried out have led, or may lead, to a relevant contravention;

(d) took the measures identified and assessed under paragraph (b)(ii);

(e) for each action mentioned in any of paragraphs (a) to (d) taken by the party—

(i) kept a record of the action for at least 3 years after taking it; or

(ii) if 3 years have not passed since taking the action, kept a record of the action since taking it.

(2) This section does not limit the circumstances in which things done or omitted to be done by a person charged with a speeding offence or fatigue management offence constitute reasonable steps.

(3) In this section—

fatigue management offence means an offence against Chapter 6.

party in the chain of responsibility—

(a) for a heavy vehicle the subject of a speeding offence—has the meaning given by section 184; or

(b) for a fatigue-regulated heavy vehicle the subject of a fatigue management offence—has the meaning given by section 197.

relevant contravention, for a party in the chain of responsibility for a heavy vehicle charged with a speeding offence or fatigue management offence, means a contravention of the type to which the offence relates.

relevant driver, for a party in the chain of responsibility for a heavy vehicle charged with a speeding offence or fatigue management offence, means each driver of the heavy vehicle.

speeding offence means an offence against Part 5.2 or section 189.

566 Regulation for s 565

(1) For section 565, the national regulations may provide for—

(a) the ways, or examples of ways, a person may identify and assess the aspects of the activities of the person, and relevant drivers for the person, that may lead to a

relevant contravention by a relevant driver for the person; and

(b) the measures, or examples of measures, a person may take to eliminate or minimise the risks of aspects of activities of the person, or relevant drivers for the person, leading to a relevant contravention by the person or a relevant driver for the person.

(2) In this section—

fatigue management offence means an offence against Chapter 6.

relevant contravention means a contravention constituting a fatigue management offence.

567 Proof of compliance with registered industry code of practice

(1) This section applies for deciding whether a person charged with an offence against this Law for which the person has the benefit of the reasonable steps defence took all reasonable steps to prevent the contravention constituting the offence.

(2) Proof, as established by the person, that the person complied with all relevant standards and procedures, including, for example, a registered industry code of practice, in relation to matters to which the offence relates is evidence that the person took all reasonable steps to prevent the contravention.

(3) Subsection (2) does not apply unless the person has given the complainant notice of the intention to prove the matters mentioned in the subsection.

(4) The notice must be—

(a) signed by the person; and

(b) given at least 28 days before the day fixed for the hearing of the charge.

568 Inclusion of reasonable diligence

For any provision of this Law that provides that a person may avoid liability, or is not liable, for an offence by proving the person took all reasonable steps in relation to a matter, the taking of all reasonable steps includes the exercise of reasonable diligence.

Division 3 Other defences

569 Definition for Div 3

In this Division—

deficiency, of a vehicle, means—

(a) a deficiency of the vehicle or a component of the vehicle, including, for example, the vehicle—

(i) contravening a heavy vehicle standard; or

(ii) being unsafe; or

(b) a deficiency constituted by the absence of a particular thing required to be in, or displayed on, the vehicle, including, for example, a thing required to be in, or displayed on, the vehicle under—

(i) a heavy vehicle standard; or

(ii) a condition of a heavy vehicle accreditation or a mass or dimension authority.

570 Defence for owner or operator of vehicle if offence committed while vehicle used by unauthorised person

(1) This section applies in relation to an offence against this Law that may be committed by a person—

(a) in the person's capacity as an owner or operator of a vehicle; and

(b) in relation to the use of the vehicle by someone else.

(2) Subject to subsection (3), in a proceeding for an offence mentioned in subsection (1), it is a defence for the person charged to prove that, at the relevant time, the vehicle was being used by—

(a) a person not entitled (expressly, impliedly or otherwise) to use the vehicle, other than an employee or agent of the person; or

(b) an employee of the person who was, at the relevant time, acting outside the scope of the employment; or

(c) an agent of the person who was, at the relevant time, acting outside the scope of the agency.

(3) If the offence relates to a deficiency of the vehicle, the defence under subsection (2) is not available unless the person charged also proves that—

(a) the vehicle had not, before it ceased to be under the person's control, been driven on a road in contravention of this Law arising in connection with the deficiency; and

(b) one or more material changes, resulting in the deficiency, had been made after the vehicle had ceased to be under the person's control.

571 Defence for driver of vehicle subject to a deficiency

(1) This section applies to an offence against this Law relating to a deficiency of a heavy vehicle.

(2) In a proceeding for an offence mentioned in subsection (1) alleged to be committed by the driver of a heavy vehicle, it is a defence for the driver to prove that the driver—

(a) did not cause the deficiency and had no responsibility for or control over the maintenance of the vehicle or its equipment at any relevant time; and

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

(c) could not reasonably be expected to have sought to ascertain whether there was or was likely to be a deficiency of the kind to which the offence relates.

Division 4 Other provisions about liability

572 Deciding whether person ought reasonably to have known something

(1) This section applies in relation to a proceeding for an offence against this Law if it is relevant to prove that someone ought reasonably to have known something.

(2) A court must consider the following when deciding whether the person ought reasonably to have known the thing—

(a) the person's abilities, experience, expertise, knowledge, qualifications and training;

(b) the circumstances of the offence;

(c) any other relevant matter prescribed by the national regulations for this section.

573 Multiple offenders

(1) This section applies if a provision of this Law provides that, for a particular act or omission or set of circumstances, each of 2 or more persons is liable for an offence against a provision of this Law.

(2) Proceedings may be taken against all or any of the persons in relation to the act, omission or circumstances.

(3) Proceedings may be taken against any of the persons in relation to the act, omission or circumstances—

(a) regardless of whether or not proceedings have been started against any of the other persons in relation to the act, omission or circumstances; and

(b) regardless of whether or not any proceedings taken against any of the other persons in relation to the act, omission or circumstances have ended; and

(c) regardless of the outcome of any proceedings taken against any of the other persons in relation to the act, omission or circumstances.

(4) This section is subject to section 574(1).

574 Multiple offences

(1) A person may be punished only once in relation to the same contravention of this Law by the person or a heavy vehicle, even if the person is liable in more than 1 capacity.

(2) A person who has been punished for an act or omission or circumstances constituting an offence against this Law as it applies in another participating jurisdiction can not be punished for an offence against this Law as it applies in this jurisdiction arising from the same act or omission or circumstances.

(3) Despite any Act or other law (including subsections (1) and (2))—

(a) a person may be punished for more than 1 contravention of a requirement of this Law if the contraventions relate to different parts of the same vehicle; and

(b) a person may be punished for 1 or more contraventions of a requirement of this Law as it applies in another participating jurisdiction (***interstate contraventions***), and 1 or more contraventions of a requirement of this Law as it applies in this jurisdiction (***local contraventions***), if the interstate contraventions and local contraventions relate to different parts of the same vehicle.

575 Responsibility for acts or omissions of representative

(1) This section applies in a proceeding for an offence against this Law.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

representative means—

(a) for an individual—an employee or agent of the individual; or

(b) for a corporation—an executive officer, employee or agent of the corporation or authority.

state of mind, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

576 Liability of executive officers of corporation

(1) If a corporation commits an offence against a provision of this Law, each executive officer of the corporation also commits an offence against the provision.

Maximum penalty—the penalty for a contravention of the provision by an individual.

(2) However, it is a defence for an executive officer to prove—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(3) An executive officer of a corporation may be proceeded against and convicted for an offence against the provision whether or not the corporation has been proceeded against or convicted under that provision.

(4) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under the provision.

(5) This section does not apply to an executive officer acting on a voluntary basis, whether or not the officer is reimbursed for the expenses incurred by the officer for carrying out activities for the corporation.

577 Treatment of unincorporated local government authorities

This Law, and for the purposes of this Law, other laws apply to an unincorporated local government authority in the same way as they apply to a body corporate.

578 Treatment of partnerships

(1) This Law applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation or liability that would otherwise be imposed on the partnership by this Law is imposed on each partner instead, but may be discharged by any of the partners.

(3) An amount that would be payable under this Law by the partnership is jointly and severally payable by the partners.

(4) An offence against this Law that would otherwise be committed by the partnership is taken to have been committed by each partner.

Maximum penalty—the penalty for a contravention of the provision by an individual.

(5) However, it is a defence for a partner to prove—

(a) if the partner was in a position to influence the conduct of the partnership in relation to the offence, the partner exercised reasonable diligence to ensure the partnership complied with the provision; or

(b) the partner was not in a position to influence the conduct of the partnership in relation to the offence.

(6) For the purposes of this Law, a change in the composition of a partnership does not affect the continuity of the partnership.

579 Treatment of unincorporated bodies

(1) This Law applies to an unincorporated body as if it were a person, but with the changes set out in this section.

(2) An obligation or liability that would otherwise be imposed on the unincorporated body by this Law is imposed on each management member of the body instead, but may be discharged by any of the management members.

(3) An amount that would be payable under this Law by the unincorporated body is jointly and severally payable by the management members of the body.

(4) An offence against this Law that would otherwise be committed by the unincorporated body is taken to have been committed by each management member for the body.

Maximum penalty—the penalty for a contravention of the provision by an individual.

(5) However, it is a defence for a management member of an unincorporated body to prove—

(a) if the member was in a position to influence the conduct of the body in relation to the offence, the member exercised reasonable diligence to ensure the body complied with the provision; or

(b) the member was not in a position to influence the conduct of the body in relation to the offence.

(6) Also, subsections (1) to (5) do not apply to a management member of an unincorporated body acting on a voluntary basis, whether or not the member is reimbursed for the expenses incurred by the member for carrying out activities for the body.

(7) In this section—

management member, of an unincorporated body, means—

(a) if the body has a management committee—each member of the management committee; or

(b) otherwise—each member who is concerned with, or takes part in, the body's management, whatever name is given to the member's position in the body.

unincorporated body does not include an unincorporated local government authority.

580 Liability of registered operator

(1) This section applies to an offence against this Law that may be committed by the operator of a heavy vehicle (whether or not any other person can also commit the offence).

(2) If an offence to which this section applies is committed, the following person is taken to be the operator of the heavy vehicle and, in that capacity, is taken to have committed the offence—

(a) for a heavy vehicle that is not a combination—the registered operator of the vehicle;

(b) for a heavy combination or the towing vehicle in a heavy combination—the registered operator of the towing vehicle in the combination;

(c) for a trailer forming part of a heavy combination—the registered operator of the towing vehicle in the combination and the registered operator (if any) of the trailer.

(3) The registered operator has the same excuses and defences available to the operator of the heavy vehicle under this Law or another law.

(4) Subsection (2) does not apply if the registered operator gives the Regulator an operator declaration—

(a) if an infringement notice for the offence is issued to the registered operator—within 14 days after the infringement notice is issued; or

(b) if the registered operator is charged with the offence—

(i) if the charge is to be heard 28 days or less after the charge comes to the operator's knowledge—as soon as practicable after the charge comes to the registered operator's knowledge; or

(ii) if the charge is to be heard more than 28 days after the charge comes to the operator's knowledge—as soon as practicable after the charge comes to the registered operator's knowledge but at least 28 days before the charge is heard.

(5) If the registered operator gives an operator declaration as mentioned in subsection (4)—

(a) a proceeding for the offence may be started against the person named as the operator of the heavy vehicle in the operator declaration only if a copy of the operator declaration has been served on the person; and

(b) in a proceeding for the offence against the person named as the operator of the heavy vehicle in the operator declaration, the operator declaration is evidence that the

person was the operator of the heavy vehicle at the time of the offence; and

(c) in a proceeding for the offence against the registered operator, a court must not find the registered operator guilty of the offence in the registered operator's capacity as the operator of the heavy vehicle if it is satisfied, whether on the statements in the operator declaration or otherwise, the registered operator was not the operator of the heavy vehicle at the time of the offence.

(6) To remove any doubt, it is declared that this section does not affect the liability of the registered operator in a capacity other than as the operator of the heavy vehicle.

(7) In this section—

operator declaration means a statutory declaration, made by the registered operator of a vehicle that is or forms part of a heavy vehicle the subject of an offence against this Law, stating—

(a) the registered operator was not the operator of the heavy vehicle at the time of the offence; and

(b) the name and address of the operator of the heavy vehicle at the time of the offence.

registered operator, of a vehicle other than a heavy vehicle, means the registered or licensed operator of the vehicle under an Australian road law.

Chapter 11 Reviews and appeals

Part 11.1 Preliminary

581 Definitions for Ch 11

In this Chapter—

public safety ground, for a reviewable decision, means the Regulator being satisfied that making the decision is necessary to prevent a significant risk to public safety.

relevant appeal body means the relevant tribunal or court for the relevant jurisdiction.

relevant jurisdiction, for an applicant for the review of a reviewable decision or an appellant for an appeal against a review decision, means—

(a) for a reviewable decision made under Division 3 of Part 4.5 or Division 4 of Part 4.6, or a review decision relating to a reviewable decision made under Division 3 of Part 4.5 or Division 4 of Part 4.6—

(i) if the areas or routes for which the authorisation the subject of the reviewable decision was sought are situated in the same participating jurisdiction—the jurisdiction in which the areas or routes are situated; or

(ii) if the areas or routes for which the authorisation the subject of the reviewable decision was sought are situated in 2 or more participating jurisdictions—

(A) the jurisdiction in which most of the areas or routes are situated, worked out by reference to the length of road covered by the areas or routes; or

(B) if there is more than 1 jurisdiction for which subparagraph (A) is satisfied—any of the jurisdictions for which subparagraph (A) is satisfied chosen by the applicant or appellant; or

(b) for another reviewable decision or review decision—

(i) if the reviewable decision or review decision relates to only 1 heavy vehicle whose relevant garage address is in a participating jurisdiction—the jurisdiction in which the relevant garage address is located; or

(ii) if the reviewable decision or review decision relates to 2 or more heavy vehicles whose relevant garage addresses are in the same participating jurisdiction—the jurisdiction in which the relevant garage addresses are located; or

(iii) if the reviewable decision or review decision relates to 2 or more heavy vehicles whose relevant garage addresses are located in 2 or more participating jurisdictions—any of those jurisdictions chosen by the operator of the vehicles; or

(iv) otherwise—the participating jurisdiction in which the applicant's or appellant's home address is located.

reviewable decision means—

(a) a decision mentioned in Schedule 3; or

(b) a decision made under the national regulations prescribed as a reviewable decision for this Chapter.

review application means an application for review of a reviewable decision under Part 11.2.

review decision has the meaning given by section 586.

reviewer means a person deciding a review of a reviewable decision under Part 11.2.

Part 11.2 Internal review

582 Applying for internal review

(1) A dissatisfied person for a reviewable decision may apply to the Regulator for a review of the decision.

(2) A review application may be made only within 28 days after—

(a) the day the person is notified of the decision; or

(b) if the person applies for a statement of reasons under subsection (6)—the day the statement is given to the person.

(3) However, the Regulator may, at any time, extend the time for making a review application.

(4) A review application must be written and state in detail the grounds on which the person wants the reviewable decision to be reviewed.

(5) The person is entitled to receive a statement of reasons for the original decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision.

(6) If the person was not given an information notice for the original decision, the person may ask the Regulator for a statement of reasons for the decision and the Regulator must provide the statement within 28 days after the request is made.

(7) The making of a review application does not affect the reviewable decision, or the carrying out of the reviewable decision, unless it is stayed under section 583.

(8) In this section—

dissatisfied person means—

(a) for a reviewable decision of the Regulator made in relation to an application for an exemption,

authorisation, approval or heavy vehicle accreditation under this Law—the applicant; or

(b) for a reviewable decision of the Regulator not to make a decision sought in an application for an amendment of an exemption, authorisation, approval or heavy vehicle accreditation under this Law—the applicant; or

(c) for a reviewable decision of the Regulator to amend, cancel or suspend an exemption, authorisation, approval or heavy vehicle accreditation under this Law—the person to whom the exemption, authorisation, approval or heavy vehicle accreditation was granted; or

(d) for a reviewable decision of the Regulator not to give a replacement permit for an exemption or authorisation under this Law or not to give a replacement accreditation certificate for a heavy vehicle accreditation under this Law—the person to whom the exemption, authorisation or heavy vehicle accreditation was granted; or

(e) for a reviewable decision of the Regulator that a thing or sample is forfeited to the Regulator—an owner of the thing or sample; or

(f) for a reviewable decision of an authorised officer to give a person an improvement notice or to amend an improvement notice given to a person—the person to whom the improvement notice was given; or

(g) for a reviewable decision of a relevant road manager for a mass or dimension authority—a person adversely affected by the decision; or

(h) for a reviewable decision made under the national regulations—the person prescribed as the dissatisfied person for the decision under the national regulations.

583 Stay of reviewable decisions made by Regulator or authorised officer

(1) This section applies to—

(a) a reviewable decision made by the Regulator other than a decision made on the basis of a public safety ground; or

(b) a reviewable decision made by an authorised officer.

(2) If a person makes a review application for the reviewable decision, the person may immediately apply for a stay of the decision to the relevant appeal body.

(3) The relevant appeal body may stay the reviewable decision to secure the effectiveness of the review and any later appeal to the body.

(4) In setting the time for hearing the stay application, the relevant appeal body must allow at least 3 business days between the day the application is filed with it and the hearing day.

(5) The Regulator is a party to the application.

(6) The person must serve a copy of the application showing the time and place of the hearing, and any document filed in the relevant appeal body with the application, on the Regulator at least 2 business days before the hearing.

(7) The stay—

(a) may be given on conditions the relevant appeal body considers appropriate; and

(b) operates for the period specified by the relevant appeal body; and

(c) may be revoked or amended by the relevant appeal body.

(8) The period of a stay under this section must not extend past the time when the reviewer reviews the reviewable decision and any later period the relevant appeal body allows the applicant to enable the applicant to appeal against the decision.

584 Referral of applications for review of decisions made by road managers

(1) This section applies to a review application relating to a reviewable decision made by a road manager for a road.

Note—

In Schedule 3, only decisions made by a road manager (for a road) that is a public authority are reviewable decisions.

(2) The Regulator must refer the application to the road manager for review within 2 business days after receiving it.

585 Internal review

(1) A review of a reviewable decision that was not made by the Regulator or a road manager personally must not be decided by—

(a) the person who made the reviewable decision; or

(b) a person who holds a less senior position than the person who made the reviewable decision.

(2) The reviewer must conduct the review—

(a) on the material before the person who made the reviewable decision; and

(b) on the reasons for the reviewable decision; and

(c) any other relevant material the reviewer allows.

(3) For the review, the reviewer must give the applicant a reasonable opportunity to make written or oral representations to the reviewer.

586 Review decision

(1) The reviewer must, within the prescribed period, make a decision (the ***review decision***) to—

(a) confirm the reviewable decision; or

(b) amend the reviewable decision; or

(c) substitute another decision for the reviewable decision.

(2) If the review decision confirms the reviewable decision, for the purpose of an appeal, the reviewable decision is taken to be the review decision.

(3) If the review decision amends the reviewable decision, for the purpose of an appeal, the reviewable decision as amended is taken to be the review decision.

(4) If the review decision substitutes another decision for the reviewable decision, the substituted decision is taken to be the review decision.

(5) If the reviewer is a road manager for a road, the reviewer must, as soon as practicable, give the Regulator notice of the review decision stating—

(a) the decision; and

(b) the reasons for the decision.

(6) In this section—

prescribed period means—

(a) for a review of a reviewable decision made by a road manager for a road—

(i) 28 days after the application for the review is given to the road manager; or

(ii) if the Regulator and road manager have agreed to a longer period, of not more than 3 months after the application for the review is given to the road manager, and the Regulator has given notice of the longer period to the applicant—the longer period; or

(b) for a review of another reviewable decision—28 days after the application for the review is made.

587 Notice of review decision

(1) The Regulator must, within the prescribed period, give the applicant notice (the ***review notice***) of the review decision.

(2) If the review decision is not the decision sought by the applicant, the review notice must state the following—

(a) the reasons for the decision;

(b) for a review decision relating to a reviewable decision made by a road manager for a road—that the review decision is not subject to further review or appeal under this Law;

(c) for a review decision relating to another reviewable decision—

(i) that the applicant may appeal against the decision under Part 11.3; and

(ii) how to appeal;

(d) for a review decision relating to a reviewable decision made under Division 3 of Part 4.5 or Division 4 of Part 4.6 if the areas or routes for which the authorisation the subject of the reviewable decision was sought are situated in 2 or more participating jurisdictions—the jurisdiction in which most of the areas or routes are situated, worked out by reference to the length of road covered by the areas or routes.

(3) If the reviewer does not make a review decision within the period required under section 586, the reviewer is taken to have made a review decision confirming the reviewable decision.

(4) In this section—

prescribed period means—

(a) for a review of a reviewable decision made by a road manager for a road—as soon as practicable, but not more than 7 days, after the reviewer gives the Regulator notice of the decision; or

(b) for a review of another reviewable decision—as soon as practicable.

Part 11.3 Appeals

588 Appellable decisions

(1) A person may appeal to the relevant appeal body against a review decision relating to a reviewable decision made by the Regulator or an authorised officer.

(2) A person may appeal against the review decision only within 28 days after—

(a) if a review notice is given to the person under section 587—the notice was given to the person; or

(b) if the reviewer is taken to have confirmed the decision under section 587(3)—the period mentioned in that section ends.

(3) However, the relevant appeal body may extend the period for appealing.

(4) The filing of an appeal does not affect the review decision, or the carrying out of the review decision, unless it is stayed under section 589.

589 Stay of review decision

(1) This section applies if, under this Law, a person appeals to the relevant appeal body against a review decision relating to—

(a) a reviewable decision made by the Regulator other than on the basis of a public safety ground; or

(b) a reviewable decision made by an authorised officer.

(2) The person may immediately apply to the relevant appeal body for a stay of the decision.

(3) The relevant appeal body may stay the review decision to secure the effectiveness of the appeal.

(4) In setting the time for hearing the stay application, the relevant appeal body must allow at least 3 business days between the day the application is filed with it and the hearing day.

(5) The Regulator is a party to the application.

(6) The person must serve a copy of the application showing the time and place of the hearing, and any document filed in the relevant appeal body with the application, on the Regulator at least 2 business days before the hearing.

(7) The stay—

(a) may be given on conditions the relevant appeal body considers appropriate; and

(b) operates for the period specified by the relevant appeal body, but not extending past the time when it decides the appeal; and

(c) may be revoked or amended by the relevant appeal body.

590 Powers of relevant appeal body on appeal

(1) In deciding, under this Law, an appeal against a review decision, the relevant appeal body—

(a) has the same powers as the person who made the reviewable decision to which the review decision relates; and

(b) is not bound by the rules of evidence; and

(c) must comply with natural justice.

(2) An appeal is by way of rehearing—

(a) unaffected by the review decision; and

(b) on the material before the person who made the review decision and any further evidence allowed by the relevant appeal body.

(3) After hearing the appeal, the relevant appeal body must—

(a) confirm the review decision; or

(b) set aside the review decision and substitute another decision that it considers appropriate; or

(c) set aside the review decision and return the issue to the person who made the reviewable decision to which the review decision relates with the directions that it considers appropriate.

591 Effect of decision of relevant appeal body on appeal

If, under this Law, the relevant appeal body substitutes another decision for a review decision, the substituted decision is, for the relevant provision of this Law, taken to be that of the person who made the reviewable decision to which the review decision relates.

Chapter 12 Administration

Part 12.1 Responsible Ministers

592 Policy directions

(1) The responsible Ministers may give directions to the Regulator about the policies to be applied by the Regulator in exercising its functions under this Law.

(2) A direction under this section can not be about—

(a) a particular person; or

(b) a particular heavy vehicle; or

(c) a particular application or proceeding.

(3) The Regulator must comply with a direction given to it by the responsible Ministers under this section.

(4) A copy of a direction given by the responsible Ministers to the Regulator is to be published in the Regulator's annual report.

593 Referral of matters etc. by responsible Minister

(1) The responsible Minister for a participating jurisdiction may—

(a) refer a matter relevant to that jurisdiction to the Regulator for action under this Law; or

(b) ask the Regulator for information about the exercise of the Regulator's functions under this Law as applied in that jurisdiction.

(2) However, the Minister can not—

(a) refer a matter to the Regulator under subsection (1)(a) that may require the Regulator to take action that is inconsistent with—

(i) a direction given by the responsible Ministers under section 592; or

(ii) guidelines approved by the responsible Ministers under section 594; or

(b) direct the Regulator to take or not to take particular action in relation to a matter referred to the Regulator under subsection (1)(a); or

(c) otherwise influence the exercise of the Regulator's functions under this Law.

(3) The Regulator may charge a fee for dealing with a referral or request made under subsection (1).

(4) A fee charged by the Regulator under subsection (3) must be an amount—

(a) the Regulator considers reasonable; and

(b) that is no more than the reasonable cost of dealing with the referral or request.

594 Approved guidelines for exemptions, authorisations, permits and other authorities

(1) The responsible Ministers may approve guidelines about any of the following—

(a) granting registration exemptions;

(b) granting vehicle standards exemptions;

(c) granting mass or dimension exemptions;

(d) granting class 2 heavy vehicle authorisations;

(e) granting electronic recording system approvals;

(f) granting work and rest hours exemptions;

(g) granting work diary exemptions;

(h) granting heavy vehicle accreditation;

(i) granting or issuing an exemption, authorisation, permit or authority, or making a declaration, under the national regulations.

(2) The guidelines, and any instrument amending or repealing the guidelines, must be published in the Commonwealth Gazette.

(3) The Regulator must ensure a copy of the guidelines as in force from time to time and any document applied, adopted or incorporated by the guidelines is—

(a) made available for inspection, without charge, during normal business hours at each office of the Regulator; and

(b) published on the Regulator's website.

595 Other approvals

(1) The responsible Ministers may approve—

(a) a standard for sleeper berths; or

(b) standards and business rules for—

(i) advanced fatigue management; or

(ii) basic fatigue management; or

(iii) heavy vehicle maintenance management; or

(iv) heavy vehicle mass management; or

(c) a class of auditors for Chapter 8.

(2) The approval, and any instrument amending or repealing the approval, must be published in the Commonwealth Gazette.

(3) The Regulator must ensure a copy of an approval in force under subsection (1), and any document the subject of the approval, is—

(a) made available for inspection, without charge, during normal business hours at each office of the Regulator; and

(b) published on the Regulator's website.

596 How responsible Ministers exercise functions

(1) The responsible Ministers are to give a direction or approval, or make a recommendation, request or decision, for the purposes of a provision of this Law by a resolution passed by the responsible Ministers in accordance with the procedures decided by the responsible Ministers.

(2) Subsection (1) applies subject to a provision of this Law that provides how a direction or approval must be given, or a recommendation, request or decision must be made, by the responsible Ministers, including, for example, a provision that provides that a recommendation by the responsible Ministers must be unanimous.

(3) An act or thing done by the responsible Ministers (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Ministers comprising the responsible Ministers.

Part 12.2 National Heavy Vehicle Regulator

Division 1 Establishment, functions and powers

597 Establishment of National Heavy Vehicle Regulator

(1) The National Heavy Vehicle Regulator is established.

(2) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that the National Heavy Vehicle Regulator is one single national entity, with functions conferred by this Law as so applied.

(3) The Regulator has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(4) The Regulator may exercise its functions in relation to—

(a) one participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

598 Status of Regulator

(1) The Regulator—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

(2) The Regulator represents the State.

599 General powers of Regulator

(1) The Regulator has all the powers of an individual and, in particular, may—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, real and personal property; and

(c) do anything necessary or convenient to be done in the exercise of its functions.

(2) Without limiting subsection (1), the Regulator may enter into an agreement with a State or Territory that makes provision for—

(a) the State or Territory to provide services to the Regulator that assist the Regulator in exercising its functions; or

(b) the Regulator to provide services to the State or Territory, including, for example, services relating to—

(i) collecting vehicle registration duty; and

(ii) ensuring compliance with third party insurance legislation, including, for example, by collecting third party insurance premiums.

600 Functions of Regulator

(1) The Regulator's main function is to achieve the object of this Law.

(2) Without limiting subsection (1), the Regulator has the following functions—

(a) to provide the necessary administrative services for the operation of this Law, including, for example—

(i) services for the national registration of heavy vehicles; and

(ii) collecting fees, charges and other amounts payable under this Law;

(b) to monitor compliance with this Law;

(c) to investigate contraventions or possible contraventions of provisions of this Law, including offences against this Law;

(d) to bring and conduct proceedings in relation to contraventions or possible contraventions of provisions of this Law, including offences against this Law;

(e) to bring and conduct, or conduct and defend, appeals from decisions in proceedings mentioned in paragraph (d);

(f) to conduct reviews of particular decisions made under this Law by the Regulator or authorised officers;

(g) to conduct and defend appeals from decisions on reviews mentioned in paragraph (f);

(h) to implement and manage an audit program for heavy vehicle accreditations granted under this Law;

(i) to monitor and review, and report to the responsible Ministers on, the operation of this Law, including, for example, monitoring, reviewing and reporting on—

(i) the extent to which the object of this Law or particular aspects of this Law are being achieved; and

(ii) the extent and nature of noncompliance with this Law; and

(iii) the outcome of activities for monitoring and investigating compliance with this Law; and

(iv) the effect of heavy vehicle accreditation on achieving the object of this Law or particular aspects of this Law; and

(v) the effect of modifications to this Law as it applies in a particular participating jurisdiction on achieving the object of this Law or particular aspects of this Law;

(j) to identify and promote best practice methods—

(i) for complying with this Law; or

(ii) for managing risks to public safety arising from the use of heavy vehicles on roads; or

(iii) for the efficient road transport of goods or passengers by heavy vehicles;

(k) to encourage and promote safe and productive business practices of persons involved in the road transport of goods or passengers by heavy vehicles that do not compromise the object of this Law;

(l) to work collaboratively with other law enforcement agencies to ensure a nationally consistent approach for enforcing contraventions of laws involving heavy vehicles;

(m) to work collaboratively with road managers, the National Transport Commission and industry bodies to ensure a wide understanding of the object of this Law or particular aspects of this Law, and encourage participation in achieving the object;

(n) the other functions conferred on it under this Law.

601 Cooperation with participating jurisdictions and Commonwealth

(1) The Regulator may exercise any of its functions in cooperation with or with the assistance of a participating jurisdiction or the Commonwealth, including in cooperation

with or with the assistance of a government agency of a participating jurisdiction or of the Commonwealth.

(2) In particular, the Regulator may—

(a) ask a government agency of a participating jurisdiction or the Commonwealth for information that the Regulator requires to exercise its functions under this Law; and

(b) use the information provided to exercise its functions under this Law.

(3) A government agency that receives a request for information under this section from the Regulator is authorised to give the information to the Regulator.

602 Delegation

(1) The Regulator may delegate any of its functions to—

(a) the chief executive of an entity or a department of government of a participating jurisdiction or the Commonwealth; or

(b) the chief executive officer or another member of the staff of the Regulator; or

(c) a person engaged as a contractor by the Regulator; or

(d) any other person whom the Regulator considers is appropriately qualified to exercise the function.

(2) A delegation of a function may permit the subdelegation of the function to an appropriately qualified person.

Note—

See section 29 of Schedule 1 which provides for matters relating to the delegation and subdelegation of functions.

Division 2 Governing board of Regulator

Subdivision 1 Establishment and functions

603 Establishment of National Heavy Vehicle Regulator Board

(1) The Regulator has a governing board known as the National Heavy Vehicle Regulator Board.

(2) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that the National Heavy Vehicle Regulator Board is one single national entity, with functions conferred by this Law as so applied.

(3) The Board has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(4) The Board may exercise its functions in relation to—

(a) one participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

604 Membership of Board

(1) The Board consists of 5 members appointed by the Queensland Minister on the unanimous recommendation of the responsible Ministers.

(2) The members of the Board must consist of—

(a) at least 1 member who has expertise in transportation policy; and

(b) at least 1 other member who has expertise in economics, law, accounting, social policy or education and training; and

(c) at least 2 other members who have financial management skills, business skills, administrative expertise or other skills or experience the responsible Ministers believe is appropriate, including, for example, experience in managing risks to public safety arising from the use of vehicles on roads.

(3) Of the members of the Board, one is to be appointed by the Queensland Minister, on the unanimous recommendation of the responsible Ministers, as the Chairperson of the Board and another as the Deputy Chairperson.

605 Functions of Board

(1) The affairs of the Regulator are to be controlled by the Board.

(2) Without limiting subsection (1), the Board's functions include the following—

(a) subject to any directions of the responsible Ministers, deciding the policies of the Regulator;

(b) ensuring the Regulator exercises its functions in a proper, effective and efficient way.

(3) All acts and things done in the name of, or on behalf of, the Regulator by or with the authority of the Board are taken to have been done by the Regulator.

(4) The Board has any other functions given to the Board under this Law.

Subdivision 2 Members

606 Terms of office of members

(1) Subject to this Division, a member of the Board holds office for the period, not more than 3 years, specified in the member's instrument of appointment.

(2) If otherwise qualified, a member of the Board is eligible for reappointment.

607 Remuneration

A member of the Board is entitled to be paid the remuneration and allowances decided by the responsible Ministers from time to time.

608 Vacancy in office of member

(1) The office of a member of the Board becomes vacant if the member—

(a) completes a term of office; or

(b) resigns the office by signed notice given to the responsible Ministers; or

(c) has been found guilty of an offence, whether in a participating jurisdiction or elsewhere, that the responsible Ministers consider renders the member unfit to continue to hold the office of member; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or

(e) is absent, without leave first being granted by the relevant entity, from 3 or more consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post; or

(f) is removed from office by the Queensland Minister under this section; or

(g) dies.

(2) The Queensland Minister may remove a member of the Board from office if the responsible Ministers recommend the removal of the member on the basis that the member has

engaged in misconduct or has failed to or is unable to properly exercise the member's functions as a member of the Board.

(3) In this section—

relevant entity means—

(a) for a member who is the Chairperson of the Board—the responsible Ministers; or

(b) for another member—the Chairperson of the Board.

609 Board member to give responsible Ministers notice of certain events

A member of the Board must, within 7 days of either of the following events occurring, give the responsible Ministers notice of the event—

(a) the member is convicted of an offence;

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit.

610 Extension of term of office during vacancy in membership

(1) If the office of a member of the Board becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled, whether by re-appointment of the member or appointment of a successor to the member.

(2) However, this section ceases to apply to the member if—

(a) the member resigns the member's office by signed notice given to the responsible Ministers; or

(b) the responsible Ministers decide the services of the member are no longer required.

(3) The maximum period for which a member of the Board is taken to continue to be a member under this section after completion of the member's term of office is 6 months.

611 Members to act in public interest

A member of the Board is to act impartially and in the public interest in the exercise of the member's functions as a member.

612 Disclosure of conflict of interest

(1) If a member of the Board has a direct or indirect pecuniary or other interest that conflicts or may conflict with the exercise of the member's functions as a member, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the member's interest and the conflict to—

(a) for a member who is the Chairperson of the Board—the responsible Ministers; or

(b) for another member—the Chairperson of the Board.

(2) If a disclosure is made under subsection (1), the entity to whom the disclosure is made must notify the Board of the disclosure.

(3) Particulars of any disclosure made under subsection (1) must be recorded by the Board in a register of interests kept for the purpose.

(4) After a member of the Board has disclosed the nature of an interest and conflict or potential conflict under subsection (1), the member must not be present during any deliberation of the Board with respect to any matter that is, or may be, affected by the conflict, or take part in any decision of the Board with respect to any matter that is, or may be, affected by the conflict, unless—

(a) for a member who is the Chairperson of the Board, the responsible Ministers otherwise decide; or

(b) for another member, the Board otherwise decides.

(5) For the purposes of the making of a decision by the Board under subsection (4) in relation to a matter, a member of the Board who has a direct or indirect pecuniary or other interest that conflicts or may conflict with the exercise of the member's functions as a member with respect to the matter must not—

(a) be present during any deliberation of the Board for the purpose of making the decision; or

(b) take part in the making of the decision by the Board.

(6) A contravention of this section does not invalidate any decision of the Board but if the Board becomes aware a member of the Board contravened this section, the Board must reconsider any decision made by the Board in which the member took part in contravention of this section.

Subdivision 3 Meetings

613 General procedure

(1) The procedure for the calling of meetings of the Board and for the conduct of business at the meetings is, subject to this Law, to be decided by the Board.

(2) Without limiting subsection (1), the Chairperson of the Board—

(a) may at any time call a meeting of the Board; and

(b) must call a meeting if asked, in writing, by at least 3 other members of the Board.

614 Quorum

The quorum for a meeting of the Board is a majority of its members.

615 Chief executive officer may attend meetings

(1) The chief executive officer of the Regulator may attend meetings of the Board and participate in discussions of the Board.

(2) However, the chief executive officer—

(a) must, as soon as possible after becoming aware that the chief executive officer has a direct personal interest in a matter to be considered by the Board, disclose the interest to the Chairperson of the Board; and

(b) is not entitled to be present during the consideration by the Board of any matter in which the chief executive officer has a direct personal interest; and

(c) is not entitled to vote at a meeting.

616 Presiding member

(1) The Chairperson of the Board is to preside at a meeting of the Board.

(2) However, in the absence of the Chairperson of the Board the following person is to preside at a meeting of the Board—

(a) if the Deputy Chairperson of the Board is present at the meeting, the Deputy Chairperson;

(b) otherwise, a person elected by the members of the Board who are present at the meeting.

(3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

617 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

618 Minutes

The Chairperson or other member of the Board presiding at a meeting of the Board must ensure minutes of the meeting are taken.

619 First meeting

The Chairperson of the Board may call the first meeting of the Board in any way the Chairperson thinks fit.

620 Defects in appointment of members

A decision of the Board is not invalidated by any defect or irregularity in the appointment of any member of the Board.

Subdivision 4 Committees

621 Committees

(1) The Board may establish committees to assist the Board in exercising its functions.

(2) The members of a committee need not be members of the Board.

(3) A member of a committee is appointed on the terms and conditions the Board considers appropriate, including terms about remuneration.

(4) The procedure for the calling of meetings of a committee and for the conduct of business at the meetings may be decided by the Board or, subject to any decision of the Board, by the committee.

Division 3 Chief executive officer

622 Chief executive officer

(1) There is to be a chief executive officer of the Regulator.

(2) The chief executive officer is to be appointed by the Board.

(3) The chief executive officer is to be appointed for a period, not more than 5 years, specified in the officer's instrument of appointment.

(4) The chief executive officer is eligible for re-appointment.

(5) The chief executive officer is taken, while holding that office, to be a member of the staff of the Regulator.

623 Functions of chief executive officer

The chief executive officer of the Regulator—

(a) is responsible for the day-to-day management of the Regulator; and

(b) has any other functions conferred on the chief executive officer by the Board.

624 Delegation by chief executive officer

The chief executive officer of the Regulator may delegate any of the functions conferred on the officer, other than this power of delegation, to—

(a) an appropriately qualified member of the staff of the Regulator; or

(b) the chief executive of an entity or a department of government of a participating jurisdiction or the Commonwealth.

Division 4 Staff

625 Staff

(1) The Regulator may, for the purpose of exercising its functions, employ staff.

(2) The staff of the Regulator are to be employed on the terms and conditions decided by the Regulator from time to time.

(3) Subsection (2) is subject to any relevant industrial award or agreement that applies to the staff.

626 Staff seconded to Regulator

The Regulator may make arrangements for the services of any of the following persons to be made available to the Regulator in connection with the exercise of its functions—

(a) a member of the staff of a government agency of the Commonwealth, a State or a Territory;

(b) a member of the staff of a local government authority.

627 Consultants and contractors

(1) The Regulator may engage persons with suitable qualifications and experience as consultants or contractors.

(2) The terms and conditions of engagement of consultants or contractors are as decided by the Regulator from time to time.

Part 12.3 Miscellaneous

Division 1 Finance

628 National Heavy Vehicle Regulator Fund

(1) The National Heavy Vehicle Regulator Fund is established.

(2) The Fund is to be administered by the Regulator.

(3) The Regulator may establish accounts with any financial institution for money in the Fund.

(4) The Fund does not form part of the consolidated fund or consolidated account (however described) of a participating jurisdiction or the Commonwealth.

629 Payments into Fund

There is payable into the Fund—

(a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the Fund; and

(b) all fees, charges, costs and expenses paid to or recovered by the Regulator under this Law; and

(c) the proceeds of the investment of money in the Fund; and

(d) all grants, gifts and donations made to the Regulator, but subject to any trusts declared in relation to the grants, gifts or donations; and

(e) all money directed or authorised to be paid into the Fund under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and

(f) any other money or property received by the Regulator in connection with the exercise of its functions; and

(g) any moneys paid to the Regulator for the provision of services to a State or Territory under an agreement mentioned in section 599(2)(b).

630 Payments out of Fund

Payments may be made from the Fund for the purpose of—

(a) paying any costs or expenses, or discharging any liabilities, incurred in the administration or enforcement of this Law, including, for example, payments made to a State or Territory for the provision of services under an agreement mentioned in section 599(2)(a); and

(b) paying any moneys directed or authorised to be paid out of the Fund under this Law; and

(c) making any other payments recommended by the Regulator and approved by the responsible Ministers.

631 Investment by Regulator

(1) The Regulator must invest its funds in a way that is secure and provides a low risk so that the Regulator's exposure to the loss of funds is minimised.

(2) The Regulator must keep records that show it has invested in a way that complies with subsection (1).

632 Financial management duties of Regulator

The Regulator must—

(a) ensure its operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the Fund and other moneys received by the Regulator; and

(c) ensure expenditure is made from the Fund for lawful purposes only and, as far as possible, that reasonable

value is obtained for moneys expended from the Fund; and

(d) ensure its procedures, including internal control procedures, afford adequate safeguards with respect to—

(i) the correctness, regularity and propriety of payments made from the Fund; and

(ii) receiving and accounting for payments made to the Fund; and

(iii) prevention of fraud or mistake; and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and

(f) take any action necessary to facilitate the audit of the financial statements under this Law; and

(g) arrange for any further audit by a qualified person of the books and records kept by the Regulator if directed to do so by the responsible Ministers.

Division 2 Reporting and planning arrangements

633 Annual report

(1) The Regulator must, within 3 months after the end of each financial year, give the responsible Ministers an annual report for the financial year.

(2) The annual report must—

(a) include for the period to which the report relates—

(i) the financial statements that have been audited by an auditor decided by the responsible Ministers; and

(ii) other matters required by the national regulations; and

(b) be prepared in the way required by the national regulations.

(3) Without limiting subsection (2)(b), the national regulations may provide—

(a) that the financial statements are to be prepared in accordance with Australian Accounting Standards; and

(b) for the auditing of the financial statements.

(4) The responsible Ministers are to make arrangements for the tabling of the Regulator's annual report in each House of the Parliament of each participating jurisdiction and of the Commonwealth.

(5) As soon as practicable after the annual report has been tabled in at least one House of the Parliament of a participating jurisdiction, the Regulator must publish a copy of the report on the Regulator's website.

634 Other reports

The responsible Ministers may, by written direction given to the Regulator, require the Regulator to give to the responsible Ministers, within the period stated in the direction, a report about any matter that relates to the exercise by the Regulator of its functions.

635 Corporate plans

(1) The Regulator must, on an annual basis, prepare and give to the responsible Ministers for approval by the Ministers a corporate plan for each 3 year period.

(2) The corporate plan must—

(a) outline the Regulator's objectives for the 3 year period; and

(b) state how the Regulator's objectives will be implemented during the 3 year period; and

(c) state the performance indicators for measuring the Regulator's progress in implementing the objectives; and

(d) include the Regulator's proposed budget for each financial year within the 3 year period.

(3) The Regulator must, by notice given to the responsible Ministers, advise the Ministers if either of the following occurs—

(a) the Regulator makes a significant amendment to its corporate plan;

(b) the Regulator becomes aware of an issue that will have a significant impact on its ability to implement the objectives stated in the corporate plan.

Division 3 Oversight of the Regulator and Board

636 Application of Commonwealth Archives Act, FOI Act, Ombudsman Act and Privacy Act

(1) The following Acts, as in force from time to time, apply for the purposes of this Law—

(a) the *Archives Act 1983* of the Commonwealth;

(b) the *Freedom of Information Act 1982* of the Commonwealth;

(c) the *Ombudsman Act 1976* of the Commonwealth;

(d) the *Privacy Act 1988* of the Commonwealth.

(2) However, the Acts mentioned in subsection (1) do not apply for the purposes of this Law to the extent that functions are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify any such Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may—

(a) provide that the Act applies as if a provision of the Act specified in the regulations were omitted; or

(b) provide that the Act applies as if an amendment to the Act made by a law of the Commonwealth, and specified in the regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) An Act mentioned in subsection (1) applies for the purposes of this Law as if the Minister responsible for a government agency were the responsible Ministers in relation to a body established by this Law.

Division 4 Provisions relating to persons exercising functions under Law

637 General duties of persons exercising functions under this Law

(1) A person exercising functions under this Law must, when exercising the functions, act honestly and with integrity.

(2) A person exercising functions under this Law must exercise the person's functions under this Law—

(a) in good faith; and

(b) with a reasonable degree of care, diligence and skill.

(3) A person exercising functions under this Law must not make improper use of the person's position or of information that comes to the person's knowledge in the course of, or because of, the person's exercise of the functions—

(a) to gain an advantage for himself or herself or another person; or

(b) to cause a detriment to the implementation or operation of this Law.

Maximum penalty for subsection (3)—$2000.

638 Protection from personal liability for persons exercising functions

(1) A person who is or was a protected person is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a function under this Law; or

(b) in the reasonable belief that the act or omission was the exercise of a function under this Law.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to the Regulator.

(3) In this section—

protected person—

(a) means any of the following—

(i) a member of the Board;

(ii) a member of a committee of the Regulator;

(iii) a member of the staff of the Regulator;

(iv) an authorised officer;

(v) a person to whom the Regulator has delegated any of its functions or to whom functions delegated by the Regulator have been subdelegated;

(vi) a person acting under the direction or authority of a person mentioned in subparagraphs (i) to (v), including, for example, a person helping an authorised officer or an assistant mentioned in section 467, 468 or 471;

(vii) any other person exercising functions under this Law; but

(b) does not include any of the following—

(i) a road authority;

(ii) a road manager;

(iii) TCA;

(iv) an intelligent access service provider;

(v) an intelligent access auditor.

Chapter 13 General

Part 13.1 General offences

Division 1 Offence about discrimination or victimisation

639 Discrimination against or victimisation of employees

(1) An employer must not dismiss an employee, or otherwise prejudice an employee in the employee's employment, for the reason that the employee—

(a) has helped or given information to a public authority or law enforcement agency in relation to a contravention or alleged contravention of this Law; or

(b) has made a complaint about a contravention or alleged contravention of this Law to an employer, former employer, fellow employee, former fellow employee, union or public authority or law enforcement agency.

Examples of prejudicial conduct in relation to an employee's employment—

- demotion of the employee
- unwarranted transfer of the employee
- reducing the employee's terms of employment

Maximum penalty—$10000.

(2) An employer must not fail to offer employment to a prospective employee, or in offering employment to a prospective employee treat the prospective employee less favourably than another prospective employee would be treated in similar circumstances, for the reason that the prospective employee—

(a) has helped or given information to a public authority or law enforcement agency in relation to a contravention or alleged contravention of this Law; or

(b) has made a complaint about a contravention or alleged contravention of this Law to an employer, former employer, fellow employee, former fellow employee, union or public authority or law enforcement agency.

Maximum penalty—$10000.

(3) In a proceeding for an offence against subsection (1) or (2), if all the facts constituting the offence other than the reason for the defendant's action are proved, the defendant has the onus of proving that the defendant's action was not for the reason alleged in the charge for the offence.

(4) In this section—

employee includes an individual who works under a contract for services.

employer, of a prospective employee, includes a prospective employer of the employee.

640 Order for damages or reinstatement

(1) This section applies if a court convicts an employer of an offence against section 639 in relation to an employee or prospective employee.

(2) In addition to imposing a penalty, the court may make 1 or more of the following orders—

(a) an order that the employer pay, within a stated period, the employee or prospective employee the damages the court considers appropriate to compensate the employee or prospective employee;

(b) for an employee—an order that the employee be reinstated or re-employed in the employee's former position or, if that position is not available, in a similar position;

(c) for a prospective employee—an order that the prospective employee be employed in the position for which the prospective employee applied or, if that position is not available, in a similar position.

(3) An order for damages under subsection (2)(a)—

(a) can not be for an amount exceeding the monetary jurisdictional limit of the court in civil proceedings; and

(b) is taken to be, and is enforceable as, a judgment of the court sitting in civil proceedings.

(4) A person against whom an order is made under subsection (2)(b) or (c) must comply with the order.

Maximum penalty—$10000.

(5) In this section—

employee includes an individual who works under a contract for services.

employer, of a prospective employee, includes a prospective employer of the employee.

Division 2 Offences about false or misleading information

641 False or misleading statements

(1) A person commits an offence if the person makes a statement to an official that the person knows is false or misleading in a material particular.

Maximum penalty—$10000.

(2) A person commits an offence if the person—

(a) makes a statement to an official that is false or misleading in a material particular; and

(b) is reckless as to whether the statement is false or misleading in a material particular.

Maximum penalty—$8000.

(3) Subsections (1) and (2) apply even if the statement was not given in response to, or in purported compliance with, a direction or requirement under this Law.

(4) In a proceeding for an offence against subsection (1) or (2), it is enough for a charge to state that the statement made was 'false or misleading', without specifying whether it was false or whether it was misleading.

(5) In this section—

official includes—

(a) TCA exercising a function under Chapter 7; and

(b) a person exercising a function under this Law under the direction or authority of an official.

642 False or misleading documents

(1) A person commits an offence if the person gives an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—$10000.

(2) Subsection (1) does not apply if the person, when giving the document—

(a) tells the official, to the best of the person's ability, how information contained in the document is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) A person commits an offence if the person—

(a) gives an official a document containing information that is false or misleading in a material particular; and

(b) is reckless as to whether information contained in the document is false or misleading in a material particular.

Maximum penalty—$8000.

(4) Subsections (1) and (3) apply even if the document was not given in response to, or in purported compliance with, a direction or requirement under this Law.

(5) In a proceeding for an offence against subsection (1) or (3), it is enough for a charge to state that the information was 'false or misleading', without specifying whether it was false or whether it was misleading.

(6) In this section—

official includes—

(a) TCA exercising a function under Chapter 7; and

(b) a person exercising a function under this Law under the direction or authority of an official.

643 False or misleading information given by responsible person to another responsible person

(1) A responsible person for a heavy vehicle (the ***information giver***) must not give another responsible person for a heavy vehicle (the ***affected person***) information the information

giver knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty—$10000.

Note—

See section 572 for the matters a court must consider when deciding whether a person ought reasonably to have known something.

(2) Subsection (1) does not apply if the affected person knew, or ought reasonably to have known, that the information was false or misleading in the material particular.

(3) Also, subsection (1) does not apply if the information giver gives the information in writing and, when giving the information—

(a) tells the affected person, to the best of the information giver's ability, how it is false or misleading; and

(b) if the information giver has, or can reasonably obtain, the correct information—gives the correct information in writing.

(4) Subsection (1) applies even if the information was not given in response to, or in purported compliance with, a direction or requirement under this Law.

(5) In a proceeding for an offence against subsection (1)—

(a) it is enough for a charge to state that the statement made was 'false or misleading', without specifying whether it was false or whether it was misleading; and

(b) it is enough for a charge to state that the information given was false or misleading to the information giver's knowledge, without specifying whether the information giver knew or ought reasonably to have known the information was false or misleading.

(6) In this section—

information means information in any form, whether or not in writing.

material particular means a particular relating to an element of an offence against this Law that is or could be committed by a person mentioned in paragraph (a) or (b) if the person relies, or were to rely, on the particular—

(a) the responsible person for a heavy vehicle to whom the information is given;

(b) any other responsible person for a heavy vehicle who, at any time, is given the false or misleading information.

644 Offence to falsely represent that heavy vehicle authority is held etc.

(1) A person must not represent—

(a) that the person has been granted a heavy vehicle authority the person has not been granted; or

(b) that the person is operating under a heavy vehicle authority that the person is not entitled to operate under.

Maximum penalty—$10000.

(2) A person must not represent that the person is operating under a heavy vehicle authority if the authority is no longer in force.

Maximum penalty—$10000.

(3) A person must not possess a document that falsely purports to be—

(a) an accreditation certificate for a heavy vehicle accreditation; or

(b) a document mentioned in section 420(1)(b) or (c); or

(c) a document evidencing the grant of an exemption, authorisation, permit or other authority under this Law; or

Examples—

a Commonwealth Gazette notice, a permit

(d) a copy of a document mentioned in paragraph (a), (b) or (c).

Maximum penalty—$10000.

(4) In this section—

heavy vehicle authority means—

(a) a heavy vehicle accreditation; or

(b) an exemption, authorisation, permit or other authority under this Law.

Part 13.2 Industry codes of practice

645 Guidelines for industry codes of practice

(1) The Regulator may make guidelines about the preparation and content of an industry code of practice that may be registered under this Law.

(2) Without limiting subsection (1), the guidelines may provide that an industry code of practice registered under this Law must provide for the review of the code of practice.

(3) The Regulator must—

(a) keep a copy of the guidelines available for inspection by the public, during office hours on business days, at the Regulator's head office; and

(b) publish a copy of the guidelines on the Regulator's website.

646 Registration of industry codes of practice

(1) The Regulator may register an industry code of practice for this Law prepared in accordance with guidelines in force under section 645.

(2) The registration may be subject to conditions the Regulator considers appropriate.

Examples of conditions that may be imposed on the registration of an industry code of practice—

- that the industry code of practice must be reviewed after a stated period
- that a stated person, or a person of a stated class, must be appointed to maintain the industry code of practice and ensure it is updated following changes to best practice methods for the industry to which it relates
- that the industry code of practice must be updated following changes to the guidelines for the preparation and content of the industry code of practice in force under section 645

(3) Subsection (4) applies if—

(a) a condition applying to the registration of an industry code of practice is contravened; or

(b) the guidelines in force under section 645 about the preparation and content of an industry code of practice are changed and a registered industry code of practice does not comply with the guidelines as amended.

(4) The Regulator may—

(a) amend the conditions of the registration, including by adding new conditions; or

Example of a condition for paragraph (a)—

that the registered industry code of practice be amended in a stated way to reflect a change to the guidelines for the preparation and content of the code of practice in force under section 645

(b) cancel the registration.

Part 13.3 Legal proceedings

Division 1 Proceedings

647 Proceedings for offences

(1) A proceeding for an offence against this Law is to be by way of a summary proceeding before a court of summary jurisdiction.

(2) The proceeding must start within the later of the following periods to end—

(a) 2 years after the commission of the offence;

(b) 1 year after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.

(3) A statement in a complaint for an offence against this Law that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

(4) In this section—

complaint means a complaint, notice, charge or other process by which a proceeding for an offence is started.

Division 2 Evidence

648 Proof of appointments unnecessary

For this Law, it is not necessary to prove the appointment of the following persons—

(a) an official;

(b) a police commissioner.

649 Proof of signatures unnecessary

For this Law, a signature purporting to be the signature of 1 of the following persons is evidence of the signature it purports to be—

(a) an official;

(b) a police commissioner.

650 Averments

(1) In a proceeding for an offence against this Law, a statement in the complaint for the offence that, at a stated time or during a stated period—

(a) a stated vehicle or a stated combination was a heavy vehicle; or

(b) a stated vehicle or a stated combination was of a stated category of heavy vehicle; or

(c) a stated person was the registered operator of a stated heavy vehicle; or

(d) a stated person held a permit for a mass or dimension authority, a heavy vehicle accreditation or another authority under this Law; or

(e) a stated location was, or was a part of, a road or road-related area; or

(f) a stated location was, under a stated provision of this Law or another stated law, subject to a stated prohibition, restriction or other requirement about the use of heavy vehicles or stated categories of heavy vehicles;

is evidence of the matter.

(2) In a proceeding for an offence against this Law, a statement or allegation in the complaint for the offence that the act or omission constituting the alleged offence was done or made in a stated place, at a stated time, on a stated date or during a stated period, is evidence of the matter.

(3) In this section—

complaint means a complaint, notice, charge or other process by which a proceeding for an offence is started.

651 Evidence by certificate by Regulator generally

(1) A certificate purporting to be issued by the Regulator and stating that, at a stated time or during a stated period—

(a) a stated vehicle was or was not registered under this Law; or

(b) a stated vehicle was or was not registered under this Law on the basis it is a heavy vehicle; or

(c) a stated vehicle registered under this Law was or was not registered as a heavy vehicle of a stated category; or

(d) a stated person was or was not the registered operator of a stated vehicle registered under this Law; or

(e) a stated person held or did not hold a heavy vehicle accreditation granted under this Law; or

(f) a stated exemption or authorisation under this Law applied or did not apply to a stated person or a stated heavy vehicle; or

(g) a stated person is the holder of a stated permit or other authority under this Law; or

(h) a stated registration, heavy vehicle accreditation, exemption, authorisation, permit or other authority under this Law was or was not amended, suspended or cancelled under this Law; or

(i) a stated penalty, fee, charge or other amount was or was not, or is or is not, payable under this Law by a stated person; or

(j) a stated fee, charge or other amount payable under this Law was or was not paid to the Regulator; or

(k) a stated person has or has not notified the Regulator of any, or a stated, change of the person's address; or

(l) a stated identification card (however called) was issued by the Regulator to a stated person and was or was not current; or

(m) a stated authorised officer (other than an authorised officer who is a police officer) was authorised to exercise a stated power under this Law and—

(i) was not restricted in the exercise of the power by the officer's conditions of appointment or a direction of the Regulator; or

(ii) was not restricted in a stated way in the exercise of the power by the officer's conditions of appointment or a direction of the Regulator; or

(n) a stated industry code of practice was or was not registered under section 646; or

(o) a stated road or road-related area, or a stated part of a road or road-related area, was in an area or on a route declared under a stated provision of this Law or the national regulations; or

(p) a stated heavy vehicle, or a stated component of a stated heavy vehicle, was weighed by or in the presence of a stated authorised officer on a stated weighbridge or weighing facility or by the use of a stated weighing device, and that a stated mass was the mass of the vehicle or component; or

(q) a stated mathematical or statistical procedure was carried out in relation to stated information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system and the results of the procedure being carried out;

is evidence of the matter.

(2) A procedure specified in a certificate under subsection (1)(q) is presumed, unless the contrary is proved—

(a) to be valid and reliable for the purpose for which it was used; and

(b) to have been carried out correctly.

652 Evidence by certificate by road authority

A certificate purporting to be issued by a road authority and stating that, at a stated time or during a stated period—

(a) a stated vehicle was or was not registered or licensed under a law administered by the authority; or

(b) a stated person was the person in whose name a stated vehicle was registered or licensed under a law administered by the authority; or

(c) a stated vehicle was not registered or licensed under a law administered by the authority in a stated person's name; or

(d) a stated location—

(i) was, or was part of, a road or road-related area; or

(ii) was not a road or road-related area or part of a road or road-related area; or

(e) a stated location was or was not, under a stated law of a stated participating jurisdiction, subject to a stated prohibition, restriction or other requirement about the use of heavy vehicles or stated categories of heavy vehicles;

is evidence of the matter.

653 Evidence by certificate by Regulator about matters stated in or worked out from records

(1) A certificate purporting to be issued by the Regulator and stating any of the following matters is evidence of the matter—

(a) a stated matter appears in a stated record kept by the Regulator for the administration or enforcement of this Law;

(b) a stated matter appears in a stated record accessed by the Regulator for the administration or enforcement of this Law.

(2) A certificate purporting to be issued by the Regulator and stating that a matter that has been worked out from either of the following is evidence of the matter—

(a) a stated record kept by the Regulator for the administration or enforcement of this Law;

(b) a stated record accessed by the Regulator for the administration or enforcement of this Law.

(3) This section does not limit section 651.

654 Evidence by certificate by authorised officer about instruments

(1) A certificate purporting to be issued by an authorised officer and stating that, on a stated day or at a stated time on a stated day, a stated instrument—

(a) was in a proper condition; or

(b) had a stated level of accuracy;

is evidence of those matters on the stated day or at the stated time.

(2) Evidence of the condition of the instrument, or the way in which it was operated, is not required unless evidence that the instrument was not in proper condition or was not properly operated has been given.

(3) A defendant in a proceeding for an offence against this Law who intends to challenge the condition of an instrument, or the way in which it was operated, must give the complainant notice of the intention to challenge.

(4) The notice must be—

(a) signed by the defendant; and

(b) given at least 14 days before the day fixed for the hearing of the charge.

(5) In this section—

instrument means—

(a) a weighing device; or

(b) an intelligent transport system.

655 Challenging evidence by certificate

(1) A defendant in a proceeding for an offence against this Law who intends to challenge a matter stated in a certificate mentioned in section 651, 652, 653 or 654(1) must give the complainant notice of the intention to challenge.

(2) The notice must be—

(a) signed by the defendant; and

(b) given at least 14 days before the day fixed for the hearing of the charge.

(3) If the matter intended to be challenged is the accuracy of a measurement, an analysis or a reading from a device, the notice must state—

(a) the basis on which the defendant intends to challenge the accuracy of the measurement, analysis or reading; and

(b) the measurement, analysis or reading the defendant considers to be the correct measurement, analysis or reading.

(4) A defendant in a proceeding for an offence against this Law can not challenge a matter stated in a certificate mentioned in section 651, 652, 653 or 654(1) unless—

(a) the defendant has complied with this section; or

(b) the court gives leave to the defendant to challenge the matter, in the interests of justice.

(5) This section applies only if the defendant is given a copy of the certificate at least 28 days before the appointed date for the hearing of the charge.

656 Evidence by record about mass

A record of the mass of a heavy vehicle, or a component of a heavy vehicle, purporting to be made by the operator of a weighbridge or weighing facility at which the vehicle or component was weighed, or by the operator's employee—

(a) is admissible in a proceeding under this Law; and

(b) is evidence of the mass of the vehicle or component at the time it was weighed.

657 Manufacturer's statements

(1) A written statement of the recommended maximum loaded mass (***mass rating***) for a heavy vehicle, or a component of a heavy vehicle, purporting to be made by the manufacturer of the vehicle or component is admissible in a proceeding under this Law and is evidence—

(a) of the mass rating; and

(b) of any conditions, stated in the statement, to which the mass rating is subject; and

(c) that the statement was made by the manufacturer.

(2) A written statement of the strength or performance rating of equipment used to restrain a load and designed for use on a heavy vehicle, or on a component of a heavy vehicle, purporting to be made by the manufacturer of the equipment is admissible in a proceeding under this Law and is evidence—

(a) that the equipment was designed for the use; and

(b) of the strength or performance rating of the equipment; and

(c) of any conditions, stated in the statement, to which the rating is subject; and

(d) that the statement was made by the manufacturer.

Example of equipment used to restrain a load—

a chain or strap

658 Measurement of weight on tyre

(1) A mark or print on a tyre purporting to be the maximum load capacity decided by the manufacturer of the tyre is evidence of the maximum load capacity for the tyre at cold inflation pressure decided by the manufacturer.

(2) If it is impracticable to work out the mass on each tyre in an axle or axle group, the mass on the axle or axle group divided by the number of tyres in the axle or axle group is taken to be the mass on the tyre in the absence of evidence to the contrary.

659 Transport and journey documentation

(1) Transport documentation and journey documentation are admissible in a proceeding under this Law and are evidence of—

(a) the identity and status of the parties to the transaction to which the documentation relates; and

(b) the destination or intended destination of the load to which the documentation relates.

(2) In this section—

status, of the parties to a transaction, includes the status of each of the parties as a responsible person for the heavy vehicle used or intended to be used for transporting the goods the subject of the transaction.

660 Evidence not affected by nature of vehicle

Evidence obtained in relation to a vehicle because of the exercise of a power under this Law in the belief or suspicion that the vehicle is a heavy vehicle is not affected merely because the vehicle is not a heavy vehicle.

661 Certificates of TCA

(1) A certificate purporting to be signed by a person on behalf of TCA stating any of the following matters is evidence of the matter—

(a) a stated intelligent transport system was or was not an approved intelligent transport system on a stated date or during a stated period;

(b) a stated person was or was not an intelligent access service provider on a stated date or during a stated period;

(c) a stated person was or was not an intelligent access auditor on a stated date or during a stated period.

(2) A person who purportedly signs a certificate of a type mentioned in subsection (1) on behalf of TCA is presumed, unless the contrary is proved, to have been authorised by TCA to sign the certificate on TCA's behalf.

662 Approved intelligent transport system

(1) An approved intelligent transport system, including all the equipment and software that makes up the system, is presumed, unless the contrary is proved, to have operated properly on any particular occasion.

(2) Without limiting subsection (1), information generated, recorded, stored, displayed, analysed, transmitted and reported by an approved intelligent transport system is presumed, unless the contrary is proved, to have been correctly generated, recorded, stored, displayed, analysed, transmitted and reported by the system.

(3) Without limiting subsection (1) or (2), information generated by an approved intelligent transport system is presumed, unless the contrary is proved, not to have been changed by being recorded, stored, displayed, analysed, transmitted or reported by the system.

(4) If in a proceeding it is established by contrary evidence that particular information recorded or stored by an approved intelligent transport system is not a correct representation of the information generated by the system, the presumption mentioned in subsection (3) continues to apply to the remaining information recorded or stored by the system despite that contrary evidence.

(5) If a defendant in a proceeding for an offence against this Law intends to challenge any of the following matters, the defendant must give the complainant notice of the intention to challenge—

(a) that an approved intelligent transport system has operated properly;

(b) that information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system has been correctly generated, recorded, stored, displayed, analysed, transmitted or reported by the system;

(c) that information generated by an approved intelligent transport system has not been changed by being recorded, stored, displayed, analysed, transmitted or reported by the system.

(6) The notice must—

(a) be signed by the defendant; and

(b) state the grounds on which the defendant intends to rely to challenge a matter mentioned in subsection (5)(a), (b) or (c); and

(c) be given at least 14 days before the day fixed for the hearing of the charge.

(7) This section does not limit section 654.

663 Reports and statements made by approved intelligent transport system

(1) A report purporting to be made by an approved intelligent transport system—

(a) is presumed, unless the contrary is proved—

(i) to have been properly made by the system; and

(ii) to be a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system; and

(b) is admissible in a proceeding under this Law; and

(c) is evidence of the matters stated in it.

(2) However, subsection (1)(c) does not apply to information stated in a report made by an approved intelligent transport system that has been manually entered into the system by an operator or driver of a heavy vehicle.

Example—

If the driver of a heavy vehicle enters the mass of the vehicle into the intelligent transport system, the information about the mass of the vehicle stated in a report made by the system is not evidence of the mass of the vehicle.

(3) Also, if in a proceeding it is established by contrary evidence that part of a report made by an approved intelligent transport system is not a correct representation of particular information generated, recorded, stored, displayed, analysed, transmitted or reported by the system, the presumption mentioned in subsection (1)(a) continues to apply to the remaining parts of the report despite that contrary evidence.

(4) If a defendant in a proceeding for an offence against this Law intends to challenge any of the following matters, the defendant must give the complainant notice of the intention to challenge—

(a) that a report made by an approved intelligent transport system has been properly made;

(b) that a report made by an approved intelligent transport system is a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system;

(c) the correctness of a statement of a vehicle's position on the surface of the earth at a particular time that is made by an approved intelligent transport system.

(5) The notice must—

(a) be signed by the defendant; and

(b) state the grounds on which the defendant intends to rely to challenge the matter mentioned in subsection (4)(a), (b) or (c); and

(c) be given at least 14 days before the day fixed for the hearing of the charge.

(6) This section does not limit section 654.

664 Documents produced by an approved electronic recording system

(1) This section applies to an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part.

(2) A document purporting to be made by the approved electronic recording system—

(a) is admissible in a proceeding under this Law relating to a fatigue-regulated heavy vehicle; and

(b) is evidence of the matters stated in it.

665 Statement by person involved with use or maintenance of approved electronic recording system

(1) This section applies to an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part.

(2) A written statement about how the approved electronic recording system has been used or maintained, and purporting to be made by the person purporting to be involved in the use or maintenance—

(a) is admissible in a proceeding under this Law relating to a fatigue-regulated heavy vehicle; and

(b) is evidence of the matters included in the statement.

Examples of statements—

- a statement made by the driver of a fatigue-regulated heavy vehicle who uses an electronic work diary about how the driver operated the work diary
- a statement made by an owner of an approved electronic recording system about how the owner has maintained the system
- a statement made by the record keeper (within the meaning given by section 287) of the driver of a fatigue-regulated heavy vehicle who uses an electronic work diary about how information was transmitted from the electronic work diary to the record keeper

Part 13.4 Protected information

666 Definitions for Pt 13.4

In this Part—

authorised use, for protected information, means—

(a) the exercise of a function under this Law; or

(b) use by a public authority or law enforcement agency—

(i) for the administration or enforcement of a law or the exercise of another function of the authority or agency, including, for example, investigating a contravention or suspected contravention of a law; or

(ii) if a law authorises, requires or permits the disclosure of the information to, and the use of the information by, the authority or agency; or

(c) use by a court or tribunal in a proceeding under an Australian road law; or

(d) use by a court or tribunal if an order of the court or tribunal requires the disclosure of the information to the court; or

(e) an activity associated with preventing or minimising—

(i) a risk of danger to the life of a person; or

(ii) a risk of serious harm to the health of a person; or

(iii) a risk to public safety; or

(f) a use authorised by the person to whom the information relates; or

(g) research purposes if the information contains no personal information; or

(h) a use prescribed by the national regulations.

protected information—

(a) means information obtained in the course of administering this Law or because of an opportunity provided by involvement in administering this Law; but

(b) does not include—

(i) intelligent access information; or

Note—

See Chapter 7 for the restrictions on the use and disclosure of intelligent access information.

(ii) information mentioned in paragraph (a) in a form that does not identify a person; or

(iii) information relating to proceedings before a relevant tribunal or court that are or were open to the public.

667 Duty of confidentiality

(1) A person who is, or has been, a person exercising functions under this Law must not disclose protected information to another person.

Maximum penalty—$20000.

(2) However, subsection (1) does not apply to the Regulator—

(a) disclosing protected information in the form of a confirmation that a stated person is the registered operator of a stated heavy vehicle; or

(b) disclosing details of heavy vehicles registered in a person's name to an executor or administrator of that person's deceased estate.

(3) Also, subsection (1) does not apply if—

(a) the disclosure is to an entity for an authorised use; or

(b) the disclosure is to, or made with the agreement of, the person to whom the information relates.

668 Protected information only to be used for authorised use

(1) A person who is, or has been, a person exercising functions under this Law must not use protected information other than for an authorised use.

Maximum penalty—$20000.

(2) However, subsection (1) does not apply to the Regulator using protected information for making a disclosure mentioned in section 667(2).

(3) A person to whom protected information is disclosed under section 667(3)(a) must not use the protected information other than for the authorised use for which it was disclosed to the person.

Maximum penalty for subsection (3)—$20000.

Part 13.5 National regulations

669 National regulations

(1) For the purposes of this section, the designated authority is the Queensland Governor acting with the advice of the Executive Council of Queensland and on the unanimous recommendation of the responsible Ministers.

(2) The designated authority may make regulations for the purposes of this Law.

(3) The regulations may provide for—

(a) any matter a provision of this Law states may be provided for in the regulations; and

(b) the imposition of a maximum fine for a contravention of a provision of the regulations of not more than—

(i) for a contravention by an individual—$4000; or

(ii) in any other case—$20000; and

(c) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.

(4) Subsection (3)(b) does not require a provision of the regulations prescribing a maximum fine for an offence to expressly prescribe a maximum fine for a body corporate different to the maximum fine for an individual.

Note—

See section 537 in relation to a provision of the regulations prescribing a maximum fine that does not expressly prescribe a maximum fine for a body corporate different to the maximum fine for an individual.

(5) In this section—

Queensland Governor means the Governor of the State of Queensland and includes—

(a) a person acting under a delegation under section 40 of the *Constitution of Queensland 2001*; and

(b) a person for the time being administering the Government of Queensland under section 41 of the *Constitution of Queensland 2001*.

670 Publication of national regulations

(1) The national regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

(2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

Part 13.6 Other

671 Approved forms

(1) The Regulator may approve forms for use under this Law.

(2) The approval of a form must be notified on the Regulator's website.

(3) Failure to comply with subsection (2) does not affect a form's validity.

672 Penalty at end of provision

In this Law, a penalty stated at the end of a provision indicates that an offence mentioned in the provision is punishable on conviction or, if no offence is mentioned, a contravention of the provision constitutes an offence against the provision that is punishable on conviction, by a penalty not more than the stated penalty.

Note—

See also section 537 in relation to maximum fines for bodies corporate.

673 Service of documents

(1) If this Law requires or permits a document to be served on a person, the document may be served—

(a) on an individual—

(i) by delivering it to the individual personally; or

(ii) by leaving it at, or by sending it by post to, the address of the place of residence or business of the individual last known to the person serving the document; or

(iii) by sending it by facsimile transmission to a facsimile number notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(iv) by sending it by email to an internet address notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(b) on another person—

(i) by leaving it at, or by sending it by post to, the head office, a registered office or a principal office of the person; or

(ii) by sending it by facsimile transmission to a facsimile number notified to the sender by the

person as an address at which service of notices under this Law will be accepted; or

(iii) by sending it by email to an internet address notified to the sender by the person as an address at which service of notices under this Law will be accepted.

(2) Subsection (1) applies whether the expression 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used.

(3) Subsection (1) does not affect—

(a) the operation of another law that authorises the service of a document otherwise than as provided in the subsection; or

(b) the power of a court or tribunal to authorise service of a document otherwise than as provided in the subsection.

674 Service by post

(1) If a document authorised or required to be served on a person under this Law is served by post, service of the document—

(a) may be effected by properly addressing, prepaying and posting the document as a letter; and

(b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) Subsection (1) applies whether the expression 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used.

675 Fees

(1) The national regulations may prescribe the fees payable for the following—

(a) an application under this Law;

(b) the issue of a work diary for the driver of a fatigue-regulated heavy vehicle.

(2) The Regulator may set fees payable for the provision of a service in connection with the administration of this Law (other than fees mentioned in subsection (1)).

(3) A fee set by the Regulator under subsection (2) must be an amount—

(a) the Regulator considers reasonable; and

(b) that is no more than the reasonable cost of providing the service.

(4) The Regulator must publish a fee set by the Regulator under subsection (2)—

(a) in the Commonwealth Gazette; and

(b) on the Regulator's website.

676 Recovery of amounts payable under Law

(1) A fee, charge or other amount payable under this Law is a debt due to the Regulator and may be recovered by action for a debt in a court of competent jurisdiction.

(2) A fee, charge or other amount payable under this Law may also be recovered in a proceeding for an offence against this Law.

(3) An order made under subsection (2)—

(a) can not be for an amount exceeding the monetary jurisdictional limit of the court in civil proceedings; and

(b) is taken to be, and is enforceable as, a judgment of the court sitting in civil proceedings.

677 Contracting out prohibited

(1) A contract is void to the extent to which it—

(a) is contrary to this Law; or

(b) purports to annul, exclude, restrict or otherwise change the effect of a provision of this Law; or

(c) purports to require the payment or reimbursement by a person of all or part of a penalty that another person has been ordered to pay under this Law.

(2) This section does not prevent the parties to a contract from including provisions in the contract imposing greater or more onerous obligations on an entity than are imposed by the requirements of this Law.

(3) This section applies to contracts entered into before or after the commencement of this section.

(4) In this section—

contract means contract or other agreement.

678 Other powers not affected

(1) Unless otherwise provided in this Law, nothing in this Law affects any power a court, tribunal or official has apart from this Law.

(2) Without limiting subsection (1), nothing in this Law affects a power or obligation under another law to amend, suspend, cancel or otherwise deal with the registration of a heavy vehicle.

Chapter 14 Savings and transitional provisions

679 Responsible Ministers

(1) This section applies if a jurisdiction—

(a) is not a participating jurisdiction; but

(b) has signed the Inter-governmental Agreement on Heavy Vehicle Regulatory Reform, as in force from time to time, between the Commonwealth of Australia and the States and Territories of Australia.

(2) The jurisdiction may nominate a Minister to be the responsible Minister for the jurisdiction for the purposes of this Law until the prescribed day for the jurisdiction.

(3) Until the prescribed day for the jurisdiction, the relevant provisions of this Law apply as if—

(a) the jurisdiction were a participating jurisdiction; and

(b) the Minister nominated under subsection (2) were the responsible Minister for the jurisdiction for the purposes of this Law.

(4) To remove any doubt, it is declared that this section does not prevent the Minister nominated under subsection (2) being nominated as the responsible Minister for the jurisdiction after the participation day for the jurisdiction.

(5) In this section—

prescribed day, for a jurisdiction, means the earlier of the following—

(a) the participation day for the jurisdiction;

(b) 30 June 2014.

relevant provisions means the provisions of this Law relating to the functions of responsible Ministers under this Law other than section 593.

680 Exercise of powers by Board between enactment and commencement

(1) This section applies if—

(a) under section 30 of Schedule 1, the Queensland Minister, on the unanimous recommendation of the responsible Ministers, appoints the members of the Board before section 604 commences; and

(b) a provision of this Law conferring a function on the Board (a ***relevant provision***) has not commenced.

(2) The members—

(a) may meet and exercise the function under the relevant provision in the same way and subject to the same conditions that would apply if the relevant provision had commenced; and

(b) in doing so, are entitled to be paid the remuneration and allowances to which the members are entitled under section 607 whether or not that section has commenced.

(3) For the purposes of deciding the duration of the term of office of a member of the Board, the term does not start until section 604 commences despite the exercise of any function by the member under subsection (2).

(4) The exercise of a function under a relevant provision does not confer a right, or impose a liability, on a person before the relevant provision commences.

(5) This section does not limit section 30 of Schedule 1.

681 Reference to section 2F of the Acts Interpretation Act 1901 of the Commonwealth

(1) This section applies if the de facto partner definition commences before the Commonwealth de facto relationship definition amendment commences.

(2) Until the Commonwealth de facto relationship definition amendment commences, the reference in the de facto partner definition to section 2F of the *Acts Interpretation Act 1901* of the Commonwealth is taken to be a reference to section 22C of the *Acts Interpretation Act 1901* of the Commonwealth.

(3) In this section—

Commonwealth de facto relationship definition amendment means Schedule 1 of the *Acts Interpretation Amendment Act 2011* of the Commonwealth to the extent it inserts section 2F into the *Acts Interpretation Act 1901* of the Commonwealth.

de facto partner definition means the definition *de facto partner* in section 5.

Schedule 1 Miscellaneous provisions relating to interpretation

section 10

Part 1 Preliminary

1 Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2 General

2 Law to be construed not to exceed legislative power of Parliament

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Parliament of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of the Parliament of this jurisdiction—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This section applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3 Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4 Material that is, and is not, part of this Law

(1) The heading to a Chapter, Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

(5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

5 References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act;

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act;

together with a reference to the jurisdiction.

6 References taken to be included in Law or Act citation etc.

(1) A reference in this Law to this Law or an Act includes a reference to—

(a) this Law or the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if this Law or the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—this Law or the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subsections (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7 Interpretation best achieving Law's purpose or object

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subsection (1) applies whether or not the purpose or object is expressly stated in this Law.

8 Use of extrinsic material in interpretation

(1) In this section—

extrinsic material means relevant material not forming part of this Law, including, for example—

(a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and

(c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this section.

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subsection (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9 Effect of change of drafting practice and use of examples

If—

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

10 Use of examples

If this Law includes an example of the operation of a provision—

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11 Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way;

the form is not properly completed unless the requirement is complied with.

Part 3 Terms and references

12 Definitions

(1) In this Law—

Act means an Act of the Parliament of this jurisdiction.

adult means an individual who is 18 or more.

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication.

appoint includes reappoint.

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

business day means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month.

calendar year means a period of 12 months beginning on 1 January.

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

confer, in relation to a function, includes impose.

contravene includes fail to comply with.

country includes—

(a) a federation; or

(b) a state, province or other part of a federation.

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent.

definition means a provision of this Law (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression.

document includes—

(a) any paper or other material on which there is writing; and

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device).

electronic communication means—

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity.

expire includes lapse or otherwise cease to have effect.

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

fail includes refuse.

financial year means a period of 12 months beginning on 1 July.

foreign country means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

function includes a power or duty.

Government Printer means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument.

individual means a natural person.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

insert, in relation to a provision of this Law, includes substitute.

instrument includes a statutory instrument.

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property.

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

Jervis Bay Territory means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth.

make includes issue or grant.

minor means an individual who is under 18.

modification includes addition, omission or substitution.

month means a calendar month.

named month means 1 of the 12 months of the year.

Northern Territory means the Northern Territory of Australia.

number means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter.

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise.

office includes position.

omit, in relation to a provision of this Law or an Act, includes repeal.

party includes an individual or a body politic or corporate.

penalty includes forfeiture or punishment.

person includes an individual or a body politic or corporate.

power includes authority.

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law.

printed includes typewritten, lithographed or reproduced by any mechanical means.

proceeding means a legal or other action or proceeding.

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Law or the Act; and

(b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; and

(c) the long title and any preamble to the Act.

record includes information stored or recorded by means of a computer.

repeal includes—

(a) revoke or rescind; and

(b) repeal by implication; and

(c) abrogate or limit the effect of this Law or the instrument concerned; and

(d) exclude from, or include in, the application of this Law or the instrument concerned any person, subject matter or circumstance.

sign includes the affixing of a seal or the making of a mark.

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise.

word includes any symbol, figure or drawing.

writing includes any mode of representing or reproducing words in a visible form.

year, without specifying the type of year, means calendar year.

(2) In a statutory instrument—

the Law means this Law.

13 Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14 Meaning of 'may' and 'must'

(1) In this Law, the word ***may***, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word ***must***, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This section has effect despite any rule of construction to the contrary.

15 Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This section has effect in relation to a statutory instrument except so far as the contrary intention appears in the instrument.

16 Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression "person", "party", "someone", "anyone", "no-one", "one", "another" or "whoever" or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is

particular reference to an individual (however expressed).

17 Production of records kept in computers etc.

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18 References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19 References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20 Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Chapter, Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Chapter, Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law—the reference is a reference to—

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs;

as the case requires.

21 Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes—

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Example—

A reference to "sections 5 to 9" includes both section 5 and section 9. It is not necessary to refer to "sections 5 to 9 (both inclusive)" to ensure that the reference is given an inclusive interpretation.

Part 4 Functions and powers

22 Exercise of statutory functions

(1) If this Law confers a function on a person or body, the function may be exercised from time to time as occasion requires.

(2) If this Law confers a function on a particular officer or the holder of a particular office, the function may be exercised by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function on a body (whether or not incorporated), the exercise of the function is not affected merely because of vacancies in the membership of the body.

23 Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24 Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind);

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

(a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

(b) apply generally to all persons, matters or things or be limited in its application to—

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to—

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25 Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26 Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing;

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27 Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subsection (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy;

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28 Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subsection (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subsection (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subsection (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29 Delegation of functions

(1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—

(a) a person or body by name; or

(b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.

(2) The delegation may be—

(a) general or limited; and

(b) made from time to time; and

(c) revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function, do anything that is incidental to the delegated function.

(6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.

(7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

(9) If—

(a) the delegator is a specified officer or the holder of a specified office; and

(b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office;

then—

(c) the delegation continues in force; and

(d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.

(10) If—

(a) the delegator is a body; and

(b) there is a change in the membership of the body;

then—

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be the delegator for the purposes of this section.

(11) If a function is delegated to a specified officer or the holder of a specified office—

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subsection (15), this section applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

30 Exercise of powers between enactment and commencement

(1) If a provision of this Law (the ***empowering provision***) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If a provision of a Queensland Act (the ***empowering provision***) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(3) If—

(a) this Law has commenced and confers a power to make a statutory instrument (the ***basic instrument-making power***); and

(b) a provision of a Queensland Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the ***additional instrument-making power***);

then—

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subsection (2).

(4) If an instrument, or a provision of an instrument, is made under subsection (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subsection; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect;

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under subsection (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subsection (1) or (2) is not necessary for a purpose mentioned in subsection (4);

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subsection (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subsection (2) but before the provision's commencement, this section applies as if the references in subsections (2) and (5) to the commencement of the empowering provision were references

to the commencement of the provision mentioned in subsection (2) as amended by the empowering provision.

(8) In the application of this section to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5 Distance, time and age

31 Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6 Effect of repeal, amendment or expiration

32 Time of Law ceasing to have effect

If a provision of this Law is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day;

the provision has effect until the last moment of the specified day.

33 Repealed Law provisions not revived

If a provision of this Law is repealed or amended by a Queensland Act, or a provision of a Queensland Act, the provision is not revived merely because the Queensland Act or the provision of the Queensland Act—

(a) is later repealed or amended; or

(b) later expires.

34 Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35 Continuance of repealed provisions

If a Queensland Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36 Law and amending Acts to be read as one

This Law and all Queensland Acts amending this Law are to be read as one.

Part 7 Instruments under Law

37 Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this

Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Part 8 Application to coastal waters

38 Application

This Law has effect in and in relation to the coastal waters of this jurisdiction as if the coastal waters were part of this jurisdiction.

Schedule 2 Subject matter for conditions of mass or dimension authorities

sections 100, 106 and 127

1 the maximum permissible mass of a heavy vehicle, a heavy vehicle together with its load, or a component of a heavy vehicle, being used on a road

2 the maximum permissible dimensions of a heavy vehicle (including its equipment), or a component or load of a heavy vehicle, being used on a road

3 the configuration of a heavy vehicle

4 the types of loads a heavy vehicle may carry

5 the use of signs and warning devices

6 the use of a pilot vehicle or escort vehicle

7 the times when a heavy vehicle may be used on a road

8 the maximum speed at which a heavy vehicle may be driven on a road

9 requirements about monitoring the movement of a heavy vehicle

10 the use of stated technology to—

(a) ensure the safe use of a heavy vehicle; or

(b) ensure a heavy vehicle will not cause damage to road infrastructure; or

(c) minimise the adverse effect of the use of a heavy vehicle on public amenity

Schedule 3 Reviewable decisions

section 581, definition *reviewable decision*

Part 1 Decisions of Regulator

Section under which decision made	Description of decision
section 54	decision of Regulator not to grant a vehicle standards exemption (permit)
section 54	decision of Regulator to grant a vehicle standards exemption (permit) for a period less than the period of not more than 3 years sought by the applicant
section 57	decision of Regulator to impose on a vehicle standards exemption (permit) a condition not sought by the applicant
section 61	decision of Regulator not to make a decision sought in an application for amendment or cancellation of a vehicle standards exemption (permit)
section 62	decision of Regulator to amend or cancel a vehicle standards exemption (permit)
section 65	decision of Regulator not to give a replacement permit for a vehicle standards exemption (permit)
section 103	decision of Regulator not to grant a mass or dimension exemption (permit) other than because a relevant road manager for the exemption did not consent to the grant
section 103	decision of Regulator to grant a mass or dimension exemption (permit) for a period less than the period of not more than 3 years sought by the applicant
section 106	decision of Regulator to impose on a mass or dimension exemption (permit) a condition not sought by the applicant and not a road condition required by a relevant road manager for the exemption
section 124	decision of Regulator not to grant a class 2 heavy vehicle authorisation (permit) other than because a relevant road manager for the authorisation did not consent to the grant

Section under which decision made	Description of decision
section 124	decision of Regulator to grant a class 2 heavy vehicle authorisation (permit) for a period less than the period of not more than 3 years sought by the applicant
section 127	decision of Regulator to impose on a class 2 heavy vehicle authorisation (permit) a condition not sought by the applicant and not a road condition required by a relevant road manager for the authorisation
section 146	decision of Regulator not to make a decision sought in an application for amendment of a mass or dimension authority granted by giving a permit to a person
section 147	decision of Regulator to amend or cancel a mass or dimension authority granted by giving a permit to a person, other than at the request of a relevant road manager
section 149	decision of Regulator to immediately suspend a mass or dimension authority granted by giving a permit to a person
section 152	decision of Regulator not to give a replacement permit for a mass or dimension authority
section 242	decision of Regulator not to grant a work and rest hours exemption (permit)
section 242	decision of Regulator to grant a work and rest hours exemption (permit) that does not cover all of the drivers sought by the applicant
section 242	decision of Regulator to grant a work and rest hours exemption (permit) setting maximum work times or minimum rest times different to the maximum work times or minimum rest times sought by the applicant
section 242	decision of Regulator to grant a work and rest hours exemption (permit) for a period less than the period of not more than 3 years sought by the applicant
section 245	decision of Regulator to impose on a work and rest hours exemption (permit) a condition not sought by the applicant
section 249	decision of Regulator not to make a decision sought in an application for the amendment or cancellation of a work and rest hours exemption (permit)
section 250	decision of Regulator to amend or cancel a work and rest hours exemption (permit)

Section under which decision made	Description of decision
section 251	decision of Regulator to immediately suspend a work and rest hours exemption (permit)
section 254	decision of Regulator not to give a replacement permit for a work and rest hours exemption (permit)
section 313	decision of Regulator not to grant an electronic recording system approval
section 313	decision of Regulator to impose on an electronic recording system approval a condition not sought by the applicant
section 321	decision of Regulator not to make a decision sought in an application for amendment or cancellation of an electronic recording system approval
section 322	decision of Regulator to amend or cancel an electronic recording system approval
section 333	decision of Regulator not to grant a work diary exemption (permit)
section 333	decision of Regulator to grant a work diary exemption (permit) for a period less than the period of not more than 3 years sought by the applicant
section 336	decision of Regulator to impose on a work diary exemption (permit) a condition not sought by the applicant
section 340	decision of Regulator not to make a decision sought in an application for the amendment or cancellation of a work exemption (permit)
section 341	decision of Regulator to amend or cancel a work diary exemption (permit)
section 344	decision of Regulator not to give a replacement permit for work diary exemption (permit)
section 410	decision of Regulator not to grant a heavy vehicle accreditation
section 410	decision of Regulator to grant a heavy vehicle accreditation for a period less than the period of not more than 3 years sought by the applicant

Section under which decision made	Description of decision
section 410	decision of Regulator to grant an AFM accreditation setting maximum work times and minimum rest times different to the maximum work times and minimum rest times sought by the applicant
section 414(2)	decision of Regulator to impose on a heavy vehicle accreditation a condition not sought by the applicant
section 424	decision of Regulator not to make a decision sought in an application for amendment or cancellation of a heavy vehicle accreditation
section 425	decision of Regulator to amend, suspend or cancel a heavy vehicle accreditation
section 426	decision of Regulator to immediately suspend a heavy vehicle accreditation
section 429	decision of Regulator not to give a replacement accreditation certificate
section 507	decision of Regulator that a thing or sample is forfeited to the Regulator

Part 2 Decisions of authorised officers

1
2

Section under which decision made	Description of decision
section 516	decision of an authorised officer who is not a police officer to give a person an improvement notice
sections 516 and 518	decision of an authorised officer who is not a police officer to amend an improvement notice given to a person

Part 3 Decisions of relevant road managers

1

2

Section under which decision made	Description of decision
section 136	decision of a relevant road manager for a mass or dimension authority, that is a public authority, not to consent to the grant of the authority
section 138	decision of a relevant road manager for a mass or dimension authority, that is a public authority, to consent to the grant of the authority subject to a condition that a road condition be imposed on the authority
section 144	decision of a relevant road manager for a mass or dimension authority (granted by Commonwealth Gazette notice), that is a public authority, to request the authority be amended or cancelled
section 148	decision of a relevant road manager for a mass or dimension authority (granted by giving a permit to a person), that is a public authority, to request the authority be amended or cancelled

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