

House of Assembly—No 9A

As reported with amendments, report agreed to and passed remaining stages, 7 June 2006

South Australia

Statutes Amendment (Road Transport Compliance and Enforcement) Bill 2006

A BILL FOR

An Act to amend the *Road Traffic Act 1961*, the *Motor Vehicles Act 1959* and the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Road Transport Compliance and Enforcement) Act 2006*.

5 2—Commencement

(1) This Act will come into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to Part 2 or section 16.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Road Traffic Act 1961* (temporary powers related to drink driving and drug driving)

4—Insertion of section 47EAB

After section 47EAA insert:

47EAB—Direction to leave vehicle etc

- (1) If a member of the police force believes on reasonable grounds that the driver of a vehicle is not fit to drive the vehicle because of the consumption of alcohol or a drug, the officer may do one or more of the following:
- (a) direct the driver to vacate the driver's seat;
 - (b) direct the driver to leave the vehicle;
 - (c) direct the driver not to occupy the driver's seat until permitted to do so by a police officer;
 - (d) direct the driver not to enter the vehicle until permitted to do so by a police officer;
 - (e) direct the driver to secure the vehicle and surrender to the officer all keys to the vehicle that are in the person's immediate possession or in the vehicle;
 - (f) immobilise the vehicle;
 - (g) direct the driver not to drive any other vehicle until permitted to do so by a police officer.
- (2) The police officer may also direct any other person to do either or both of the following:
- (a) to leave the vehicle;
 - (b) not to enter the vehicle until permitted to do so by a police officer.
- (3) A direction under this section may be given to a driver orally or by means of a sign or signal (electronic or otherwise), or in any other manner.
- (4) A person commits an offence if—
- (a) the person is subject to a direction under this section; and
 - (b) the person engages in conduct that results in a contravention of the direction.

Penalty: \$5 000.

(5) If a police officer takes possession of keys or (in order to immobilise the vehicle) components of a vehicle, the officer must—

(a) advise the driver that the keys or components may be recovered from a specified police station; and

(b) cause the keys or components to be taken to the police station.

(6) A police officer on duty at the police station to which the keys or components are taken under this section must deliver possession of the keys or components to any person who the officer is satisfied is lawfully entitled to them and who makes a request for them at the police station, provided that the officer has no reason to believe that the person will drive the vehicle but not be qualified or fit to do so.

(7) For the purposes of this section, a person is *qualified* to drive a vehicle (or to run its engine) if the person—

(a) holds a driver's licence of the appropriate class to drive it and the driver's licence is not suspended; and

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

(8) For the purposes of this section, a person is *fit* to drive a vehicle (or to run its engine) if—

(a) the person is apparently physically and mentally fit to drive the vehicle; and

(b) (without limiting the above) the person is not apparently affected by—

(i) alcohol; or

(ii) any drug that affects the person's fitness to drive, or both; and

(c) the person has not at the time been found to have, and there are not any reasonable grounds to suspect that the person has, the prescribed concentration of alcohol in his or her blood; and

(d) the person has not at the time been found to have, and there are not any reasonable grounds to suspect that the person has, a prescribed drug in his or her oral fluid or blood.

(9) In this section—

keys means keys or electronic or other devices for starting or securing a vehicle.

Part 3—Amendment of *Road Traffic Act 1961*

5—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *air-cushioned vehicle* insert:

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

- (a) is prescribed by the regulations; or
- (b) is identified by, or is of a class identified by, the regulations, and that makes provision for compliance with and enforcement of any Australian road laws, including (for example) a scheme, agreement or arrangement that provides for—
 - (c) a system of accreditation-based compliance; or
 - (d) an intelligent transport system; or
 - (e) a system applying alternative legal entitlements to those otherwise applicable, such as one based on performance-based standards;

- (2) Section 5(1)—after the definition of *articulated motor vehicle* insert:

associate—see section 9;

Australian Authority means the Minister, the Registrar of Motor Vehicles or a corresponding Authority;

Australian police officer means—

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

Australian road law means a road law or a corresponding road law;

Australian road law offence means an offence against an Australian road law;

- (3) Section 5(1)—after the definition of *Australian Road Rules* insert:

authorised officer means a person appointed as an authorised officer, or of a class of persons appointed as authorised officers, under Part 2 Division 4;

- (4) Section 5(1)—after the definition of *axle group* insert:

base of a driver—see section 8;

- (5) Section 5(1)—after the definition of *bicycle* insert:

body corporate includes the Crown in any capacity and any body or entity that is not a natural person;

breach of a mass, dimension or load restraint requirement, *breach of a mass, dimension or load restraint requirement in this State* and *breach of a mass, dimension or load restraint requirement in another jurisdiction*—see section 119;

breach of a vehicle standards or maintenance requirement—see section 116;

(6) Section 5(1)—after the definition of *bus* insert:

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

- (a) its GCM and GVM; and
- (b) its speed capabilities;

(7) Section 5(1)—after the definition of *condition* insert:

10 *conduct* means an act or an omission to perform an act;

consignee of goods that are transported by road means—

- (a) a person who, with the person’s authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the transport of the goods by road; or
- 15 (b) a person who is to actually receive the goods after completion of their transport by road,

but does not include a person who is to merely unload the goods;

consignor of goods that are transported by road means—

- 20 (a) a person who, with the person’s authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods by road; or
- (b) a person who engaged the operator of the vehicle concerned, either directly or indirectly or through an agent or other intermediary, to transport the goods by road; or
- 25 (c) a person who had possession of, or control over, the goods immediately before their transport by road; or
- (d) a person who loaded the vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is unattended (except by the driver of the vehicle, a trainee driver or any person necessary for the normal operation of the
- 30 vehicle) during loading; or
- (e) if the transport of the goods by road followed their import into Australia—a person who imported the goods into Australia;

35 *container weight declaration* means a declaration referred to in Part 4 Division 3B Subdivision 5, and includes a copy of such a declaration or a version of such a declaration in electronic or other form;

contravene includes fail to comply with;

corresponding Authority means—

- 40 (a) the Authority as defined in a corresponding road law (except in the case of a jurisdiction for which a declaration is made under paragraph (b)); or

- (b) a person declared under the regulations to be the corresponding Authority for another jurisdiction for the purposes of this Act;

corresponding law means a law of another jurisdiction that is declared under the regulations to be a corresponding law;

corresponding road law means—

- (a) a law declared under the regulations to be a corresponding road law for another jurisdiction for the purposes of this Act; or
- (b) except in the case of a jurisdiction for which a declaration is made under paragraph (a), a road law, or applicable road law, as defined in a corresponding law; or

- (8) Section 5(1), definition of **driver**—after "the term" insert:

includes a two-up driver of a vehicle who is present in or near the vehicle, but

- (9) Section 5(1), definition of **driver's licence**—before "includes" insert:

means a licence under the *Motor Vehicles Act 1959* and

- (10) Section 5(1), definition of **inspector**—delete the definition and substitute:

employee means a natural person who works under a contract of employment, apprenticeship or training;

employer means a person who employs persons under—

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

engage in conduct means—

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

equipment, in relation to a vehicle, includes tools, devices and accessories in or on the vehicle;

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

freight container means—

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

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

garage address, in relation to a vehicle, means—

- (a) the address of the place of residence or business at which the vehicle is ordinarily kept when not in use; or
- (b) the principal depot or base of operation of the vehicle;

5 **GCM** of a vehicle means the greatest possible sum of the maximum loaded mass of the vehicle and of any vehicles that may lawfully be towed by it at any one time—

- (a) as specified by the vehicle's manufacturer; or
- (b) as specified by an Australian Authority if—
 - 10 (i) the manufacturer has not specified the sum of the maximum loaded mass; or
 - (ii) the manufacturer cannot be identified; or
 - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;

15 **goods** includes—

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

but does not include—

- (c) people; or
- 20 (d) fuel, water, lubricants and equipment required for the normal operation of the vehicle in which they are carried;

GVM of a vehicle means the maximum loaded mass of the vehicle—

- (a) as specified by the vehicle's manufacturer; or
- (b) as specified by an Australian Authority if—
 - 25 (i) the manufacturer has not specified a maximum loaded mass; or
 - (ii) the manufacturer cannot be identified; or
 - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;

30 **heavy vehicle** means a motor vehicle or trailer that has a GVM greater than 4.5 tonnes;

home address of a person means—

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

(11) Section 5(1)—after the definition of *installation* insert:

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

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

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

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

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and whether or not the documentation relates to a particular journey or to journeys generally, and includes (for example) any of the following:

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

jurisdiction means the Commonwealth or a State or Territory;

learner's permit means a learner's permit under the *Motor Vehicles Act 1959*;

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

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

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

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

and includes a part of a load as so defined;

loader of goods that are transported by road means a person who—

- (a) loaded the vehicle concerned with the goods for transport by road; or
- (b) loaded the vehicle with a freight container (whether or not containing goods) for transport by road; or
- (c) without limiting the above, loaded a freight container already in or on the vehicle with the goods for transport by road; or
- (d) supervised an activity mentioned in paragraph (a), (b) or (c); or
- (e) managed or controlled an activity mentioned in paragraph (a), (b), (c) or (d);

(12) Section 5(1)—after the definition of **mass and loading requirements** insert:

mass, dimension or load restraint requirement means any of the following:

- (a) the mass and loading requirements;
- (b) requirements of the Australian Road Rules relating to mass limits where the mass limits are indicated by signs (for example, sign-posted bridge limits);
- (c) a law of another jurisdiction that is defined in the corresponding law of the jurisdiction as a mass, dimension or load restraint requirement or mass, dimension or load restraint limit or requirement or taken under the corresponding law of the jurisdiction to be a mass, dimension or load restraint requirement or mass, dimension or load restraint limit or requirement;

mass limit means a mass limit specified in or applying under mass, dimension or load restraint requirements;

minor risk breach—see section 120;

(13) Section 5(1), definitions of *operator* and *owner*—delete the definitions and substitute:

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

operator of a vehicle means—

10 (a) in the case of a vehicle other than a combination but including a vehicle in a combination—a person controlling or directing the operation of the vehicle; or

(b) in the case of a combination—a person controlling or directing the operation of the towing vehicle in the combination,

15 and includes the registered operator of the vehicle; (however, a person is not an *operator* of a vehicle merely because the person does any or all of the following:

(c) owns the vehicle;

(d) drives the vehicle;

(e) maintains or arranges for the maintenance of the vehicle;

(f) arranges for the registration of the vehicle);

20 *owner* of a vehicle means—

(a) in the case of a vehicle other than a combination but including a vehicle in a combination—

(i) a person who is the sole owner, a joint owner or a part owner of the vehicle; or

25 (ii) a person who has possession or use of the vehicle under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else; or

(b) in the case of a combination—

30 (i) a person who is the sole owner, a joint owner or a part owner of the towing vehicle in the combination; or

(ii) a person who has possession or use of the towing vehicle in the combination under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else,

35 and includes a registered owner of the vehicle;

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

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

5 **packer** of goods that are transported by road means a person who—

- (a) put the goods in a packaging for transport by road; or
- (b) assembled the goods as packaged goods in an outer packaging or unit load for transport by road; or
- (c) supervised an activity mentioned in paragraph (a) or (b); or
- 10 (d) managed or controlled an activity mentioned in paragraph (a), (b) or (c);

(14) Section 5(1)—after the definition of **photographic detection device** insert:

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

15 (15) Section 5(1)—after the definition of **prime mover** insert:

public authority means—

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

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public place includes a place—

- (a) of public resort open to or used by the public as of right; or
- (b) for the time being—
 - (i) used for a public purpose; or
 - 25 (ii) open to access by the public, whether on payment or otherwise; or
- (c) open to access by the public by the express or tacit consent or sufferance of the owner of that place, whether the place is or is not always open to the public,

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but does not include—

- (d) a track that at the material time is being used as a course for racing or testing motor vehicles and from which other traffic is excluded during that use; or
- (e) a place declared by the regulations not to be a public place;

35

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

- (a) the drivers of and passengers in vehicles; and
- (b) persons in or in the vicinity of (or likely to be in or in the vicinity of) roads, road infrastructure and public places; and

(c) vehicles and any loads in or on them;

(16) Section 5(1)—after the definition of *quad-axle group* insert:

reasonable steps defence—see section 121;

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

registered industry code of practice means an instrument that is registered by an Australian Authority as an industry code of practice under section 174F or under a corresponding road law;

registered operator of a vehicle means—

(a) in the case of a vehicle other than a combination but including a vehicle in a combination—the person registered as the operator of the vehicle by the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* or recorded as the operator of the vehicle by another Australian Authority on a register maintained under an Australian road law; or

(b) in the case of a combination—the person registered as the operator of the towing vehicle in the combination by the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* or recorded as the operator of the towing vehicle in the combination by another Australian Authority on a register maintained under an Australian road law;

registered owner of a vehicle means—

(a) in the case of a vehicle other than a combination but including a vehicle in a combination—a person registered as an owner of the vehicle by the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* or recorded as an owner of the vehicle by another Australian Authority on a register maintained under an Australian road law; or

(b) in the case of a combination—a person registered as an owner of the towing vehicle in the combination by the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* or recorded as an owner of the towing vehicle in the combination by another Australian Authority on a register maintained under an Australian road law;

Registrar of Motor Vehicles or *Registrar* means the person holding or acting in the office of Registrar of Motor Vehicles under the *Motor Vehicles Act 1959*, and includes any person acting on behalf of the Registrar in accordance with that Act;

responsible entity in relation to a freight container—see section 131;

responsible person means any person having, at a relevant time, a role or responsibilities associated with road transport, and includes any of the following:

(a) an owner of a vehicle;

(b) a driver of a vehicle;

- 5
- (c) an operator or registered operator of a vehicle;
- (d) a person in charge or apparently in charge of a vehicle;
- (e) a person in charge or apparently in charge of the garage address of a vehicle or the base of the driver or drivers of a vehicle;
- 10
- (f) a person appointed under an approved road transport compliance scheme to have monitoring or other responsibilities under the scheme, including (for example) responsibilities for certifying, monitoring or approving vehicles under the scheme;
- (g) an operator of an intelligent transport system;
- (h) a person in charge of premises entered by an authorised officer or police officer under this Act;
- (i) a person who consigns goods for transport by road;
- (j) a person who packs goods in a freight container or other container or in a package or on a pallet for transport by road;
- 15
- (k) a person who loads goods or a container on a vehicle for transport by road;
- (l) a person who unloads goods or a container containing goods consigned for transport by road;
- (m) a person to whom goods are consigned for transport by road;
- 20
- (n) a person who receives goods packed outside Australia in a freight container or other container or as a unit load for transport by road in Australia;
- (o) an owner or operator of a weighbridge, or weighing facility, used to weigh vehicles or an occupier of premises where such a weighbridge or weighing facility is located;
- 25
- (p) a responsible entity for a freight container;
- (q) a person who controls or directly influences the loading or operation of a vehicle;
- 30
- (r) an agent, employer, employee, contractor or subcontractor of any person referred to in the preceding paragraphs of this definition;

(17) Section 5(1)—after the definition of *road* insert:

road authority means—

- 35
- (a) an authority, person or body that is responsible for the care, control or management of a road; or
- (b) any person or body prescribed by the regulations for the purposes of this definition, in relation to specified roads or specified classes of roads;

road infrastructure includes—

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

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

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

road law means this Act, the *Motor Vehicles Act 1959* or rules or regulations under either of the Acts;

15

road law offence means an offence against a road law;

- (18) Section 5(1), definition of **road-related area**, (d) and (e)—delete paragraphs (d) and (e) and substitute:

- (d) any public place that is not a road and on which a motor vehicle may be driven, whether or not it is lawful to drive a motor vehicle there;
- 20

- (19) Section 5(1)—after the definition of **road-related area** insert:

run the engine of a vehicle includes to start or stop the engine;

- (20) Section 5(1)—after the definition of **semi-trailer** insert:

severe risk breach—see section 120;

- 25 (21) Section 5(1)—after the definition of **single axle group** insert:

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

substantial risk breach—see section 120;

- (22) Section 5(1)—after the definition of **tram** insert:

transport documentation means—

30

- (a) any contractual documentation directly or indirectly associated with—
- (i) a transaction for or relating to the actual or proposed transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or
- 35 (ii) goods or passengers themselves so far as the documentation is relevant to their actual or proposed transport; or
- (b) any associated documentation—
- (i) contemplated in the contractual documentation; or

- (ii) required by law, or customarily provided, in connection with the contractual documentation or with the transaction,

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and includes (for example) an invoice, vendor declaration, delivery order, consignment note, load manifest, export receival advice, bill of lading, contract of carriage, sea carriage document, or container weight declaration, relating to the goods or passengers;

- (23) Section 5(1)—after the definition of *twinsteer axle group* insert:

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

unit load means a load of packaged goods that are—

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

6—Substitution of section 8A

Section 8A—delete the section and substitute:

8—Driver's base

- (1) For the purposes of this Act, the base of a driver of a vehicle is—
- (a) the place recorded for the time being as the driver's base in the log book kept by the driver of the vehicle; or
- (b) if no place is recorded as specified in paragraph (a)—the garage address of the vehicle (or, in the case of a combination, the towing vehicle of the combination), as recorded by an Australian Authority; or
- (c) if no place is recorded as specified in paragraph (a) or (b)—the place from which the driver normally works and receives instructions.
- (2) For the purposes of this section, if a driver is a self-employed driver and an employed driver at different times, the driver may have one base as a self-employed driver and another base as an employed driver.
- (3) For the purposes of this section, if a driver has 2 or more employers, the driver may have a different base in relation to each employer.

9—Associates

- (1) For the purposes of this Act, a person is an associate of another if—
- (a) one is a spouse, parent, brother, sister or child of the other;
or

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

- (2) For the purposes of subsection (1), a *beneficiary* of a trust includes an object of a discretionary trust.

10—Act in addition to and not in derogation of other Acts

This Act is in addition to, and does not derogate from, the provisions of any other Act.

7—Amendment of section 16—Roads under care etc of Commissioner of Highways

Section 16(1)—delete subsection (1)

8—Amendment of section 17—Installation etc of traffic control devices

Section 17(1) and (2)—delete "An Authority" wherever occurring and substitute in each case:

A road authority

9—Amendment of section 18—Direction as to installation etc of traffic control devices

- (1) Section 18(1) and (6)—delete "an Authority" wherever occurring and substitute in each case:

a road authority

- (2) Section 18(5) and (7)—delete "Authority" wherever occurring and substitute in each case:

road authority

- (3) Section 18(6)—delete "the Authority" and substitute:

the road authority

10—Amendment of section 19—Cost of traffic control devices and duty to maintain

Section 19—delete "Authority" wherever occurring and substitute in each case:
road authority

5 **11—Amendment of section 19A—Recovery of cost of installing certain traffic control devices**

(1) Section 19A(1)—delete "Authority" and substitute:

road authority

(2) Section 19A(3)—delete "An Authority" and substitute:

10 A road authority

12—Amendment of section 21—Offences relating to traffic control devices

Section 21(2)—delete "an Authority" and substitute:

a road authority

15 **13—Amendment of section 31—Action to deal with false devices or hazards to traffic**

Section 31(2)—delete "Authority" wherever occurring and substitute in each case:
road authority

14—Substitution of Part 2 Divisions 4 and 5

Part 2 Divisions 4 and 5—delete the Divisions and substitute:

20 **Division 4—Enforcement officers for Australian road laws**

35—Authorised officers

(1) The Minister may, by instrument in writing, appoint—

(a) a specified person to be an authorised officer; or

(b) persons of a specified class to be authorised officers.

25 (2) An authorised officer may but need not be an employee in the public service or an employee of a government or government body.

(3) An authorised person as defined in the *Local Government Act 1999* is an authorised officer under this Act for the purposes of—

30 (a) enforcing prescribed provisions of this Act in the area of the council for which he or she is an authorised person; or

(b) exercising the powers of an authorised officer under prescribed provisions of this Act in the area of the council for which he or she is an authorised person.

35 (4) Every person for the time being in charge of a ferry established by a council or established, maintained or operated by the Commissioner of Highways is an authorised officer under this Act.

- (5) Without limiting the above, an authorised officer as defined in a corresponding road law may be appointed as an authorised officer under this section.

36—Exercise of powers by authorised officers

- (1) This section applies to the powers conferred on authorised officers by a road law.
- (2) The Minister may, by instrument in writing applicable to a specified authorised officer or each authorised officer of a specified class, impose conditions on the exercise of powers.

37—Exercise of powers by police officers

A police officer has the powers conferred on police officers by a road law in addition to the officer's powers under other Acts or at law.

38—Identification cards

- (1) The Minister may—
- (a) issue an authorised officer with an identification card; or
- (b) designate a card, issued to an authorised officer by another person, body or authority (whether or not of this State), as an identification card for the purposes of this Act.
- (2) An identification card issued by the Minister must—
- (a) contain a photograph of the officer and either—
- (i) the name and signature of the officer; or
- (ii) a unique number that has been assigned to the officer by the Minister; and
- (b) identify the officer as an authorised officer.
- (3) The Minister must not designate a card issued to an authorised officer by another person, body or authority as an identification card for the purposes of this Act unless the card—
- (a) contains a photograph of the officer, the name of the other person, body or authority and either—
- (i) the name and signature of the officer; or
- (ii) a unique number that has been assigned to the officer by the other person, body or authority; and
- (b) identifies in some way (however expressed) the officer as an authorised officer under another law or as having official functions under another law.

39—Production of identification

- (1) This section applies to powers conferred on authorised officers or police officers under a road law, but only where the physical presence of an officer at the scene is necessary for the exercise of the power.

- 5
- (2) An authorised officer must not exercise a power unless an identification card has been issued to or designated for the officer.
- (3) An authorised officer who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by producing his or her identification card.
- (4) A police officer who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by—
- 10
- (a) producing his or her police identification; or
- (b) stating orally or in writing his or her surname, rank and identification number.
- (5) An authorised officer or police officer is required to comply with a requirement under subsection (3) or (4)—
- 15
- (a) immediately; or
- (b) if it is not practicable to comply with the requirement immediately—as soon as practicable afterwards.
- (6) An authorised officer or police officer need only identify himself or herself once to a particular person during the course of an incident, even though more than one power is being exercised during the course of the incident.
- 20
- (7) In this section—
- incident* means—
- (a) a single incident; or
- (b) a connected series of incidents involving the same or substantially the same parties and occurring during a period of 72 hours;
- 25

power means a power under an Australian road law;

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

30 **40—Return of identification cards**

- (1) A person commits an offence if—
- 35
- (a) the Minister has issued an identification card to the person; and
- (b) the person was but has stopped being an authorised officer; and
- (c) the Minister has requested the person to return the card to the Minister within a specified period; and
- (d) the person did not return the card during the period.

Penalty: \$2 500.

- 40
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

40A—Reciprocal powers of officers

- 5
- (1) This section has effect in relation to another jurisdiction while the corresponding law of the other jurisdiction contains provisions corresponding to this section.
- (2) The Minister may enter into agreements with a Minister of the other jurisdiction for the purposes of this section, and to amend or revoke any such agreement.
- (3) To the extent envisaged by such an agreement—
- 10
- (a) authorised officers or police officers of this State may, in this State or the other jurisdiction, exercise powers conferred respectively on authorised officers or police officers of the other jurisdiction under the corresponding law of the other jurisdiction; and
- 15
- (b) authorised officers or police officers of the other jurisdiction may, in this State or the other jurisdiction, exercise powers conferred respectively on authorised officers or police officers under this Act.
- (4) Anything done or omitted to be done by an authorised officer or police officer of this State under subsection (3)(a) is taken to have been done under this Act as well as under the corresponding law.
- 20
- (5) The regulations may make provision for or with respect to the exercise of powers under this section.
- (6) Nothing in this section affects the appointment under this Division of persons as authorised officers for the purposes of this Act.
- 25

40B—Registrar may exercise powers of authorised officers

- 25
- (1) The Registrar of Motor Vehicles may exercise any power conferred under a road law on an authorised officer.
- (2) Accordingly, in this Act (except this Division) references to an authorised officer include references to the Registrar of Motor Vehicles.
- 30

Division 5—General enforcement powers for Australian road laws

Subdivision 1—Interpretation

40C—Meaning of qualified, fit or authorised to drive or run engine

- 35
- (1) For the purposes of this Division, a person is *qualified* to drive a vehicle (or to run its engine) if the person—
- (a) holds a driver's licence of the appropriate class to drive it and the driver's licence is not suspended; and

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

5 (2) For the purposes of this Division, a person is *fit* to drive a vehicle (or to run its engine) if—

(a) the person is apparently physically and mentally fit to drive the vehicle; and

(b) (without limiting the above) the person is not apparently affected by—

10 (i) alcohol; or

(ii) any drug that affects the person's fitness to drive, or both; and

(c) the person has not at the time been found to have, and there are not any reasonable grounds to suspect that the person has, a concentration of alcohol in the person's blood that exceeds the amount permitted by a road law; and

(d) the person has not at the time been found to have, and there are not any reasonable grounds to suspect that the person has, a prescribed drug in his or her oral fluid or blood.

20 (3) For the purposes of this Division, a person is *authorised*—

(a) to drive a vehicle if the person is its operator or has the authority of the operator to drive it; or

(b) to run the engine of a vehicle if the person is its operator or has the authority of the operator to drive it or to run the engine,

25 regardless of whether or not the person is qualified to drive the vehicle (or run its engine) as mentioned in subsection (1).

40D—Meaning of unattended vehicle and driver of disconnected trailer

30 (1) For the purposes of this Division, a vehicle is *unattended* if—

(a) where the authorised officer or police officer concerned—

(i) is present at the scene—there is, after inspection and enquiry by the officer that is reasonable in the circumstances, apparently no person in, on or in the vicinity of the vehicle who appears to be a driver of the vehicle; or

(ii) is not present at the scene but is able to inspect the scene by means of camera or other remote surveillance system—there is, after inspection by the officer that is reasonable in the circumstances, apparently no person in, on or in the vicinity of the vehicle who appears to be a driver of the vehicle; or

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

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

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

(iii) the person is subject to a direction under section 40K in relation to the vehicle.

(2) For the purposes of this Division, a person is the *driver* of a vehicle if, in a case where the vehicle is a trailer and is not connected (either directly or by one or more other trailers) to a towing vehicle, the person is the driver of the towing vehicle to which the trailer was or apparently was last connected.

40E—Meaning of broken down vehicle

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

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

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

(4) For the purposes of this Division, a vehicle of a kind not referred to in subsection (1), (2) or (3) is *broken down* if it is not connected to a towing vehicle or an animal by which it could be drawn or if it is not possible to tow or draw the vehicle because it is disabled through damage, mechanical failure or any similar reason.

40F—Meaning of compliance purposes

For the purposes of this Division, a power is exercised *for compliance purposes* in relation to a person if the power is exercised—

(a) to find out whether the Australian road laws or an approved road transport compliance scheme are being complied with by that or any other person; or

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

- (c) to investigate an accident in which that person or any other person has been involved.

Subdivision 2—Directions to stop, move or leave vehicles

40G—Application of Subdivision

- (1) This Subdivision applies to a vehicle located—
 - (a) on any road; or
 - (b) in or on any premises occupied or owned by a public authority; or
 - (c) in or on any premises where the officer is lawfully present after entry under Subdivision 4.
- (2) This Subdivision applies to the driver of a vehicle who is apparently in, on or in the vicinity of the vehicle.

40H—Direction to stop vehicle to enable exercise of other powers

- (1) An authorised officer or police officer may, for the purpose of or in connection with exercising other powers under a road law, direct—
 - (a) the driver of a vehicle to stop the vehicle; or
 - (b) the driver of a vehicle or any other person not to do one or more of the following:
 - (i) move the vehicle;
 - (ii) interfere with it or any equipment in or on it;
 - (iii) interfere with its load.
- (2) A direction to stop a vehicle may require that it be stopped without delay, or that it be stopped at the nearest place for it to be safely stopped as indicated by the officer.
- (3) A direction to stop the vehicle, or not to move it, or not to interfere with it or any equipment in or on it or with its load, does not prevent an authorised officer or police officer from giving the driver or another person any later inconsistent directions under a road law or any other law.
- (4) A direction ceases to be operative to the extent that an authorised officer or police officer—
 - (a) gives the driver or other person a later inconsistent direction; or
 - (b) indicates to the driver or other person that the direction is no longer operative.
- (5) A person commits an offence if—
 - (a) the person is subject to a direction under subsection (1); and

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

Penalty: \$5 000.

- (6) In this section—

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

40I—Direction to move vehicle to enable exercise of other powers

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

10

- (2) A person commits an offence if—

- (a) the person is subject to a direction under subsection (1); and
15 (b) the person engages in conduct that results in a contravention of the direction.

15

Penalty:

- (a) in the case of a direction to move the vehicle for the purpose of determining whether there has been a breach of a mass limit—not less than \$5 000 and not more than \$10 000;
20 (b) in any other case—\$5 000.

20

- (3) A court may not reduce or mitigate in any way a minimum penalty prescribed by subsection (2).

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

25

- (a) it was not possible to move the vehicle concerned because it was broken down; and
30 (b) the breakdown occurred for a physical reason beyond the driver's or operator's control; and
(c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

30

- (5) In this section—

35

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

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

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

5 **40J—Direction to move vehicle if danger or obstruction**

(1) This section applies if an authorised officer or police officer believes on reasonable grounds that a vehicle on a road is—

- 10 (a) causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure; or
- (b) causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or
- (c) obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road.

15 (2) The officer may direct the driver or operator of the vehicle to do either or both of the following:

- (a) to move it, or cause it to be moved, to the extent necessary to avoid the harm or obstruction;
- 20 (b) to do anything else reasonably required by the officer, or to cause anything else reasonably required by the officer to be done, to avoid the harm or obstruction.

(3) A person commits an offence if—

- (a) the person is subject to a direction under subsection (2); and
- 25 (b) the person engages in conduct that results in a contravention of the direction.

Penalty: \$5 000.

(4) In proceedings for an offence in relation to the contravention of a direction under subsection (2)(a), it is a defence if the person charged establishes that—

- 30 (a) it was not possible to move the vehicle concerned because it was broken down; and
- (b) the breakdown occurred for a physical reason beyond the driver's or operator's control; and
- 35 (c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

40K—Direction to leave vehicle

(1) This section applies if—

- 40 (a) the driver of a vehicle fails to comply with a direction given by an authorised officer or police officer under another provision of this Subdivision; or

- (b) an authorised officer or police officer believes on reasonable grounds that the driver of a vehicle is not qualified, is not fit or is not authorised to drive the vehicle.
- (2) The officer may do one or more of the following:
- 5 (a) direct the driver to vacate the driver's seat;
- (b) direct the driver to leave the vehicle;
- (c) direct the driver not to occupy the driver's seat until permitted to do so by an authorised officer or police officer;
- 10 (d) direct the driver not to enter the vehicle until permitted to do so by an authorised officer or police officer.
- (3) The officer may direct any other person to do either or both of the following:
- (a) to leave the vehicle;
- 15 (b) not to enter the vehicle until permitted to do so by an authorised officer or police officer.
- (4) The officer, being a police officer, may do one or more of the following if the officer believes on reasonable grounds that the driver is not fit to drive the vehicle because of the consumption of alcohol or a drug:
- 20 (a) direct the driver to secure the vehicle and surrender to the officer all keys to the vehicle that are in the person's immediate possession or in the vehicle;
- (b) immobilise the vehicle;
- 25 (c) direct the driver not to drive any other vehicle until permitted to do so by a police officer.
- (5) A person commits an offence if—
- (a) the person is subject to a direction under this section; and
- (b) the person engages in conduct that results in a contravention of the direction.
- 30 Penalty: \$5 000.
- (6) If a police officer takes possession of keys or (in order to immobilise the vehicle) components of a vehicle, the officer must—
- (a) advise the driver that the keys or components may be recovered from a specified police station; and
- 35 (b) cause the keys or components to be taken to the police station.

5 (7) A police officer on duty at the police station to which the keys or components are taken under this section must deliver possession of the keys or components to any person who the officer is satisfied is lawfully entitled to them and who makes a request for them at the police station, provided that the officer has no reason to believe that the person will drive the vehicle but not be qualified or fit to do so.

(8) In this section—

keys means keys or electronic or other devices for starting or securing a vehicle.

10 **40L—Manner of giving directions under Subdivision**

(1) A direction under this Subdivision may be given to a driver orally or by means of a sign or signal (electronic or otherwise), or in any other manner.

15 (2) A direction under this Subdivision may be given to an operator orally or by telephone, facsimile, electronic mail or radio, or in any other manner.

40M—Moving unattended vehicle to enable exercise of other powers

(1) This section applies if an authorised officer or police officer—

20 (a) believes on reasonable grounds that a vehicle is unattended on a road; and

(b) is seeking to exercise other powers under this Act; and

(c) believes on reasonable grounds that the vehicle should be moved to enable or to facilitate the exercise of those powers.

25 (2) The officer may—

(a) move the vehicle (by driving or towing it or otherwise); or

(b) authorise another person to move it (by driving or towing it or otherwise),

30 to the extent reasonably necessary to enable or to facilitate the exercise of the powers concerned.

(3) The officer may enter the vehicle, or authorise another person to enter it, for the purpose of moving the vehicle.

(4) The officer or person authorised by the officer may use reasonable force to do any or all of the following:

35 (a) to open unlocked doors and other unlocked panels and objects;

(b) to gain access to the vehicle, or its engine or other mechanical components, to enable the vehicle to be moved;

(c) to enable the vehicle to be towed.

40 (5) The officer or person authorised by the officer may drive the vehicle only if qualified and fit to drive it.

Subdivision 3—Power to move or remove unattended or broken down vehicles

40N—Removing unattended or broken down vehicle if danger or obstruction

- 5 (1) This section applies if—
- (a) an authorised officer or police officer believes on reasonable grounds that a vehicle is unattended or broken down on a bridge, culvert or freeway; or
 - 10 (b) an authorised officer or police officer believes on reasonable grounds that—
 - (i) a vehicle is unattended or broken down on any road; and
 - (ii) the vehicle is—
 - 15 (A) causing harm, or creating a risk of harm, to public safety, the environment or road infrastructure; or
 - (B) causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or
 - 20 (C) obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road.
- (2) The officer may—
- 25 (a) remove the vehicle, or, in the case of a vehicle that is a combination, any vehicle forming part of the combination (by driving or towing it or otherwise), or
 - (b) authorise another person to remove it (by driving or towing it or otherwise),
- to a convenient place.
- 30 (3) The officer may—
- (a) enter the vehicle, or authorise another person to enter it, for the purpose of removing the vehicle; or
 - 35 (b) in the case of a vehicle that is a combination, separate any or all of the vehicles forming part of the combination, or authorise another person to separate them, for the purpose of removing any or all of the vehicles.
- 40 (4) The officer may drive the vehicle even though the officer is not qualified to drive it, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle who is more capable of driving it than the officer and who is fit and willing to drive it.

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

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

10 (7) The officer or person authorised by the officer may use reasonable force to the extent reasonably necessary for the purpose of entering or removing the vehicle.

(8) In this section—

15 *authorised officer* has the meaning assigned to the term by section 5, and includes—

(a) in relation to a vehicle unattended or broken down on a freeway—a person authorised by the Minister for the purposes of this section; and

20 (b) in relation to a vehicle unattended or broken down on any road within the area of a council—an officer of the council;

event has the same meaning as in section 33;

freeway means a length of road to which a freeway sign applies in accordance with the *Australian Road Rules*.

25 **40O—Operator’s authorisation not required for driving under Subdivision**

It is immaterial that the officer or person driving a vehicle under the authority of this Subdivision is not authorised to drive it.

30 **40P—Notice of removal of vehicle and disposal of vehicle if unclaimed**

(1) This section applies if a vehicle is removed to a convenient place under section 40N.

(2) The person who removed the vehicle must ensure that the owner of the vehicle is notified of the removal of the vehicle and of the place to which the vehicle was removed—

35 (a) by written notice—

(i) served on the owner personally; or

(ii) sent by registered post to the owner's last-known residential address,

forthwith after the removal of the vehicle; or

(b) by public notice published in a newspaper circulating generally in the State within 14 days after the removal of the vehicle.

(3) If the owner of the vehicle does not, within 1 month after service or publication of the notice relating to the removal of the vehicle—

(a) take possession of the vehicle; and

(b) pay all expenses in connection with the removal, custody and maintenance of the vehicle and of serving, posting or publishing the notice,

the relevant authority must, subject to subsection (4), offer the vehicle for sale by public auction.

(4) If—

(a) the vehicle is offered for sale by public auction but is not sold at the auction; or

(b) the relevant authority reasonably believes that the proceeds of the sale of the vehicle would be unlikely to exceed the costs incurred in selling the vehicle,

the relevant authority may dispose of the vehicle in such manner as the relevant authority thinks fit.

(5) The relevant authority must apply any proceeds of sale of the vehicle as follows:

(a) firstly, in payment of the costs of and incidental to the sale;

(b) secondly, in payment of the costs of and incidental to the removal, custody and maintenance of the vehicle and of the notice served, posted or published under this section; and

(c) thirdly, in payment of the balance to the owner of the vehicle.

(6) If after reasonable inquiry following sale of the vehicle the owner of the vehicle cannot be found, the balance of the proceeds of the sale will be paid—

(a) if the vehicle was sold by the Commissioner of Police or the Minister—to the Treasurer to be credited to the Consolidated Account; or

(b) if the vehicle was sold by a council—to the council.

(7) In this section—

relevant authority means—

(a) in relation to a vehicle removed by a police officer—the Commissioner of Police; or

(b) in relation to a vehicle removed by an officer of a council—the council; or

- (c) in relation to a vehicle removed by a person approved by the Minister—the Minister.

Subdivision 4—Powers of inspection and search

40Q—Power to inspect vehicle on road or certain official premises

- 5
- (1) This section applies to a vehicle located at a place—
- (a) on a road; or
- (b) in or on premises occupied or owned by a public authority, whether or not the vehicle is unattended.
- 10
- (2) An authorised officer or police officer may inspect a vehicle for compliance purposes.
- (3) The officer may enter the vehicle for the purpose of or in connection with conducting the inspection.
- 15
- (4) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or any other person.
- (5) Without limiting the above, the power to inspect a vehicle under this section includes any or all of the following:
- 20
- (a) the power to weigh, test, measure or take photographs of the vehicle or any part of it or its equipment or load;
- (b) the power to check the existence or details of, or take photographs of, placards or other information required under an Australian road law or under an approved road transport compliance scheme to be displayed in or on the vehicle, including placards or other information relating to its specifications, capabilities or legal entitlements;
- 25
- (c) the power to inspect and take copies of or extracts from any records that are located in or on the vehicle and that are required to be carried in or on the vehicle under an Australian road law or under an approved road transport compliance scheme;
- 30
- (d) the power to access or download information that is required to be kept under an Australian road law or under an approved road transport compliance scheme and that is—
- 35
- (i) stored electronically in equipment located in or on the vehicle; or
- (ii) accessible electronically from equipment located in or on the vehicle.
- 40
- (6) This section does not authorise the use of force, but the officer may under this section do any or all of the following:
- (a) open unlocked doors and other unlocked panels and objects;

- 5
- (b) inspect anything that has been opened or otherwise accessed under the power to use reasonable force in the exercise of a power to enter or move a vehicle under Subdivision 3;
 - (c) move but not take away anything that is not locked up or sealed.

40R—Power to search vehicle on road or certain official premises

- 10
- (1) This section applies to a vehicle located at a place—
 - (a) on a road; or
 - (b) in or on premises occupied or owned by a public authority, whether or not the vehicle is unattended.
 - (2) An authorised officer or police officer may search a vehicle for compliance purposes, if the officer believes on reasonable grounds that—
 - 15 (a) the vehicle has been used, is being used, or is likely to be used, in the commission of an Australian road law offence or in the commission of a breach of an approved road transport compliance scheme; or
 - (b) the vehicle has been or may have been involved in an accident.
 - (3) The officer may form the necessary belief during or after an inspection or independently of an inspection.
 - (4) The officer may enter the vehicle for the purpose of or in connection with conducting the search.
 - 25 (5) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or any other person.
 - (6) Without limiting the above, the power to search a vehicle under this section includes any or all of the following:
 - 30 (a) the power to search for evidence of an Australian road law offence or a breach of an approved road transport compliance scheme;
 - (b) the power to search for and inspect any records, devices or other things that relate to the vehicle or any part of its equipment or load and that are located in or on the vehicle;
 - 35 (c) the power to take copies of or extracts from any or all of the following:
 - 40 (i) any records that are located in or on the vehicle and that are required to be carried in or on the vehicle under an Australian road law or under an approved road transport compliance scheme;

(ii) any transport documentation or journey documentation located in or on the vehicle;

(iii) any other records, or any readout or other data obtained from any device or thing, located in or on the vehicle that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme;

(d) any powers that may be exercised during an inspection of a vehicle under section 40Q(5).

(7) The power to search a vehicle under this section does not include a power to search a person.

(8) The officer may seize and remove any records, devices or other things from the vehicle that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.

(9) The officer may use reasonable force in the exercise of powers under this section.

40S—Power to inspect premises

(1) This section applies to the following premises:

(a) premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person;

(b) the garage address of a vehicle;

(c) the base of the driver or drivers of a vehicle;

(d) premises where records required to be kept under an Australian road law or under an approved road transport compliance scheme are located or where any such records are required to be located.

(2) An authorised officer or police officer may inspect the premises for compliance purposes.

(3) The officer may enter the premises for the purpose of conducting the inspection.

(4) Without limiting the above, the officer may inspect, or enter and inspect, any vehicle at the premises.

(5) The inspection may be made—

(a) at any time with the consent of the occupier or other person apparently in charge of the premises; or

- (b) if a business is carried on at the premises—at any time during the usual business operating hours applicable at the premises (whether or not the premises are actually being used for that purpose), and without consent.
- 5 (6) This section does not authorise, without consent, the entry or inspection of—
- (a) premises that are apparently unattended, unless the officer believes on reasonable grounds that the premises are not unattended; or
- 10 (b) premises that are, or any part of premises that is, used predominantly for residential purposes.
- (7) Without limiting the above, the power to inspect premises under this section includes any or all of the following:
- 15 (a) the power to inspect and take copies of or extracts from any records located at the premises and required to be kept under an Australian road law or under an approved road transport compliance scheme;
- (b) the power to check the existence of and inspect any devices (including weighing, measuring, recording or monitoring devices) required to be installed, used or maintained under 20 an Australian road law or under an approved road transport compliance scheme, and to inspect and take copies of or extracts from any readout or other data obtained from any such device;
- 25 (c) the power to exercise with respect to a vehicle located at the premises any powers that may be exercised during an inspection of a vehicle under section 40Q(5);
- (d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or 30 other material.
- (8) This section does not authorise the use of force, but the officer may under this section do any or all of the following:
- 35 (a) open unlocked doors and other unlocked panels and objects;
- (b) inspect anything that has been opened or otherwise accessed under the power to use reasonable force in the exercise of a power to enter or move a vehicle under Subdivision 3;
- (c) move but not take away anything that is not locked up or sealed.

40T—Power to search premises

- (1) This section applies to the following premises:
- (a) premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person;
 - (b) the garage address of a vehicle;
 - (c) the base of the driver or drivers of a vehicle;
 - (d) premises where records required to be kept under an Australian road law or under an approved road transport compliance scheme are located or where any such records are required to be located;
 - (e) premises where the officer concerned believes on reasonable grounds that—
 - (i) a vehicle is or has been located; or
 - (ii) transport documentation or journey documentation is located.
- (2) An authorised officer or police officer may search premises for compliance purposes, if the officer believes on reasonable grounds—
- (a) that there may be at the premises records, devices or other things that may provide evidence of an Australian road law offence or of the commission of a breach of an approved road transport compliance scheme; or
 - (b) that—
 - (i) a vehicle has been or may have been involved in an accident; and
 - (ii) the vehicle is connected with the premises.
- (3) For the purposes of this section, a vehicle is *connected* with the premises if—
- (a) the premises are the garage address of the vehicle; or
 - (b) the vehicle is, or has within the past 72 hours been, located at the premises; or
 - (c) the premises are or may be otherwise connected (directly or indirectly) with the vehicle or any part of its equipment or load.
- (4) The officer may form the necessary belief during or after an inspection or independently of an inspection.
- (5) The officer may enter the premises for the purpose of conducting the search.
- (6) Without limiting the above, the officer may search, or enter and search, any vehicle at the premises.

- (7) The search may be conducted—
- (a) at any time under the authority of a warrant under this Act;
or
 - 5 (b) at any time with the consent of the occupier or other person
apparently in charge of the premises; or
 - (c) if a business is carried on at the premises—at any time
during the ordinary business hours applicable at the
premises (whether or not the premises are actually being
10 used at that time for that purpose), and without a warrant
and without the consent of the occupier or other person
apparently in charge of the premises or any other person; or
 - (d) if the officer believes on reasonable grounds that
15 subsection (2)(b) applies—at any time, and without a
warrant and without the consent of the occupier or other
person apparently in charge of the premises or any other
person.
- (8) This section does not authorise, without a warrant or consent, the
entry or searching of—
- 20 (a) premises that are unattended, unless the officer believes on
reasonable grounds that the premises are not unattended; or
 - (b) premises that are, or any part of premises that is, used
predominantly for residential purposes.
- (9) Without limiting the above, the power to search premises under this
section includes any or all of the following:
- 25 (a) the power to search for evidence of an Australian road law
offence or a breach of an approved road transport
compliance scheme;
 - (b) the power to search for and inspect any records, devices or
30 other things that relate to a vehicle or any part of its
equipment or load and that are located at the premises;
 - (c) the power to take copies of or extracts from any or all of the
following:
 - 35 (i) any records that are located at the premises and are
required to be kept under an Australian road law or
under an approved road transport compliance
scheme;
 - (ii) any transport documentation or journey
documentation located at the premises;

(iii) any other records, or any readout or other data obtained from any device or thing, located at the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme;

(d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material;

(e) the power to exercise with respect to a vehicle located at the premises any powers that may be exercised during a search of a vehicle under section 40R(6);

(f) any powers that may be exercised during an inspection of premises under section 40S(7).

(10) The power to search premises under this section does not include a power to search a person.

(11) The officer may seize and remove any records, devices or other things from the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.

(12) The officer may use reasonable force in the exercise of powers under this section.

40U—Residential purposes

For the purposes of this Subdivision, premises are, or any part of premises is, taken not to be used for residential purposes merely because temporary or casual sleeping or other accommodation is provided there for drivers of vehicles.

Subdivision 5—Other directions

40V—Direction to give name and other personal details

(1) In this section—

personal details, in relation to a person, means—

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the address of where the person is living; and
- (d) the address of where the person usually lives; and
- (e) the person's business address.

- (2) If an authorised officer or police officer suspects on reasonable grounds that a natural person whose personal details are unknown to the officer—
- (a) is or may be a responsible person; or
 - 5 (b) has committed or is committing or is about to commit an Australian road law offence; or
 - (c) may be able to assist in the investigation of an Australian road law offence or a suspected Australian road law offence; or
 - 10 (d) is or may be the driver or other person in charge of a vehicle that has been or may have been involved in an accident,
- the officer may direct the person to give the officer then and there any or all of the person's personal details.
- (3) If an authorised officer or police officer suspects on reasonable grounds that a personal detail given by a person in response to a direction is false or misleading, the officer may direct the person to produce evidence then and there of the correctness of the detail.
- (4) A person commits an offence if—
- 20 (a) the person is subject to a direction under subsection (2) or (3); and
 - (b) the person—
 - (i) engages in conduct that results in a contravention of the direction; or
 - 25 (ii) gives any detail that is false or misleading in a material particular in purported response to the direction; or
 - (iii) produces any evidence that is false or misleading in a material particular in purported response to the direction.
- 30 Penalty: \$5 000.
- (5) Subsection (4)(b)(iii) does not apply if the person has a reasonable excuse.
- (6) In proceedings for an offence of contravening a direction under subsection (2) in relation to a failure to state a business address, it is a defence if the person charged establishes that—
- 35 (a) the person did not have a business address; or
 - (b) the person's business address was not connected (directly or indirectly) with road transport involving vehicles.

40W—Direction to produce records, devices or other things

- (1) An authorised officer or police officer may, for compliance purposes, direct any responsible person to produce—
- (a) any records required to be kept under an Australian road law; or
 - (b) any records comprising transport documentation or journey documentation in the person's possession or under the person's control; or
 - (c) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control relating to or indicating—
 - (i) the use, performance or condition of a vehicle; or
 - (ii) ownership, insurance or registration of a vehicle; or
 - (iii) any load or equipment carried or intended to be carried by a vehicle (including insurance of any such load or equipment); or
 - (d) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control demonstrating that a vehicle's garage address recorded in the relevant register is or is not the vehicle's actual garage address.
- (2) The direction must—
- (a) specify—
 - (i) the records, devices or other things; or
 - (ii) the classes of records, devices or other things, that are to be produced; and
 - (b) state where, when and to whom the records, devices or other things are to be produced.
- (3) The officer may do any or all of the following:
- (a) inspect records, devices or other things that are produced;
 - (b) make copies of, or take extracts from, records, devices or other things that are produced;
 - (c) seize and remove records, devices or other things that are produced that the officer believes on reasonable grounds may on further inspection provide evidence of an Australian road law offence.
- (4) A person commits an offence if—
- (a) the person is subject to a direction under subsection (1); and

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

Penalty: \$5 000.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

5 **40X—Direction to provide information**

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

- 10 (2) Without limiting the above, a direction under subsection (1) may require a responsible person who is associated with a particular vehicle to do any or all of the following:

- (a) to state the name, home address and business address of—

15 (i) other responsible persons of specified types who are associated with the vehicle; and

(ii) if so requested, in the case of a combination, the registered operator of each vehicle in the combination;

- 20 (b) to provide information about the current or intended trip of the vehicle, including—

(i) the location of the start or intended start of the trip; and

(ii) the route or intended route of the trip; and

25 (iii) the location of the destination or intended destination of the trip.

- (3) A person commits an offence if—

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

(b) the person—

30 (i) engages in conduct that results in a contravention of the direction; or

(ii) the person provides any information that is false or misleading in a material particular in purported response to the direction.

Penalty: \$10 000.

- 35 (4) In proceedings for an offence of contravening a direction under subsection (1), it is a defence if the person charged establishes that the person did not know and could not be reasonably expected to know or ascertain the required information.

(5) In proceedings for an offence of contravening a direction under subsection (1) in relation to a failure to state another person's business address, it is a defence if the person charged establishes that—

- 5
- (a) the other person did not have a business address; or
 - (b) the other person's business address was not connected (directly or indirectly) with road transport involving vehicles.

10 **40Y—Direction to provide reasonable assistance for powers of inspection and search**

(1) An authorised officer or police officer may direct a responsible person to provide assistance to the officer to enable the officer effectively to exercise a power under Subdivision 4.

15 (2) Without limiting the above, the assistance may include helping the officer to do any or all of the following:

- 20
- (a) to find and gain access to any records or information, including, but not limited to, electronically stored information;
 - (b) to weigh or measure—
 - 25 (i) the whole or any part of a vehicle, including an axle or axle group; or
 - (ii) the whole or any part of its equipment or load;
 - (c) to operate equipment or facilities for a purpose relevant to the power being or proposed to be exercised;
 - (d) to provide access free of charge to photocopying equipment for the purpose of copying any records or other material.

(3) This section authorises the giving of a direction to run the engine of a vehicle, but not otherwise to drive the vehicle.

(4) A direction—

- 30
- (a) can only be given in relation to a power under Subdivision 4 (the *principal power*) while the principal power can lawfully be exercised; and
 - (b) ceases to be operative if the principal power ceases to be exercisable.

35 (5) A person commits an offence if—

- (a) the person is subject to a direction under subsection (1); and
- (b) the person engages in conduct that results in a contravention of the direction.

Penalty: \$10 000.

40 (6) Subsection (5) does not apply if—

- (a) the direction is unreasonable; or

(b) without limiting the above, the direction or its subject-matter is outside the scope of the business or other activities of the person.

5 (7) If the responsible person to whom a direction to run the engine of a vehicle is given under this section fails to comply with the direction or no responsible person is available or willing to do so, the officer may—

(a) enter the vehicle and run its engine; or

(b) authorise any other person to do so.

10 **40Z—Provisions relating to running engine**

(1) This section applies to a person (the *authorised person*) who is—

(a) a responsible person to whom a direction is given by an officer under section 40Y; or

15 (b) an officer authorised by section 40Y(7) to run the engine of a vehicle; or

(c) a person authorised by an officer under section 40Y(7) to run the engine of a vehicle.

20 (2) The authorised person may run the engine even though the person is not qualified to drive the vehicle, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle who is more capable of running the engine than the authorised person and who is fit and willing to run the engine.

25 (3) The authorised person may use reasonable force in complying with the direction to run the engine or when acting under the authority of section 40Y(7) to run the engine.

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

30 (5) The authorised person is, in complying with the direction to run the engine or when acting under the authority of section 40Y(7) to run the engine, exempt from any other road law to the extent that the other law would require him or her to be licensed or otherwise authorised to do so.

41—Manner of giving directions under Subdivision

35 (1) A direction under this Subdivision may be given orally, in writing or in any other manner.

(2) A direction not given in person may be sent or transmitted by post, telephone, facsimile, electronic mail, radio or in any other manner.

41A—Directions to state when to be complied with

40 (1) If given orally, a direction under this Subdivision must state whether it is to be complied with then and there or within a specified period.

- (2) If given in writing, a direction under this Subdivision must state the period within which it is to be complied with.

Subdivision 6—Warrants

41B—Warrants

- 5 (1) This section applies if an authorised officer or police officer believes on reasonable grounds that—
- (a) there may be at particular premises, then or within the next 72 hours, records, devices or other things that may provide evidence of an Australian road law offence; or
- 10 (b) a vehicle has been or may have been involved in an accident and—
- (i) the vehicle is or has been located at particular premises; or
- 15 (ii) particular premises are or may be otherwise connected (directly or indirectly) with the vehicle or any part of its equipment or load.
- (2) The officer may apply to a magistrate for a warrant authorising the officer to exercise a power to enter and search the premises under section 40T.
- 20 (3) An application for a warrant may be made personally or by telephone or other means authorised under the regulations.
- (4) A magistrate may, on an application for a warrant under this section, issue the warrant if satisfied that the warrant is reasonably required in the circumstances.
- 25 (5) A warrant under this section—
- (a) must specify—
- (i) the name of the magistrate issuing the warrant; and
- (ii) the person authorised to exercise the powers conferred by the warrant; and
- 30 (iii) the period for which the warrant will be in force (being a period not longer than 45 days); and
- (b) may contain conditions and limitations; and
- (c) may, on application by the person named in the warrant, be varied or renewed (and the provisions of this Act will apply in relation to such an application in the same way as if it were an application for the issue of a warrant).
- 35 (6) The Governor may make regulations governing the making of applications and the issuing of warrants under this section.

Subdivision 7—Other provisions regarding inspections and searches

41C—Use of assistants and equipment

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

41D—Use of equipment to examine or process things

- 15 (1) Without limiting section 41C, an authorised officer or police officer exercising a power under this Division may bring to, or onto, a vehicle or premises any equipment reasonably necessary for the examination or processing of things found in, on or at the vehicle or premises in order to determine whether they are things that may be seized.
- 20 (2) If—
- (a) it is not practicable to examine or process the things at the vehicle or premises; or
 - (b) the occupier of the vehicle or premises consents in writing, the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.
- 25 (3) The officer, or a person assisting the officer, may operate equipment already in, on or at the vehicle or premises to carry out the examination or processing of a thing found in, on or at the vehicle or premises in order to determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that—
- (a) the equipment is suitable for the examination or the processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.
- 30
- 35

41E—Use or seizure of electronic equipment

- 40 (1) If—
- (a) a thing found in, on or at a vehicle or premises is, or includes, a disk, tape or other device for the storage of information; and
 - (b) equipment in, on or at the vehicle or premises may be used with the disk, tape or other storage device; and

- (c) the authorised officer or police officer concerned believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether a relevant law or scheme has been contravened,

5 the officer or a person assisting the officer may operate the equipment to access the information.

- (2) If the officer or a person assisting the officer finds that a disk, tape or other storage device in, on or at the vehicle or premises contains information of a kind referred to in subsection (1)(c), he or she may—

- 10 (a) put the information in documentary form and seize the documents so produced; or
- 15 (b) copy the information to another disk, tape or other storage device and remove that storage device from the vehicle or premises; or
- (c) if it is not practicable to put the information in documentary form or to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.

- 20 (3) An officer or a person assisting an officer must not operate or seize equipment for the purpose mentioned in this section unless the officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

25 **Subdivision 8—Other provisions regarding seizure**

41F—Receipt for and access to seized material

If a record, device or other thing is seized and removed under this Division, the authorised officer or police officer concerned must—

- 30 (a) give a receipt for it to the person from whom it is seized and removed; and
- (b) if practicable, allow the person who would normally be entitled to possession of it reasonable access to it.

41G—Embargo notices

- 35 (1) This section applies if—
- (a) an authorised officer or police officer is authorised to seize any record, device or other thing under this Division; and
- (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
- (2) The officer may issue an embargo notice under this section.

- 5
- (3) An *embargo notice* is a notice forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of the officer, the Minister or the Commissioner of Police.
- (4) The embargo notice—
- (a) must be in the form, or contain the particulars, required by the regulations; and
 - (b) must list the activities that it forbids; and
 - (c) must set out a copy of subsections (6) and (8).
- 10
- (5) The officer may issue the notice—
- (a) by causing a copy of the notice to be served on the occupier of the vehicle or premises concerned; or
 - (b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to
- 15
- the record, device or other thing in a prominent position.
- (6) A person commits an offence if—
- (a) the person knows that an embargo notice relates to a record, device or other thing; and
 - (b) the person—
- 20
- (i) does anything that is forbidden by the notice under this section; or
 - (ii) instructs any other person to do anything that is forbidden by the notice under this section or to do anything that the person is forbidden to do by the
- 25
- notice.
- Penalty: \$10 000.
- (7) It is a defence to a prosecution for an offence against subsection (6) to establish that the person charged—
- (a) moved the record, device or other thing, or part of it, for the
- 30
- purpose of protecting or preserving it; or
- (b) notified the officer who issued the notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (8) A person commits an offence if—
- (a) an embargo notice has been served on the person; and
 - (b) the person fails to take reasonable steps to prevent any other person from doing anything forbidden by the notice.
- 35
- Penalty: \$10 000.
- (9) Despite anything in any other Act, a sale, lease or transfer or other
- 40
- dealing with a record, device or other thing, or part of it, in contravention of this section is void.

Subdivision 9—Miscellaneous

41H—Power to use force against persons to be exercised only by police officers

5 A provision of this Division that authorises a person to use reasonable force does not authorise a person who is not a police officer to use force against a person.

41I—Various powers may be exercised on same occasion

10 An authorised officer or police officer may exercise various powers under road laws on the same occasion, whether the exercise of the powers is for the same purpose or different purposes and whether the opportunity to exercise one power arises only as a result of the exercise of another power.

41J—Restoring vehicle or premises to original condition after action taken

15 If—

- 20 (a) an authorised officer or police officer or a person authorised by the officer takes any action in the exercise or purported exercise of any power under this Division in relation to a vehicle or its equipment or load or in relation to any premises; and
- (b) damage was caused by the unreasonable exercise of the power or by the use of force that was not authorised under this Division,

25 the officer must take reasonable steps to return the vehicle, equipment, load or premises to the condition it was in immediately before the action was taken.

41K—Self-incrimination

- 30 (1) It is not an excuse for a person to refuse or fail to provide or produce any information, document, record, device or other thing in compliance with a direction under this Division on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- 35 (2) If compliance by a natural person with a direction under this Division to provide or produce any information, document, record, device or other thing might tend to incriminate the person or make the person liable to a penalty, then—
- 40 (a) in the case of a person who is directed to produce any document, record, device or other thing—the fact of production (as distinct from the contents of the document, record, device or other thing); or
- (b) in any other case—the information provided in compliance with the direction,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

41L—Providing evidence to other authorities

5 Any records, devices or other things seized under this Act, or any information obtained under this Act, may, for the purposes of law enforcement, be given to any public authority of any jurisdiction (including any corresponding Authority) considered appropriate by the Minister or the Commissioner of Police, but only after
10 consultation with the public authority concerned.

41M—Obstructing or hindering authorised officers or police officers

A person commits an offence if—

- 15 (a) an authorised officer or police officer is exercising a power under a road law; and
- (b) the person obstructs or hinders the officer in the exercise of the power.

Penalty: \$10 000.

41N—Impersonating authorised officers

20 A person commits an offence if the person impersonates an authorised officer.

Penalty: \$10 000.

41O—Division not to affect other powers

25 This Division does not derogate from any other law that confers powers on an authorised officer or police officer.

Part 2A—Mutual recognition and corresponding road laws

41P—Effect of administrative actions of authorities of other jurisdictions

- 30 (1) In this section—

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

administrative authority means—

- 35 (a) a corresponding Authority; or
- (b) a person holding an office constituted by or under the law of another jurisdiction and prescribed by the regulations; or
- (c) a body constituted by or under the law of another jurisdiction and prescribed by the regulations.

- 5
- (2) An administrative action of an administrative authority under or in connection with a corresponding road law has the same effect in this State as it has in the other jurisdiction.
- (3) Nothing in this section gives an administrative action effect in this State or in a particular place in this State—
- 10
- (a) in so far as the action is incapable of having effect in or in relation to this State or that place; or
- (b) if any terms of the action expressly provide that the action does not extend or apply to or in relation to this State or that place; or
- (c) if any terms of the action expressly provide that the action has effect only in the other jurisdiction or a specified place in the other jurisdiction.
- 15
- (4) This section applies only to administrative actions of kinds prescribed by the regulations.

41Q—Effect of court orders of other jurisdictions

- (1) In this section—
- order* means an order in any judicial or other proceedings, civil or criminal, as in force from time to time.
- 20
- (2) An order of a court or tribunal of another jurisdiction under or in connection with a corresponding road law has the same effect in this State as it has in the other jurisdiction.
- (3) Nothing in this section gives an order effect in this State or in a particular place in this State—
- 25
- (a) in so far as the order is incapable of having effect in or in relation to this State or that place; or
- (b) if any terms of the order expressly provide that the order does not extend or apply to or in relation to this State or that place; or
- 30
- (c) if any terms of the order expressly provide that the order has effect only in the other jurisdiction or a specified place in the other jurisdiction.
- (4) This section applies only to orders of kinds prescribed by the regulations.

15—Repeal of Part 3 Division 1

Part 3 Division 1—delete Division 1

16—Repeal of section 47EAB

Section 47EAB—delete the section

17—Repeal of section 86

Section 86—delete the section

18—Repeal of section 106

Section 106—delete the section

19—Amendment of section 107—Damage to road infrastructure

Section 107—after its present contents (now to be designated as subsection (1)) insert:

- 5 (2) A person must not remove or interfere with road infrastructure or damage it in any way other than through reasonable use.
- (3) A person who damages road infrastructure other than through reasonable use must immediately report full particulars of the damage to a police officer or road authority.

10 **20—Repeal of section 110AAD**

Section 110AAD—delete the section

21—Repeal of section 112

Section 112—delete the section:

22—Repeal of section 114

15 Section 114—delete the section

23—Amendment of section 115—Standard form conditions for oversize or overmass vehicle exemptions

Section 115(7)—delete subsection (7)

24—Insertion of Part 4 Divisions 3A and 3B

20 After section 115 insert:

Division 3A—Provisions relating to breaches of vehicle standards or maintenance requirements

116—Meaning of breach of vehicle standards or maintenance requirement

- 25 (1) For the purposes of this Act, there is a *breach of a vehicle standards or maintenance requirement* if—
- (a) a vehicle is driven on a road; and
- (b) the vehicle—
- (i) does not comply with a requirement of the vehicle standards; or
- 30 (ii) has not been maintained in a safe condition; or

(iii) has not been maintained with an emission control system fitted to it of each kind that was fitted to it when it was built and in a condition that ensures that each emission control system fitted to it continues operating essentially in accordance with the system's original design; or

(iv) does not comply with the requirements of section 162A.

(2) For the purposes of this section, a vehicle is not *maintained in a safe condition* if driving the vehicle would endanger the person driving the vehicle, anyone else in or on the vehicle or a vehicle attached to it or other road users.

(3) This section does not apply to vehicles excluded by the vehicle standards from the application of those standards.

117—Liability of driver

(1) A person commits an offence if—

(a) there is a breach of a vehicle standards or maintenance requirement; and

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

Penalty: \$2 500.

(2) It is a defence to a charge for an offence against this section if the person charged establishes that the person—

(a) did not cause or contribute to the condition of the vehicle and had no responsibility for or control over the maintenance of the vehicle at any relevant time; and

(b) did not know and could not reasonably be expected to have known of the condition of the vehicle; and

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

118—Liability of operator

(1) A person commits an offence if—

(a) there is a breach of a vehicle standards or maintenance requirement; and

(b) the person is the operator of the vehicle concerned.

Penalty: \$2 500.

- (2) It is a defence to a charge for an offence against this section if the person charged establishes that the vehicle was being used at the relevant time by—
- (a) another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the person; or
 - (b) by an employee of the person who was acting at the relevant time outside the scope of the employment; or
 - (c) by an agent of the person who was acting at the relevant time outside the scope of the agency.

Division 3B—Provisions relating to breaches of mass, dimension and load restraint requirements

Subdivision 1—Preliminary

119—Meaning of breach of mass, dimension or load restraint requirement

- (1) For the purposes of this Act, there is a *breach of a mass, dimension or load restraint requirement* if—
- (a) a vehicle is driven on a road (whether in this State or another jurisdiction); and
 - (b) the vehicle does not comply with a mass, dimension or load restraint requirement.
- (2) For the purposes of this Act, there is a *breach of a mass, dimension or load restraint requirement in this State* if—
- (a) a vehicle is driven on a road in this State; and
 - (b) the vehicle does not comply with a mass, dimension or load restraint requirement that is a law of this State.
- (3) For the purposes of this Act, there is a *breach of a mass, dimension or load restraint requirement in another jurisdiction* if—
- (a) a vehicle is driven on a road in another jurisdiction; and
 - (b) the vehicle does not comply with a mass, dimension or load restraint requirement that is a law of the other jurisdiction.

120—Meaning of minor, substantial or severe risk breaches

- (1) For the purposes of this Act, a breach of a mass, dimension or load restraint requirement is a *minor risk breach* if the breach is categorised as a minor risk breach under the regulations.
- (2) For the purposes of this Act, a breach of a mass, dimension or load restraint requirement is a *substantial risk breach* if the breach is categorised as a substantial risk breach under the regulations.

- (3) For the purposes of this Act, a breach of a mass, dimension or load restraint requirement is a *severe risk breach* if the breach is categorised as a severe risk breach under the regulations.

Subdivision 2—Reasonable steps defence

121—Reasonable steps defence

- (1) If a provision of this Division states that a person has the benefit of the *reasonable steps defence* for an offence, it is a defence to a charge for the offence concerned if the person charged establishes 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 had taken all reasonable steps to prevent the contravention; or
- (ii) there were no steps that the person could reasonably be expected to have taken to prevent the contravention.
- (2) Without limiting the above, in determining whether things done or omitted to be done by the person charged constitute reasonable steps, a court may have regard to—
- (a) the circumstances of the alleged offence, including (if relevant) the risk category to which the breach concerned belongs; and
- (b) without limiting paragraph (a), the measures available and measures taken for any or all of the following:
- (i) to accurately and safely weigh or measure the vehicle or its load or to safely restrain the load in or on the vehicle;
- (ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the vehicle or its load might be calculated;
- (iii) to manage, reduce or eliminate a potential breach arising from the location of the vehicle, or from the location of the load in or on the vehicle, or from the location of goods in the load;
- (iv) to manage, reduce or eliminate a potential breach arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;

- (v) to exercise supervision or control over others involved in activities leading to the breach; and
- (c) the measures available and measures taken for any or all of the following:
- 5 (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons;
- 10 (ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
- (iii) to maintain equipment and work systems to enable compliance with relevant laws;
- (iv) to address and remedy similar compliance problems that may have occurred in the past; and
- 15 (d) whether the person charged had, either personally or through an agent or employee, custody or control of the vehicle, or of its load, or of any of the goods included or to be included in the load; and
- 20 (e) the personal expertise and experience that the person charged had or ought to have had or that an agent or employee of the person charged had or ought to have had.
- (3) If the person charged establishes that the person had complied with all relevant standards and procedures under a registered industry code of practice with respect to matters to which the breach relates, proof of compliance (as so established by the person) constitutes prima facie evidence that the person charged had taken reasonable steps to prevent the contravention.
- 25 (4) Subsection (3) is not available unless the person charged has served notice of intention to establish the matters referred to in that subsection on the prosecution at least 28 days before the day on
- 30 which the matter is set down for hearing.

122—Reasonable steps defence—reliance on container weight declaration

- 35 (1) This section applies if the operator or driver of a vehicle is charged with an offence relating to a breach of a mass limit and is seeking to establish the reasonable steps defence in relation to the offence.
- (2) To the extent that the weight of a freight container together with its contents is relevant to the offence, the person charged may rely on the weight stated in the relevant container weight declaration, unless it is established that the person knew or ought reasonably to have known that—
- 40 (a) the stated weight was lower than the actual weight; or
- (b) the distributed weight of the container and its contents, together with—

- (i) the mass or location of any other load in or on the vehicle; or
 - (ii) the mass of the vehicle or any part of it,
- would cause one or more breaches of mass limits.

5 **Subdivision 3—Liability for breaches of mass, dimension or load restraint requirements**

123—Liability of driver

- (1) A person commits an offence if—
- (a) there is a breach of a mass, dimension or load restraint requirement in this State; and
 - (b) the person is the driver of the vehicle concerned.
- (2) If the breach concerned is a minor risk breach, the person charged has the benefit of the reasonable steps defence for an offence against this section.
- (3) If the breach concerned is a substantial risk breach or a severe risk breach, the person charged has the benefit of the reasonable steps defence for an offence against this section, but only so far as it relates to reliance on the weight stated in a container weight declaration.

20 **124—Liability of operator**

- (1) A person commits an offence if—
- (a) there is a breach of a mass, dimension or load restraint requirement; and
 - (b) the person is the operator of the vehicle concerned.
- (2) This section applies to—
- (a) a breach of a mass, dimension or load restraint requirement in this State; or
 - (b) a breach of a mass, dimension or load restraint requirement in another jurisdiction if the journey of the vehicle during which the breach occurs resulted from action taken by the person as the operator of the vehicle in this State.
- (3) If the breach concerned is a minor risk breach, the person charged has the benefit of the reasonable steps defence for an offence against this section.
- (4) If the breach concerned is a substantial risk breach or a severe risk breach, the person charged has the benefit of the reasonable steps defence for an offence against this section, but only so far as it relates to reliance on the weight stated in a container weight declaration.

- 5
- (5) It is a defence to a charge for an offence against this section if the person charged establishes that the vehicle was being used at the relevant time by—
- (a) another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the person; or
- (b) by an employee of the person who was acting at the relevant time outside the scope of the employment; or
- 10 (c) by an agent of the person who was acting at the relevant time outside the scope of the agency.

125—Liability of consignor

- (1) This section applies to the transport of goods by a heavy vehicle by road.
- 15 (2) A person commits an offence if—
- (a) there is a breach of a mass, dimension or load restraint requirement; and
- (b) the person is the consignor of any goods that are in or on the vehicle concerned.
- (3) Subsection (2) applies to—
- 20 (a) a breach of a mass, dimension or load restraint requirement in this State; or
- (b) a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the consignor of the goods—
- 25 (i) because of action taken by the person in this State; or
- (ii) because the person had possession of, or control over, the goods in this State immediately before their transport by road.
- 30 (4) A person commits an offence if—
- (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and
- 35 (b) the person is the consignor of any of the goods contained in the freight container.
- (5) Subsection (4) applies to—
- (a) the transport of the freight container in this State; or
- 40 (b) the transport of the freight container in another jurisdiction if the person is the consignor of the goods—

(i) because of action taken by the person in this State;
or

(ii) because the person had possession of, or control
over, the goods in this State immediately before
their transport by road.

(6) The person charged has the benefit of the reasonable steps defence
for an offence against this section.

(7) Proceedings for an offence against this section may be commenced at
any time within 2 years after the date of the alleged commission of
the offence or, with the authorisation of the Attorney-General, at any
later time within 3 years after the date of the alleged commission of
the offence.

(8) An apparently genuine document purporting to be signed by the
Attorney-General authorising the commencement of proceedings for
an offence against this section must be accepted in legal proceedings,
in the absence of proof to the contrary, as proof of the authorisation.

126—Liability of packer

(1) This section applies to the transport of goods by a heavy vehicle by
road.

(2) A person commits an offence if—

(a) there is a breach of a mass, dimension or load restraint
requirement; and

(b) the person is the packer of any goods that are in or on the
vehicle concerned.

(3) Subsection (2) applies to—

(a) a breach of a mass, dimension or load restraint requirement
in this State; or

(b) a breach of a mass, dimension or load restraint requirement
in another jurisdiction if the person is the packer of the
goods because of action taken by the person in this State.

(4) A person commits an offence if—

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

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

(5) Subsection (4) applies to—

(a) the transport of the freight container in this State; or

(b) the transport of the freight container in another jurisdiction
if the person is the packer of the goods because of action
taken by the person in this State.

- 5
- (6) The person charged has the benefit of the reasonable steps defence for an offence against this section.
- (7) Proceedings for an offence against this section may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.
- 10
- (8) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings for an offence against this section must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

127—Liability of loader

- 15
- (1) This section applies to the transport of goods by a heavy vehicle by road.
- (2) A person commits an offence if—
- (a) there is a breach of a mass, dimension or load restraint requirement; and
- (b) the person is the loader of any goods that are in or on the vehicle concerned.
- 20
- (3) This section applies to—
- (a) a breach of a mass, dimension or load restraint requirement in this State; or
- (b) a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the loader of the goods because of action taken by the person in this State.
- 25
- (4) The person charged has the benefit of the reasonable steps defence for an offence against this section.
- (5) Proceedings for an offence against this section may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.
- 30
- (6) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings for an offence against this section must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
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128—Liability of consignee

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- (1) This section applies to the transport of goods by a heavy vehicle by road.
- (2) A person commits an offence if—
- (a) there is a breach of a mass, dimension or load restraint requirement; and

- (b) the person is the consignee of any goods that are in or on the vehicle concerned; and
- (c) the person engaged in conduct that resulted or was likely to result in inducing or rewarding the breach; and
- (d) the person intended or was reckless or negligent as to whether there would be that result.

- (3) This section applies to—
 - (a) a breach of a mass, dimension or load restraint requirement in this State; or
 - (b) a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person engaged in conduct in this State that resulted or was likely to result in inducing or rewarding the breach.
- (4) Proceedings for an offence against this section may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.
- (5) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings for an offence against this section must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

129—Penalties for offences against Subdivision

- (1) The penalty for an offence against this Subdivision involving a heavy vehicle is as follows:

Offence	Penalty if first offence by natural person against provision concerned	Penalty if subsequent offence by natural person against provision concerned	Penalty if first offence by body corporate against provision concerned	Penalty if subsequent offence by body corporate against provision concerned
Offence involving minor risk breach of mass, dimension or load restraint requirement (not being offence against section 128)	Maximum \$1 250	Maximum \$2 500; minimum \$300	Maximum \$5 000	Maximum \$10 000; minimum \$300

Statutes Amendment (Road Transport Compliance and Enforcement) Bill 2006

Amendment of *Road Traffic Act 1961*—Part 3

Offence	Penalty if first offence by natural person against provision concerned	Penalty if subsequent offence by natural person against provision concerned	Penalty if first offence by body corporate against provision concerned	Penalty if subsequent offence by body corporate against provision concerned
Offence involving substantial risk breach of mass, dimension or load restraint (not being offence against section 128)	Maximum \$2 500	Maximum \$5 000; minimum \$600	Maximum \$10 000	Maximum \$20 000; minimum \$600
Offence involving severe risk breach of mass limit (not being offence against section 128)	Maximum \$5 000 plus maximum \$500 for each additional 1% over 120% overload	Maximum \$10 000 plus maximum \$1 000 for each additional 1% over 120% overload; minimum \$2 000 plus minimum \$200 for each additional 1% over 120% overload	Maximum \$20 000 plus maximum \$2 500 for each additional 1% over 120% overload	Maximum \$50 000 plus maximum \$5 000 for each additional 1% over 120% overload; minimum \$2 000 plus minimum \$200 for each additional 1% over 120% overload
Any other offence involving severe risk breach of mass, dimension or load restraint requirement (not being offence against section 128)	Maximum \$5 000	Maximum \$10 000; minimum \$2 000	Maximum \$20 000	Maximum \$50 000; minimum \$2 000
Offence against section 125(4), 126(4) or 128	Maximum \$5 000	Maximum \$10 000; minimum \$2 000	Maximum \$20 000	Maximum \$50 000; minimum \$2 000

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- (2) The penalty for an offence against this Subdivision involving a vehicle other than a heavy vehicle is—
 - (a) in the case of an offence involving a minor risk breach of a mass, dimension or load restraint requirement—a maximum penalty of \$750; or
 - (b) in the case of an offence involving a substantial risk breach of a mass, dimension or load restraint requirement—a maximum penalty of \$1 250; or
 - (c) in the case of an offence involving a severe risk breach of a mass, dimension or load restraint requirement—a maximum penalty of \$2 500.
 - (3) A court may not reduce or mitigate in any way a minimum penalty prescribed by this section.
 - (4) In proceedings, if the court is satisfied that—
 - (a) there has been a breach of a mass, dimension or load restraint requirement but is not satisfied that the breach is a substantial risk breach or a severe risk breach, the court may treat the breach as a minor risk breach; or
 - (b) there has been a breach of a mass, dimension or load restraint requirement and that the breach is at least a substantial risk breach but is not satisfied that the breach is a severe risk breach, the court may treat the breach as a substantial risk breach.
 - (5) The following provisions apply for the purpose of determining whether an offence relating to a breach of a mass, dimension or load restraint requirement is a first offence or a second or subsequent offence:
 - (a) a person is found guilty of a second or subsequent offence only if the occasion in respect of which the second or subsequent offence occurred was different from the occasion in respect of which the first offence for which the person was found guilty occurred;
 - (b) it is immaterial in which order the offences were committed or whether the breaches concerned are of the same risk category or of different risk categories;
 - (c) if the court is satisfied that a person is guilty of an offence but is unable to ascertain (from the information available to the court) whether or not the offence is a first offence for which the person was found guilty, the court may only impose a penalty for the offence as if it were a first offence;
 - (d) in determining whether a person has been found guilty of a previous offence relating to a breach of a mass, dimension or load restraint requirement, regard is to be had to findings of guilt for offences against the corresponding provisions of corresponding road laws;

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

Subdivision 4—Sanctions

130—Matters to be taken into consideration by courts

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

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- (2) In determining the sanctions (including the level of fine) that are to be imposed in respect of breaches of mass, dimension or load restraint requirements, courts are to take into consideration the following matters:

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- (a) minor risk breaches involve either or both of the following:
 - (i) an appreciable risk of accelerated road wear;
 - (ii) an appreciable risk of unfair commercial advantage;

20

- (b) substantial risk breaches involve one or more of the following:
 - (i) a substantial risk of accelerated road wear;
 - (ii) an appreciable risk of damage to road infrastructure;
 - (iii) an appreciable risk of increased traffic congestion;
 - (iv) an appreciable risk of diminished public amenity;
 - (v) a substantial risk of unfair commercial advantage;

25

- (c) severe risk breaches involve one or more of the following:
 - (i) an appreciable risk of harm to public safety or the environment;
 - (ii) a serious risk of accelerated road wear;
 - (iii) a serious risk of harm to road infrastructure;
 - (iv) a serious risk of increased traffic congestion;
 - (v) a serious risk of diminished public amenity;
 - (vi) a serious risk of unfair commercial advantage.

30

- (3) Nothing in this section affects any other matters that may or must be taken into consideration by a court.

35

- (4) Nothing in this section authorises or requires a court to assign the breach to a different category of breach.
- (5) Nothing in this section requires evidence to be adduced in relation to the matters that are to be taken into consideration by a court under this section.

Subdivision 5—Container weight declarations

131—Application of Subdivision

This Subdivision applies to the transport of a freight container by a heavy vehicle by road.

132—Meaning of “responsible entity”

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

- (a) a person who consigned the container for transport by a heavy vehicle by road in this State; or
- (b) a person who, on behalf of the consignor, arranged for the transport of the container by a heavy vehicle by road in this State; or
- (c) a person who physically offered the container for transport by a heavy vehicle by road in this State.

133—Container weight declarations

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

134—Complying container weight declarations

- (1) A container weight declaration for a freight container complies with this Subdivision (a *complying container weight declaration*) if it contains the following additional information:
 - (a) the number and other particulars of the freight container necessary to identify the container;
 - (b) the name, home address or business address in Australia of the responsible entity;
 - (c) the date of the declaration;
 - (d) any other information required by the regulations.

- (2) However, a container weight declaration does not comply with this Subdivision if—
- (a) the contents of the container weight declaration are not readily available to an authorised officer or police officer who seeks to ascertain its contents, there and then in the presence of the freight container (whether by examining documents located in or on the vehicle or by obtaining the information by radio or mobile telephone or by any other means); or
 - (b) it is not in a form that can be used or adapted for evidentiary purposes; or
 - (c) it is not in a form that satisfies requirements prescribed by the regulations.

135—Duty of responsible entity

- (1) This section applies if a responsible entity offers a freight container to an operator of a heavy vehicle for transport in this State by the vehicle.
- (2) The responsible entity must ensure that the operator or driver of the vehicle is provided, before the start of the transport of the freight container in this State, with a complying container weight declaration relating to the freight container.
- (3) The responsible entity is guilty of an offence if the responsible entity engages in conduct that contravenes subsection (2).
Penalty:
 - (a) if the offender is a natural person—\$5 000;
 - (b) if the offender is a body corporate—\$20 000.
- (4) The person charged has the benefit of the reasonable steps defence for an offence against this section.

136—Duty of operator

- (1) This section applies if an operator arranges for a freight container to be transported in this State by a heavy vehicle.
- (2) The operator must ensure that the driver of the vehicle is provided, before the start of the driver's journey in the course of the transport of the freight container in this State, with a complying container weight declaration relating to the freight container.
- (3) If the freight container is to be transported by another road or rail carrier, the operator must ensure that the other carrier is provided with a complying container weight declaration relating to the freight container (or with the prescribed particulars contained in the declaration) by the time the other carrier receives the freight container.

- 5
- (4) If the driver does not have a complying container weight declaration (or the prescribed particulars contained in the declaration), the operator is taken to have contravened subsection (2) unless the operator establishes that the driver was provided with the declaration (or the prescribed particulars).
- (5) The operator is guilty of an offence if the operator engages in conduct that contravenes subsection (2) or (3).
- Penalty:
- (a) if the offender is a natural person—\$5 000;
- 10 (b) if the offender is a body corporate—\$20 000.
- (6) The person charged has the benefit of the reasonable steps defence for an offence against this section.

137—Duty of driver

- 15
- (1) A person must not drive a heavy vehicle loaded with a freight container on a road in this State without first having been provided with the relevant container weight declaration.
- (2) If a container weight declaration relating to a freight container is provided to a driver of a heavy vehicle with the container, the driver must, during the course of a journey in this State, keep the
- 20 declaration in or about the vehicle or in a manner that enables it to be readily accessed from the vehicle.
- (3) The driver is guilty of an offence if the driver engages in conduct that contravenes subsection (1) or (2).
- Penalty: \$5 000.
- 25 (4) The person charged has the benefit of the reasonable steps defence for an offence against this section.

138—Liability of consignee—knowledge of matters relating to container weight declaration

30 Without limiting section 128, a consignee of goods is taken to have intended the result referred to in section 128(2) if—

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

Note—

Section 128 provides for an offence that may be committed by an assignee of goods if the person engages in conduct that results or is likely to result in inducing or rewarding a breach of a mass, dimension or load restraint requirement and the person intends that result.

Subdivision 6—Recovery of losses resulting from non-provision of or inaccurate container weight declarations

139—Recovery of losses for non-provision of container weight declaration

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

140—Recovery of losses for provision of inaccurate container weight declaration

- (1) This section applies if—
- (a) a container weight declaration has been provided as required; and
 - (b) the declaration contains information about a freight container—
 - (i) that is false or misleading in a material particular by understating the weight of the container; or

(ii) that is otherwise false or misleading in a material particular by indicating that the weight of the container is lower than its actual weight; and

(c) a breach of a mass limit occurred as a result of the reliance, by an operator or driver of a vehicle, on the information in the declaration when transporting the container by road (whether or not enforcement action has been or may be taken in relation to the breach); and

(d) the operator or driver of the vehicle—

(i) had at the time a reasonable belief that the vehicle concerned was not in breach of a mass limit; and

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

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

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

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

(a) any fine, expiation fee, infringement penalty or other penalty imposed on the plaintiff under an Australian road law;

(b) any fine, expiation fee, infringement penalty or other penalty imposed on an agent or employee of the plaintiff under an Australian road law and reimbursed by the plaintiff;

(c) any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;

(d) any loss incurred from spoliation of, or damage to, the goods;

(e) any loss incurred from the need to provide another vehicle, and any loss incurred from any delay in the provision of another vehicle;

(f) any costs or expenses incurred in weighing the freight container or any of its contents or both.

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

141—Recovery of amount by responsible entity

(1) This section applies if an order under section 140 has been made or is being sought against a responsible entity for payment of the monetary value of any loss incurred by a person.

- 5
- (2) The responsible entity has a right to recover under this Act, from a person (the *information provider*) who provided the responsible entity with all or any of the information that was false or misleading, so much (the *attributable amount*) of the monetary value paid or payable by the responsible entity under the order as is attributable to that information.
- (3) The responsible entity may enforce that right by—
- 10
- (a) joining, or seeking the joinder of, the information provider in the proceedings for the order under section 140 and applying to the court for an order for payment of the attributable amount to be made when the order is made under that section; or
- (b) bringing separate proceedings in a court of competent jurisdiction for an order for payment of the attributable amount.
- 15

142—Assessment of monetary value or attributable amount

- (1) In making an order under this Subdivision, a court may assess—
- (a) the monetary value of any loss, as referred to in—
- 20
- (i) section 139; or
- (ii) section 140; or
- (b) the attributable amount, as referred to in section 141, in such manner as the court considers appropriate.
- (2) In making such an assessment, the court may take into account such matters as it considers relevant, including any evidence adduced in connection with any prosecution brought for a breach referred to in section 140.
- 25

143—Costs

- (1) A court may award costs in relation to the proceedings for an order under this Subdivision.
- 30
- (2) A court may, in proceedings for an order under this Subdivision, order payment of any costs or expenses incurred in weighing a freight container or any of its contents or both, if—
- (a) the minimum weight stated in the container weight declaration concerned was lower than the actual weight; or
- 35
- (b) a container weight declaration was not provided.
- (3) An order under subsection (2) may be made in favour of a party to the proceedings, an Australian Authority or a public authority of this State or any other jurisdiction.

Subdivision 7—Transport documentation

144—False or misleading transport documentation: liability of consignor, packer, loader, receiver and others

(1) This section applies if—

- 5
- (a) goods are consigned for transport by a heavy vehicle by road; and
 - (b) all or any part of the transport by road occurs or is to occur in this State.

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

- 10
- (a) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
 - (b) the person is the consignor of the goods.

15
Penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$20 000.

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

- 20
- (a) the goods are packed in Australia in a freight container or other container or in a package or on a pallet for transport by road; and
 - (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
 - (c) the person is the packer of the goods.

25
Penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$20 000.

30
(4) A person is guilty of an offence if—

- (a) the goods are loaded on a vehicle for transport by road; and
- (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
- (c) the person is the loader of the goods.

35
Penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$20 000.

- (5) A person is guilty of an offence if—
- (a) the goods are packed outside Australia in a freight container or other container or in a package or on a pallet for transport by road; and
 - (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
 - (c) the person is the receiver of the goods in Australia.

Penalty:

- (a) if the offender is a natural person—\$5 000;
 - (b) if the offender is a body corporate—\$20 000.
- (6) A person is guilty of an offence if—
- (a) a container weight declaration provided to an operator of a vehicle contains information that is false or misleading in a material particular; and
 - (b) the person is the responsible entity who offered the freight container concerned to the operator for transport.

Penalty:

- (a) if the offender is a natural person—\$5 000;
 - (b) if the offender is a body corporate—\$20 000.
- (7) A person is guilty of an offence if—
- (a) a container weight declaration provided to a driver of a vehicle contains information that is false or misleading in a material particular; and
 - (b) the person is the operator of the vehicle who arranged for the freight container concerned to be transported in this State.

Penalty:

- (a) if the offender is a natural person—\$5 000;
 - (b) if the offender is a body corporate—\$20 000.
- (8) Information in a container weight declaration is not false or misleading for the purposes of this Act merely because it overstates the actual weight of the freight container and its contents.
- (9) The person charged has the benefit of the reasonable steps defence for an offence against this section.

Note—

Section 122 makes provision for reliance on a container weight declaration where an operator or driver is charged with an offence involving a breach of a mass limit and is seeking to rely on the reasonable steps defence.

(10) In this section—

receiver of goods in Australia means—

- (a) the person who first receives them in Australia, otherwise than as the person who merely unloads them; or
- (b) the person who unpacks the goods after they are first unloaded in Australia,

but does not include a class of persons declared by the regulations to be excluded from this definition.

25—Substitution of sections 148 to 156

Sections 148 to 156 (inclusive)—delete the sections and substitute:

Subdivision 1—Defect notices relating to breaches of vehicle standards or maintenance requirements

26—Amendment and redesignation of section 160—Defect notices

(1) Section 160(1aa)—delete subsection (1aa) and substitute:

(1aa) For the purposes of this section, a vehicle has *deficiencies* if the vehicle is in a condition such that there would be a breach of a vehicle standards or maintenance requirement if the vehicle were driven on a road.

(2) Section 160(3a)—delete subsection (3a)

(3) Section 160—redesignate the section as section 145

27—Insertion of Subdivision 2

After section 145 (previously designated as section 160) insert:

Subdivision 2—Formal warnings relating to breaches of mass, dimension or load restraint requirements

146—Formal warnings

- (1) An authorised officer or police officer may, instead of charging a person, or issuing an expiation notice to a person, for a minor risk breach of a mass, dimension or load restraint requirement, formally warn the person if the officer believes—
 - (a) the person was unaware of the breach; and
 - (b) it is appropriate to deal with the breach by way of a formal warning under this section.
- (2) A formal warning must be in writing.

147—Withdrawal of formal warnings

- 5
- (1) A formal warning may be withdrawn by a prescribed person or a person of a prescribed class by serving on the alleged offender a written notice of withdrawal within 21 days after the formal warning was given.
 - (2) After the formal warning has been withdrawn, the person may be charged, or issued with an expiation notice, for the breach.

Subdivision 3—Directions powers relating to breaches of mass, dimension or load restraint requirements

148—Directions power if minor risk breach

- 10
- (1) This section applies to a vehicle if an authorised officer or police officer believes on reasonable grounds that—
 - 15 (a) the vehicle is the subject of one or more minor risk breaches of mass, dimension or load restraint requirements; and
 - (b) the vehicle is not the subject of a substantial risk breach or a severe risk breach.
 - (2) The officer may—
 - 20 (a) if the officer does not give a direction under paragraph (b)—authorise the driver of the vehicle to continue its journey under section 151; or
 - (b) if the officer believes on reasonable grounds that particular circumstances exist for the purposes of this section warranting the giving of a direction under this paragraph—direct the driver or operator of the vehicle—
 - 25 (i) to rectify specified breaches of mass, dimension or load restraint requirements then and there; or
 - (ii) if the officer also believes on reasonable grounds that the vehicle should be moved to another location—to move it or cause it to be moved to a specified suitable location that is within the prescribed distance, and not to proceed from there until specified breaches of mass, dimension or load restraint requirements are rectified.
 - 35 (3) Without limiting the above, particular circumstances exist for the purposes of this section warranting the giving of a direction if—
 - (a) rectification is reasonable and can be carried out easily; or
 - (b) rectification is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.
 - 40 (4) A person commits an offence if—
 - (a) the person is subject to a direction under subsection (2); and

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

Penalty: \$5 000.

- (5) In this section—

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

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

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

149—Directions power if substantial risk breach

- 15 (1) This section applies to a vehicle if an authorised officer or police officer believes on reasonable grounds that—

- (a) the vehicle is the subject of one or more substantial risk breaches of mass, dimension or load restraint requirements; and
- 20 (b) the vehicle is not the subject of a severe risk breach.

- (2) The officer must—

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

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

- (3) Without limiting the above, particular circumstances exist for the purposes of this section warranting the moving of a vehicle if moving the vehicle is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.

40

5 (4) Particular instructions authorising or requiring the moving of a vehicle for the purposes of this section are specific instructions or standing instructions given by the Minister orally or in writing, or by telephone, facsimile, electronic mail, radio or in any other manner, authorising or requiring the moving of the vehicle in the relevant circumstances.

10 (5) A person commits an offence if—
(a) the person is subject to a direction under subsection (2); and
(b) the person engages in conduct that results in a contravention of the direction.

Penalty: \$5 000.

(6) In this section—

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

(7) Nothing in subsection (6), or in any other provision of this section, prevents—

- 20 (a) the intended destination of the journey concerned; or
(b) the depot or base of operations of the vehicle, or of a vehicle in the combination, concerned,

from being the nearest suitable location for the purposes of this section.

150—Directions power if severe risk breach

25 (1) This section applies to a vehicle if an authorised officer or police officer believes on reasonable grounds that the vehicle is the subject of one or more severe risk breaches of mass, dimension or load restraint requirements.

(2) The officer must—

30 (a) direct the driver or operator of the vehicle not to proceed until specified breaches of mass, dimension or load restraint requirements are rectified; or

(b) if the officer believes on reasonable grounds that—

35 (i) particular circumstances exist for the purposes of this section warranting the moving of the vehicle to another location; or

(ii) particular instructions have been given for the purposes of this section authorising or requiring the moving of the vehicle to another location,

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

- 5
- (3) Particular circumstances exist for the purposes of this section warranting the moving of a vehicle only—
- (a) if there is an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity; or
- 10 (b) if there is a risk to the welfare of people or live animals in or on the vehicle.
- (4) Particular instructions authorising or requiring the moving of a vehicle for the purposes of this section are specific instructions or standing instructions given by the Minister orally or in writing, or by telephone, facsimile, electronic mail, radio or in any other manner, authorising or requiring the moving of the vehicle in the relevant circumstances.
- 15
- (5) A person commits an offence if—
- (a) the person is subject to a direction under subsection (2); and
- 20 (b) the person engages in conduct that results in a contravention of the direction.

Penalty: \$5 000.

- (6) In this section—
- 25 ***risk of harm to public safety*** does not (subject to subsection (7)) include risk of harm to the safety of the vehicle or any load in or on it, but does include risk of harm to the safety of people or live animals in or on it.

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

30

- (7) Nothing in the definition of ***risk of harm to public safety*** in subsection (6), or in any other provision of this section, prevents the officer from taking into account the safety of the vehicle or any load in or on it if the officer believes on reasonable grounds he or she can do so without prejudicing the safety of other property or of people, the environment, road infrastructure or public amenity.
- 35

151—Authorisation to continue journey if minor risk breach

- (1) This section applies to a vehicle if an authorised officer or police officer believes on reasonable grounds that—
- 40 (a) the vehicle is the subject of one or more minor risk breaches of mass, dimension or load restraint requirements; and
- (b) the vehicle is not or is no longer the subject of a substantial risk breach or a severe risk breach; and

(c) the driver is not or is no longer the subject of a direction for the rectification of the minor risk breach or any of the minor risk breaches.

5 (2) The officer may authorise the driver of the vehicle to continue its journey.

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

(4) A person commits an offence if—

10 (a) the person is granted an authorisation under this section; and

(b) the authorisation is subject to a condition; and

(c) the person engages in conduct that results in a contravention of the condition.

Penalty: \$5 000.

152—Operation of directions in relation to combinations

15 (1) This section applies if a direction is given under this Subdivision in relation to a vehicle that is a combination.

(2) Subject to subsection (3), nothing in this Subdivision prevents a component vehicle of the combination from being separately driven or moved if—

20 (a) the component vehicle is not itself the subject of a breach of a mass, dimension or load restraint requirement; and

(b) it is not otherwise unlawful for the component vehicle to be driven or moved.

25 (3) Subsection (2) does not apply if there is also a direction that prevents the component vehicle from being separately driven or moved.

(4) In this section—

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

30 153—Directions and authorisations to be in writing

A direction or authorisation under this Subdivision is to be in writing, except—

35 (a) in the case of a direction to move a vehicle, where the moving is carried out in the presence of, or under the supervision of, an authorised officer or police officer; or

(b) in other circumstances prescribed by the regulations.

154—Application of Subdivision in relation to other directions

(1) This Subdivision applies to a vehicle regardless of whether or not the vehicle is, has been or becomes the subject of a direction under Part 2 Division 5.

- (2) This Subdivision does not limit or prevent the exercise of powers under Part 2 Division 5 for the purpose of finding out whether there is or has been a breach of a mass, dimension or load restraint requirement (or any other purpose).

5 **28—Amendment of section 161A—Driving of certain vehicles subject to Ministerial approval**

Section 161A—after subsection (1) insert:

- (2) An approval under subsection (1) is subject to such conditions (if any) as the Minister thinks fit and specifies in the instrument or notice of approval.

10 **29—Amendment of section 162A—Seat belts and child restraints**

Section 162A(2)—delete subsection (2)

30—Amendment of section 163GA—Maintenance records

Section 163GA(4) to (8)—delete subsections (4) to (8) (inclusive)

15 **31—Repeal of section 163H**

Section 163H—delete the section

32—Amendment of section 163I—Evidentiary

Section 163I(b)—delete paragraph (b)

33—Substitution of section 163KA

20 Section 163KA—delete the section and substitute:

Part 4B—Special provisions relating to heavy vehicle offences

Division 1—Improvement notices

163L—Definition

25 In this Division—

approved officer means an authorised officer, or an authorised officer of a class, for the time being nominated by the Minister as an approved officer for the purposes of this Division.

163M—Improvement notices

- 30 (1) This section applies if an approved officer is of the opinion that a person has contravened, is contravening or is likely to contravene a provision of an Australian road law and the contravention or likely contravention involves a heavy vehicle.

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

25 **163N—Contravention of improvement notice**

- (1) A person commits an offence if—
- (a) the person is subject to an improvement notice; and
- (b) the person engages in conduct that results in a contravention of a requirement of the improvement notice.
- 30 Penalty: \$10 000.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) In proceedings for an offence of engaging in conduct that results in a contravention of a requirement of an improvement notice, it is a defence if the person charged establishes that—
- 35 (a) the alleged contravention or likely contravention; or
- (b) the matters or activities occasioning the alleged contravention or likely contravention,
- were remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.

163O—Amendment of improvement notices

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

163P—Cancellation of improvement notices

- 15 (1) An improvement notice may be cancelled by the Minister or an approved officer.
- (2) Notice of cancellation of an improvement notice is required to be served on the person affected.

163Q—Clearance certificates

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

163R—Review of notice

- 30 (1) A person on whom an improvement notice or a notice of an amendment of an improvement notice has been served under this Division may, within 28 days, apply to the Minister for a review of the notice.
- (2) The Minister may, in his or her discretion, extend the time fixed for making an application for review, even if the time for making such an application has ended.
- 35 (3) The operation of the notice is stayed pending the determination of the application and any subsequent appeal relating to the notice.
- (4) The Minister may determine an application for review as the Minister thinks fit.

- (5) A review must be determined within 28 days of the application being lodged with the Minister.
- (6) If a review is not determined within that period, the Minister is to be taken to have confirmed the notice.

5 **163S—Appeal to District Court**

- (1) An applicant for a review under this Division who is not satisfied with the decision of the Minister on the review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.
- 10 (2) Subject to subsection (4), an appeal must be instituted within 28 days of the making of the decision appealed against.
- (3) The Minister must, if required by the applicant for the review, state in writing the reasons for the decision.
- 15 (4) If the reasons of the Minister are not given to the applicant for the review in writing at the time of making the decision and that person, within 28 days of the making of the decision, requires the Minister to state the reasons in writing, the time for instituting an appeal runs from the time at which that person receives the written statement of those reasons.

20 **Division 2—Sanctions for heavy vehicle offences**

163T—Sanctions imposed by courts

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

163U—Commercial benefits penalty orders

- 5 (1) A court that finds a person guilty of an offence that involves a heavy vehicle may, on the application of 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 that—
- (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and
- 10 (b) in the case of a journey that was interrupted or not commenced because of action taken by an authorised officer or police officer in connection with the commission of the offence—would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.
- 15 (2) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account—
- (a) benefits of any kind, whether monetary or otherwise; and
- 20 (b) any other matters that it considers relevant, including (for example)—
- (i) the value of any goods involved in the offence; and
- (ii) the distance over which any such goods were or were to be carried.
- 25 (3) However, in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.
- (4) Nothing in this section prevents the court from ordering payment of an amount that is—
- 30 (a) less than 3 times the estimated gross commercial benefit; or
- (b) less than the estimated gross commercial benefit.

163V—Supervisory intervention orders

- 35 (1) A court that finds a person guilty of an offence that involves a heavy vehicle may, on the application of the prosecutor, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order (a *supervisory intervention order*) requiring the person (at the person's own expense and for a specified period not exceeding 1 year) to do any or all of the following:
- 40 (a) to do specified things that the court considers will improve the person's compliance with road laws or specified aspects of road laws, including (for example) the following:

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- (i) appointing or removing staff to or from particular activities or positions;
 - (ii) training and supervising staff;
 - (iii) obtaining expert advice as to maintaining appropriate compliance;
 - (iv) installing monitoring, compliance, managerial or operational equipment (including, for example, intelligent transport system equipment);
 - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
- (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Minister or a person nominated by the Minister;
- (c) to furnish compliance reports to the Minister or the court or both as specified in the order;
- (d) to appoint a person to have responsibilities—
- (i) to assist the person in improving compliance with road laws or specified aspects of road laws; and
 - (ii) to monitor the person’s performance in complying with road laws or specified aspects of road laws and in complying with the requirements of the order; and
 - (iii) to furnish compliance reports to the Minister or the court or both as specified in the order.
- (2) The court may specify matters that are to be dealt with in compliance reports and the form, manner and frequency in which compliance reports are to be prepared and furnished.
- (3) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.
- (4) The court may only make a supervisory intervention order if it is satisfied that the order is capable of improving the person’s ability or willingness to comply with the road laws, having regard to—
- (a) the Australian road law offences of which the person has been previously found guilty; and
 - (b) the Australian road law offences for which the person has been proceeded against by way of unwithdrawn expiation notices or infringement notices; and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with road transport.

- (5) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (6) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of—
- (a) the Minister; or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
- (7) In this section—

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

- (a) the performance of the person in complying with—
 - (i) the road laws or aspects of the road laws specified in the order; and
 - (ii) the requirements of the order; and
- (b) without limiting the above—
 - (i) things done by the person to ensure that any failure by the person to comply with the road laws or the specified aspects of the road laws does not continue; and
 - (ii) the results of those things having been done.

163W—Contravention of supervisory intervention order

A person commits an offence if—

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

Penalty: \$10 000.

163X—Prohibition orders

- (1) A court that finds a person guilty of an offence that involves a heavy vehicle may, on the application of the prosecutor or the Minister, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order (a ***prohibition order***) prohibiting the person, for a specified period, from having a specified role or responsibilities associated with road transport.
- (2) The court cannot make a prohibition order that prohibits the person from driving or registering a vehicle.

(3) The court may only make a prohibition order if it is satisfied that the person should not continue the things the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to—

- 5
- (a) the Australian road law offences of which the person has been previously found guilty; and
- (b) the Australian road law offences for which the person has been proceeded against by way of unwithdrawn expiation notices or infringement notices; and
- 10
- (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with road transport.

(4) A court that has power to make prohibition orders may revoke or amend a prohibition order on the application of—

- 15
- (a) the Minister; or
- (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

163Y—Contravention of prohibition order

A person commits an offence if—

- (a) the person is subject to a prohibition contained in a prohibition order; and
- 25
- (b) the person engages in conduct that results in a contravention of the prohibition.

Penalty: \$10 000.

Division 3—Criminal responsibility in relation to organisations and employers

163Z—Application of Division limited to heavy vehicle offences

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This Division applies in relation to an offence that involves a heavy vehicle.

163ZA—Liability of directors, managers and partners

- (1) If a body corporate commits an offence, each director of the body corporate, and each person concerned in the management of the body corporate, is taken to have committed the offence and is punishable accordingly.
- 35
- (2) If a person who is a partner in a partnership commits an offence in the course of the activities of the partnership, each other person who is a partner in the partnership, and each person concerned in the management of the partnership, is taken to have committed the offence and is punishable accordingly.
- 40

- 5
- (3) This section does not affect the liability of the body corporate or other person who actually committed the offence.
- (4) A person may be proceeded against and found guilty of an offence arising under this section whether or not the body corporate or other person who actually committed the offence has been proceeded against or been found guilty of the offence.
- (5) It is a defence to a charge for an offence arising under subsection (1) if the defendant establishes that—
- 10
- (a) the defendant was not in a position to influence the conduct of the body corporate in relation to the actual offence; or
- (b) the defendant, being in such a position, took all reasonable steps to prevent the commission of the actual offence.
- (6) It is a defence to a charge for an offence arising under subsection (2) if the defendant establishes that—
- 15
- (a) the defendant was not in a position to influence the conduct of the person who actually committed the offence; or
- (b) the defendant, being in such a position, took all reasonable steps to prevent the commission of the actual offence.
- (7) In this section—
- 20
- director* of a body corporate includes a member of the governing body of a body corporate.

163ZB—Vicarious responsibility

- 25
- (1) If, in proceedings for an offence, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
- 30
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took all reasonable steps to prevent the conduct.
- 35
- (3) If, in proceedings for an offence, it is necessary to establish the state of mind of a person other than a body corporate (the *employer*) in relation to particular conduct, it is sufficient to show—
- 40
- (a) that the conduct was engaged in by an employee or agent of the employer within the scope of his or her actual or apparent authority; and

(b) that the employee or agent had the relevant state of mind.

5 (4) For the purposes of a prosecution for an offence, conduct engaged in on behalf of a person other than a body corporate (the *employer*) by an employee or agent of the employer within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took all reasonable steps to prevent the conduct.

(5) In this section—

10 *director* of a body corporate includes a member of the governing body of a body corporate;

state of mind of a person includes—

(a) the knowledge, intention, opinion, belief or purpose of the person; and

15 (b) the person's reasons for the intention, opinion, belief or purpose.

Part 4C—General compensation orders

163ZC—Compensation orders for damage to road infrastructure

20 (1) A court that finds a person guilty of an offence may make an order (a *compensation order*) requiring the offender to pay a road authority such amount by way of compensation as the court thinks fit for damage to any road infrastructure that the road authority has incurred or is likely to incur in consequence of the offence.

25 (2) A compensation order may be made on the application of the prosecutor or the road authority.

(3) A compensation order may only be made in favour of the road authority.

30 (4) The court may make a compensation order if it is satisfied on the balance of probabilities that the commission of the offence caused or contributed to the damage.

(5) The court may make a compensation order—

(a) when it finds the offender guilty of the offence; or

35 (b) on an application made not later than the period within which a prosecution for the offence could have been commenced.

163ZD—Assessment of compensation

(1) In making a compensation order, the court may assess the amount of compensation in such manner as it considers appropriate, including (for example) the estimated cost of remedying the damage.

- (2) In assessing the amount of compensation, the court may take into account such matters as it considers relevant, including—
- (a) any evidence adduced in connection with the prosecution of the offence; and
 - (b) any evidence not adduced in connection with the prosecution of the offence but adduced in connection with the making of the proposed order; and
 - (c) any certificate of the road authority stating that the road authority maintains the road concerned; and
 - (d) any other certificate of the road authority, such as a certificate—
 - (i) estimating the monetary value of all or any part of the road infrastructure or of the damage to it; or
 - (ii) estimating the cost of remedying the damage; or
 - (iii) estimating the extent of the offender’s contribution to the damage.

163ZE—Service of certificates

- (1) If a road authority proposes to use a certificate referred to in section 163ZD in proceedings, the road authority must serve a copy of the certificate on the defendant at least 28 working days before the day on which the matter is set down for hearing.
- (2) Such a certificate cannot be used in the proceedings unless a copy of the certificate has been served in accordance with this section.
- (3) A defendant who wishes to challenge a statement in such a certificate must serve a notice in writing on the road authority at least 14 working days before the day on which the matter is set down for hearing.
- (4) The notice of intention must specify the matters in the certificate that are intended to be challenged.
- (5) If the defendant is intending to challenge the accuracy of any measurement, analysis or reading in the certificate, the defendant must specify the reason why the defendant alleges that it is inaccurate and must specify the measurement, analysis or reading that the defendant considers to be correct.
- (6) The defendant cannot challenge any matter in the certificate if the requirements of this section have not been complied with in relation to the certificate, unless the court gives leave to do so in the interests of justice.

163ZF—Limits on amount of compensation

- 5
- (1) If, in making a compensation order, the court is satisfied that the commission of the offence concerned contributed to the damage but that other factors not connected with the commission of the offence also contributed to the damage, the court must limit the amount of the compensation payable by the offender to the amount it assesses as being the offender's contribution to the damage.
- (2) The maximum amount of compensation cannot exceed the monetary jurisdictional limit of the court in civil proceedings.
- 10 (3) The court may not include in the order any amount for—
- (a) personal injury or death; or
 - (b) loss of income (whether sustained by a road authority or any other person or organisation); or
 - (c) damage to any property (including a vehicle) that is not part of the road infrastructure.
- 15

163ZG—Costs

The court has the same power to award costs in relation to the proceedings for a compensation order as it has in relation to civil proceedings, and the relevant provisions of laws applying to costs in relation to civil proceedings apply with any necessary adaptations to costs in relation to the proceedings for the compensation order.

20

163ZH—Relationship with orders or awards of other courts and tribunals

- 25 (1) A compensation order may not be made if another court or tribunal has awarded compensatory damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, and if a court purports to make an order under this Part in those circumstances—
- (a) the order is void to the extent that it covers the same matters as those covered by the other award; and
 - (b) any payments made under the order to the extent to which it is void must be repaid by the road authority.
- 30
- (2) The making of a compensation order does not prevent another court or tribunal from afterwards awarding damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, but the court or tribunal must take the order into account when awarding damages or compensation.
- 35

34—Amendment of section 164A—Offences and penalties

- (1) Section 164A(1)(b)—after "permit" insert:
- 40

, approval

(2) Section 164A(2)—delete "\$1 250" and substitute:

\$2 500

35—Amendment of section 165—False statements

Section 165(1)—delete "\$2 500" and substitute:

\$10 000

36—Substitution of section 166

Section 166—delete the section and substitute:

166—Double jeopardy

- (1) A person may be punished only once in relation to the same contravention of a particular provision of this Act, even if the person is liable in more than one capacity.
- (2) Despite subsection (1), a person may be punished for more than one contravention of a requirement if the contraventions relate to different parts of the same vehicle.

37—Amendment of section 168—Power of court to make orders relating to licences or registration

Section 168(1)—delete subsection (1) and substitute:

- (1) A court that convicts a person of—
 - (a) an offence against this Act relating to motor vehicles; or
 - (b) an offence (under this Act or any other Act or law) in the commission of which a motor vehicle was used or the commission of which was facilitated by the use of a motor vehicle,may do one or more of the following:
 - (c) order that the person be disqualified from holding or obtaining a driver's licence for a period fixed by the court or until further order;
 - (d) order that the person so disqualified be not, at the end of the period of disqualification or on the removal of the disqualification, granted a driver's licence until the person passes a driving test as prescribed by section 79A of the *Motor Vehicles Act 1959*;
 - (e) order that a driver's licence held by the person be modified for a period fixed by the court or until further order;
 - (f) order that the registration of the motor vehicle concerned under the *Motor Vehicles Act 1959* be suspended for a period fixed by the court or until further order, or be cancelled;

(g) order that the person, and any associate of the person, be disqualified from obtaining registration of the motor vehicle concerned as an owner or operator under the *Motor Vehicles Act 1959* for a period fixed by the court or until further order.

(2) If a court considers that another person who is not present in court may be substantially affected by an order under this section, the court may issue a summons to the other person to show cause why the order should not be made.

(2a) An order under this section operates by force of this Act and takes effect either immediately or from a later specified date.

38—Amendment of section 173A—Defence relating to registered owner or operator

(1) Section 173A(2)—Before "operator" insert:

registered

(2) Section 173A(3)—delete subsection (3)

39—Insertion of section 173AB

After section 173A insert:

173AB—Further defences

(1) It is a defence to a charge for an offence against this Act if the person charged establishes that the conduct constituting the offence was—

(a) authorised or excused by or under a law; or

(b) done in compliance with a direction given by an authorised officer or police officer or an Australian Authority or a delegate of an Australian Authority; or

(c) done in response to circumstances of emergency.

(2) The defence under subsection (1)(c) applies only if the person charged reasonably believed that—

(a) circumstances of emergency existed; and

(b) committing the offence was the only reasonable way to deal with the emergency; and

(c) the conduct was a reasonable response to the emergency.

(3) Nothing in this section affects any other defence available at law.

40—Insertion of section 174AB

After section 174A insert:

174AB—Marking of tyres for parking purposes

(1) An authorised officer may place an erasable mark on a tyre of a vehicle in the course of enforcing laws relating to the parking of vehicles.

- (2) A person must not, without proper authority, erase a mark made under subsection (1).

Penalty: \$750.

41—Insertion of sections 174F to 174K

5 After section 174E insert:

174F—Industry codes of practice

- (1) The Minister may issue guidelines with respect to the preparation and contents of industry codes of practice, and may from time to time cancel, amend or replace the guidelines.
- 10 (2) The guidelines may make provision for or with respect to—
- (a) the review of registered industry codes of practice; and
 - (b) the period for which registration of an industry code of practice remains in force (unless sooner revoked).
- (3) The Minister may register industry codes of practice prepared in accordance with the guidelines in force under this section.
- 15 (4) The Minister may revoke the registration of an industry code of practice.
- (5) The Minister may register an industry code of practice unconditionally or subject to conditions specified in the instrument of registration.
- 20 (6) The Minister may attach new conditions to an existing registration, and may revoke or amend any conditions attached to a registration.
- (7) Registration of an industry code of practice remains in force (unless sooner revoked) until the earlier of the following:
- 25 (a) the end of the period of currency (if any) specified in the instrument of registration; or
 - (b) the end of the period specified in the guidelines.

174G—Dismissal or other victimisation of employee or contractor assisting with or reporting breaches

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

- 5
- (2) An employer or prospective employer must not refuse or deliberately omit to offer employment to a prospective employee or prospective contractor or treat a prospective employee or prospective contractor less favourably than another prospective employee or prospective contractor would be treated in relation to the terms on which employment is offered because the first-mentioned prospective employee or contractor—
- 10
- (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian road law; or
- (b) has made a complaint about a breach or alleged breach of an Australian road law to a former employer, a former fellow employee or former fellow contractor, a trade union or a public agency.
- 15
- (3) A person commits an offence if—
- (a) the person engages in conduct that results in a contravention of subsection (1); and
- (b) the person is an employer of the person concerned.
- Penalty: \$10 000.
- 20
- (4) A person commits an offence if—
- (a) the person engages in conduct that results in a contravention of subsection (2); and
- (b) the person is an employer or prospective employer of the person concerned.
- 25
- Penalty: \$10 000.
- (5) In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the defendant's action was not actuated by the reason alleged in the charge lies on the defendant.
- 30
- (6) If a person is found guilty of an offence against this section, the court may, in addition to imposing a penalty on the offender, make either or both of the following orders—
- 35
- (a) an order that the offender pay within a specified period to the employee or contractor or to the prospective employee or prospective contractor such damages as it thinks fit by way of compensation;
- (b) an order that—
- 40
- (i) the employee or contractor be reinstated or re-employed in the employee's or contractor's former position or (if that position is not available) in a similar position; or

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

(7) The maximum amount of damages cannot exceed the monetary jurisdictional limit of the court in civil proceedings.

(8) In this section—

contractor means a natural person who works under a contract for services;

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

174H—False or misleading information provided between responsible persons

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

- (a) the person is a responsible person and provides information to another responsible person; and
- (b) the person does so knowing that the information is false or misleading in a material particular or being reckless as to whether the information is false or misleading in a material particular; and
- (c) the material particular in which the information is alleged to be false or misleading relates to an ingredient of an Australian road law offence that is or could be committed by the other or any other responsible person if that other person relies or were to rely on the material particular.

Penalty: \$10 000.

(2) In this section—

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

174I—Amendment or revocation of directions or conditions

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

174J—Minister may provide information to corresponding Authorities

- (1) The Minister may provide information to a corresponding Authority about—
- (a) any action taken by the Minister under any road law; or

- (b) any information obtained under this Act, including any information contained in any records, devices or other things inspected or seized under this Act.

(2) This section neither affects nor is affected by section 41L.

174K—Contracting out prohibited

- (1) A term of any contract or agreement that purports to—
 - (a) exclude, limit or modify the operation of this Act or of any provision of this Act; or
 - (b) require the payment or reimbursement by a person of all or part of any penalty that another has been ordered to pay under this Act,

is void to the extent that it would otherwise have that effect.

- (2) A person commits an offence if the person requires or proposes that another agree to a term of a kind referred to in subsection (1).

Maximum penalty: \$10 000.

42—Amendment of section 175—Evidence

- (1) Section 175(1)—after paragraph (e) insert:

- (ea) a specified vehicle was a vehicle of a specified kind or had a specified GCM or GVM; or

- (eb) a specified person was or was not a member of or participant in an approved road transport compliance scheme; or

- (2) Section 175(1)—after paragraph (f) insert:

- (fa) a specified person had specified powers under this Act; or

- (3) Section 175(3)—delete "or combination" wherever occurring

- (4) Section 175—after subsection (4) insert:

- (5) In any proceedings under or for the purposes of a road law—

- (a) a document purporting to be signed by an authorised officer or a police officer or issued or signed by an Australian Authority, and to certify that any specified specifications, capabilities or legal entitlements or other information relating to a specified vehicle (or a specified component of a specified vehicle) were or were not displayed on the vehicle, or were or were not recorded in an Australian Authority's records, in accordance with an Australian road law; or

- (b) a document purporting to be signed by an authorised officer or a police officer or issued or signed by an Australian Authority, and to certify that any specified person or vehicle had or did not have specified legal entitlements; or

(c) a document purporting to be signed by an authorised officer or a police officer or issued or signed by an Australian Authority, and to certify as to any matter that appears in or can be calculated from records kept or accessed by the officer or Australian Authority; or

(d) a document purporting to be signed by an authorised officer or a police officer, and to certify as to the service of an expiation notice or the expiation of an offence,

constitutes proof of the fact so certified in the absence of proof to the contrary.

(6) Transport documentation or journey documentation is admissible in any proceedings under or for the purposes of a road law and is prima facie evidence of—

(a) the identity and status of the parties to the transaction to which it relates; and

(b) the destination or intended destination of the load to which it relates.

(7) The reference in subsection (6) to the *status* of parties includes a reference to their status as responsible persons in relation to the transaction.

43—Amendment of section 176—Regulations and rules

(1) Section 176(1a)(i)—delete "\$1 250" and substitute:

\$2 500

(2) Section 176(1a)(j)—delete "\$350" and substitute:

\$750

44—Amendments relating to members of police force

(1) Throughout Act—delete "member of the police force" wherever occurring and substitute in each case:

police officer

(2) Throughout Act—delete "members of the police force" wherever occurring and substitute in each case:

police officers

(3) Throughout Act—delete "member" wherever occurring and substitute in each case:

police officer

(4) Throughout Act—delete "member's" wherever occurring and substitute in each case:

police officer's

45—Amendments relating to inspectors

Throughout Act, other than sections 34(9), 79B(9), 79B(10) and 175(3)—delete "inspector" wherever occurring and substitute in each case:

authorised officer

5 **Part 4—Amendment of *Motor Vehicles Act 1959***

46—Amendment of section 5—Interpretation

(1) Section 5(1)—after the definition of *authorised examiner* insert:

authorised officer has the same meaning as in the *Road Traffic Act 1961*;

(2) Section 5(1), definition of *inspector*—delete the definition

10 **47—Amendment of section 7—Registrar and officers**

Section 7(2a) and (3)—delete subsections (2a) and (3)

48—Amendment of section 47C—Return or recovery of number plates

Section 47C(5)—delete subsection (5)

49—Amendment of section 52—Return or destruction of registration labels

15 Section 52(5)—delete subsection (5)

50—Insertion of sections 55B and 55C

After section 55A insert:

55B—Notice to be given to Registrar

(1) If a court makes an order —

20 (a) suspending or cancelling the registration of a motor vehicle;
or

(b) disqualifying a person from registering a motor vehicle,

25 the proper officer of the court must notify the Registrar in writing of the date of the order, the nature of the order (including the period of any disqualification) and short particulars of the grounds on which the order was made.

(2) If any such order is quashed or varied by a court on appeal, the proper officer of the court must forthwith notify the Registrar in writing of the date of the order made on the appeal and the effect of the order.

30

(3) In this section—

proper officer means—

(a) in relation to the Supreme Court, the registrar of that court;

(b) in relation to any other court, the clerk of that court.

55C—Action following disqualification or suspension outside State

- (1) If a person is disqualified from registering a motor vehicle in another State or Territory of the Commonwealth, the Registrar must—
- 5 (a) if the person is the registered operator of the motor vehicle under this Act, cancel the registration of the motor vehicle;
- (b) refuse to register the motor vehicle in the name of the person as an owner or operator during the period of disqualification.
- (2) If an order is made in another State or Territory of the Commonwealth that the registration of a motor vehicle be suspended, the Registrar must, if the person is the registered operator of the motor vehicle under this Act, suspend the registration of the motor vehicle.
- 10

51—Amendment of section 83—Action following disqualification etc outside State

15

Section 83(2)—delete subsection (2) and substitute:

- (2) If an order is made in another State or Territory of the Commonwealth that a person's licence or learner's permit be suspended or modified—
- 20 (a) the Registrar must, if the person holds a licence or learner's permit under this Act, suspend or modify the licence or permit in accordance with the order;
- (b) the Registrar must, in the case of an order that a licence or learner's permit be suspended, refuse to issue a licence or learner's permit to the person during the period of suspension;
- 25 (c) the Registrar may, in the case of an order that a licence be modified, refuse to issue a licence to the person, or to modify a licence held by the person, during the period of operation of the order, as the Registrar considers appropriate having regard to the terms of the order.
- 30

52—Amendment of section 93—Notice to be given to Registrar

Section 93(1)—after paragraph (c) insert:

or

- (d) makes an order modifying a person's driver's licence,
- 35

53—Amendment of section 96—Duty to produce licence or permit

- (1) Section 96(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$1 250.
- (2) Section 96(4), definition of *member of the police force*, (b)—delete paragraph (b)

54—Amendment of section 97—Duty to produce licence or permit at court

- (1) Section 97(1)—delete "may be required to" and substitute:
must, if so required by the court, a police officer or the Registrar,
- (2) Section 97(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$1 250.

55—Amendment of section 97A—Visiting motorists

- (1) Section 97A(3)(c)—delete paragraph (c)
- (2) Section 97A(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$1 250.

56—Amendment of section 98AAA—Duty to carry licence when driving heavy vehicle

- (1) Section 98AAA(1)—delete "motor vehicle with a GVM greater than 8 tonnes" and substitute:
heavy vehicle
- (2) Section 98AAA(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$1 250.
- (3) Section 98AAA(1a), definition of *member of the police force*, (b)—delete paragraph (b)

57—Amendment of section 98AAB—Duty to carry probationary licence, provisional licence or learner's permit

Section 98AAB, penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$1 250.

58—Repeal of section 98C

Section 98C—delete the section

59—Amendment of section 98P—Investigation powers

Section 98P(1), (7), (8), (9) and (10)—delete subsections (1), (7), (8), (9) and (10)

60—Amendment of section 139BA—Power to require production of licence etc

Section 139BA(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$1 250.

61—Amendment of section 139D—Confidentiality

Section 139D(1)(a) to (e)—delete paragraphs (a) to (e) and substitute:

- (a) as required or authorised under this or any other Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration of this Act; or

- (d) to a public authority of any jurisdiction for law enforcement purposes or a prescribed public authority of any jurisdiction; or
- (e) to a court or in connection with any legal proceedings; or

62—Repeal of section 139F

5 Section 139F—delete the section

63—Insertion of section 143B

After section 143A insert:

143B—General defences

- 10 (1) It is a defence to a charge for an offence against this Act if the person charged establishes that the conduct constituting the offence was—
 - (a) authorised or excused by or under a law; or
 - (b) done in compliance with a direction given by an authorised officer or police officer; or
 - (c) done in response to circumstances of emergency.
- 15 (2) The defence under subsection (1)(c) applies only if the person charged reasonably believed that—
 - (a) circumstances of emergency existed; and
 - (b) committing the offence was the only reasonable way to deal with the emergency; and
 - 20 (c) the conduct was a reasonable response to the emergency.
- (3) Nothing in this section affects any other defence available at law.

64—Amendment of section 145—Regulations

Section 145(1)(n)—delete "\$310" and substitute:

\$750

65—Amendments relating to members of police force

- 25 (1) Throughout Act—delete "member of the police force" wherever occurring and substitute in each case:
 - police officer
- 30 (2) Throughout Act—delete "members of the police force" wherever occurring and substitute in each case:
 - police officers
- (3) Throughout Act, other than sections 38(1), 71C(3), 98Y(4) and (5), 129(2a), 134(2), 139E(1), 143A and Schedule 5—delete "member" wherever occurring and substitute in each case:
 - 35 police officer

66—Amendments relating to inspectors

Throughout Act, other than section 142(f)—delete "inspector" wherever occurring and substitute in each case:

authorised officer

5 Part 5—Amendment of *Summary Offences Act 1953*

67—Insertion of section 68A

After section 68 insert:

68A—Power to search land for stolen vehicles etc

10 A police officer may, if he or she has reasonable cause to suspect that a vehicle has been stolen or used without the consent of the owner and is on any land or premises, enter the land or premises and search for the vehicle, and, if it is found, examine it.

68—Amendment of section 74A—Power to require name and name and other personal details

15 (1) Section 74A(1)—delete "his or her full name and address" and substitute:
all or any of the person's personal details

(2) Section 74A(2)—delete "name or address" wherever occurring and substitute, in each case:
personal detail

20 (3) Section 74A(3)(b)(i)—delete "name or address" and substitute:
personal detail

(4) Section 74A(3)(b)(ii)—delete "his or her name or address" and substitute:
a personal detail

(5) Section 74A(4)—delete subsection (4) and substitute:
25 (4) A police officer who has required a person to state all or any of the person's personal details under this section is required to comply with a request to identify himself or herself, by—
(a) producing his or her police identification; or
(b) stating orally or in writing his or her surname, rank and
30 identification number.

(5) In this section—

personal details, in relation to a person, means—

- 35 (a) the person's full name; and
(b) the person's date of birth; and
(c) the address of where the person is living; and
(d) the address of where the person usually lives; and

- (e) the person's business address.

69—Insertion of section 74AB

After section 74A insert:

74AB—Questions as to identity of drivers etc

- 5 (1) A police officer may ask a person questions for the purpose of
obtaining information that may lead to the identification of the
person who was driving, or was the owner of, a vehicle on a
particular occasion or at a particular time.
- 10 (2) A person who—
(a) refuses or fails, without reasonable excuse, to answer a
question under subsection (1); or
(b) in response to a question under subsection (1) gives an
answer that is false or misleading in a material particular,
is guilty of an offence.
- 15 Penalty: \$1 250 or imprisonment for 3 months.
- (3) A police officer who has asked a person a question under this section
is required to comply with a request to identify himself or herself,
by—
- 20 (a) producing his or her police identification; or
(b) stating orally or in writing his or her surname, rank and
identification number.