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

**HEAVY VEHICLE NATIONAL LAW
(CONSEQUENTIAL AMENDMENTS) BILL 2013**

EXPLANATORY STATEMENT

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HEAVY VEHICLE NATIONAL LAW (CONSEQUENTIAL AMENDMENTS) BILL 2013

Introduction

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

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

Overview of the Bill

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

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

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

- provides for the national registration of heavy vehicles
- prescribes standards for heavy vehicles on the road
- establishes requirements for heavy vehicle operation such as mass limits, size restrictions, and secure loading, and road access (including measures to allow improved access under certain circumstances)
- prescribes measures to control speeding
- prescribes measures to prevent driving while fatigued

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

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

- imposes duties and obligations on operators, drivers and other persons in the chain of responsibility whose activities may influence vehicle or driver compliance with requirements under the Law.

The Heavy Vehicle National Law (Consequential Amendments) Bill 2013 is cognate with the Heavy Vehicle National Law (ACT) Bill 2013 (the ‘application Bill’) the purpose of which is to apply the National Law set out in the schedule to the Queensland Act as a law of the Territory. The Explanatory Statement for the application Bill should be read together with this Explanatory Statement. The Explanatory Statement for the application Bill includes an extended discussion of the Human Rights Act implications of the *Heavy Vehicle National Law (ACT)*. The amendments in this Consequential Amendments Bill are not believed to engage human rights independently of the broader heavy vehicle regulatory scheme of which they form part, and for that reason readers are directed to the human rights discussion in the Explanatory Statement for the application Bill.

The purpose of the Heavy Vehicle National Law (Consequential Amendments) Bill 2013 is to make consequential amendments to existing ACT legislation following the enactment of the *Heavy Vehicle National Law (ACT) Act 2013*. The Bill principally amends the body of laws collectively described as the ‘road transport legislation’, as well as making necessary amendments to other laws. The amendments are technical in nature and do not make substantive policy changes, other than those discussed in the clause notes in relation to heavy vehicle infringement notice offences.

The amendments remove references to heavy vehicles for matters that are covered by the *Heavy Vehicle National Law (ACT)*. The *Heavy Vehicle National Law (ACT)* does not regulate matters relating to the transport of dangerous goods, traffic laws, public transport regulation, heavy vehicle driver licensing, or drink and drug driving. These matters will continue to be regulated through the body of law described as the ‘road transport legislation’ and the *Dangerous Goods (Road Transport) Act 2009*.

This Bill makes consequential amendments to:

- *Freedom of Information Regulation 1991*
- *Legislation Act 2001*
- *Magistrate Court Act 1930*
- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Act 1999*
- *Road Transport (General) Regulation 2000*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Safety and Traffic Management) Regulation 2000*

- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999*.

The *Road Transport (Mass, Dimensions and Loading) Act 2009* and the *Road Transport (Mass, Dimensions and Loading) Regulation 2010* are repealed, as are a number of associated legislative instruments.

The *Road Transport (General) Act 1999* provides for the administration and enforcement of the road transport legislation generally. The *Road Transport (Mass, Dimensions and Loading) Act 2009*, which is repealed by this Bill, is one of the laws that are collectively defined as comprising the ‘road transport legislation’ (see section 6 of the *Road Transport (General) Act*). The *Heavy Vehicle National Law (ACT)* establishes a separate administrative and regulatory framework through a national regulator (‘the Regulator’) for many elements of heavy vehicle transport. The *Heavy Vehicle National Law (ACT)* replaces provisions in the repealed *Road Transport (Mass, Dimensions and Loading) Act and Regulation*. This replacement is reflected in a number of consequential amendments which omit references to the *Road Transport (Mass, Dimensions and Loading) Act* from the list of Acts that are part of the ‘road transport legislation’. In addition, the *Heavy Vehicle National Law (ACT)* also brings together a number of elements of heavy vehicle transport regulation in its provisions. These include heavy vehicle standards, registration, driving while fatigued, and speeding.³

Five chapters of the *Heavy Vehicle National Law (ACT)* will be subject to delayed commencement. It should be noted that consequential amendments relating to the delayed application of chapter 2 (Registration) are not included in the *Heavy Vehicle National Law (Consequential Amendments) Bill 2013*. Similarly, consequential amendments to the *Road Transport (Offences) Regulation 2005* in relation to offences, infringement notice penalties and demerit points for the five chapters are not included in the Bill. This omission is intentional and avoids the situation where consequential amendments are enacted but remain uncommenced for a considerable period. Proposed legislation for amendments to the Territory’s heavy vehicle registration laws will be brought forward closer to the nationally agreed proclamation date for chapter 2, and to commencement dates agreed with the Regulator in relation to chapters 5 to 8.

Consequential amendments to the *Road Transport (Vehicle Registration) Regulation 2000* will be developed separately in preparation for making and commencement in conjunction with the commencement of the proposed *Heavy Vehicle National Law (ACT) Act 2013* and *Heavy Vehicle National Law (Consequential Amendments) Act 2013*. This is due to the complexity of developing new light vehicle standards following the removal of heavy vehicle standards to the *Heavy Vehicle (Vehicle Standards) National Regulation*.

³ Chapter 5 (Vehicle operations – speeding) of the *Heavy Vehicle National Law* imposes responsibility for speeding by heavy vehicles on persons whose business activities influence the conduct of the drivers of heavy vehicles.

Notes on Clauses

Part 1 Preliminary

This part deals with formal matters including the name of the proposed legislation and its commencement.

Clause 1 Name of Act

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

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on the day that section 7 (Application of Heavy Vehicle National Law) of the *Heavy Vehicle National Law (ACT) Act 2013* commences. Section 7 of that Act will come into operation on a day fixed by written notice.

Clause 3 Legislation amended

This clause lists all the legislation to be amended by the Bill.

Clause 4 Legislation repealed

This clause provides that the *Road Transport (Mass, Dimensions and Loading) Act 2009*, the *Road Transport (Mass, Dimensions and Loading) Regulation 2010*, and other legislative instruments under the Act are repealed. The provisions of the Road Transport (Mass, Dimensions and Loading) Act implemented heavy vehicle model laws that are replaced by comparable provisions in the *Heavy Vehicle National Law (ACT)*, particularly those in chapter 4 (Vehicle operations – mass, dimension and loading), chapter 9 (Enforcement) and chapter 10 (Sanctions and provisions about liability for offences).

The *Road Transport (General) (Restricted Access Vehicle Route Access Permit Fees) Determination 2010 (No 1)* is also repealed. Under the *Heavy Vehicle National Law (ACT)*, the Regulator will assume the power to determine and receive access permit fees. Separate provision is made by clause 45, which amends section 96 of the *Road Transport (General) Act 1999*, for the determination of fees and charges. This approach is consistent with section 159 of the *Heavy Vehicle National Law (ACT)*, which contemplates the payment of fees for route assessment under the law of a jurisdiction where a road is located.

Part 2 Freedom of Information Regulation 1991

Clause 5 New section 2B

To ensure the Heavy Vehicle National Law scheme operates consistently across participating jurisdictions, a number of Territory laws are excluded from application to the Regulator and to the National Heavy Vehicle Regulator Board by clause 9 of the Heavy Vehicle National Law (ACT) Bill 2013. Section 696 (Application of particular Queensland Acts to this Law) of the National Law specifically applies the *Information Privacy Act 2009* (Qld), the *Public Records Act* (Qld), and the *Right to Information Act* (Qld) to the Regulator and Board for the purposes of the Law.

Clause 5 inserts a new section in the *Freedom of Information Regulation 1991* to the effect that the Regulator and the Board are not ‘prescribed authorities’ for the purposes of the

Freedom of Information Act 1989 (ACT). As a consequence, the Freedom of Information Act—and the *Privacy Act 1988 (Cwlth)* by virtue of the definition of ‘agency’ in the Privacy Act—will not apply to the Regulator and the Board. Administrative and ‘oversight’ laws of the Territory that are excluded from application to the Regulator and Board, including the Freedom of Information Act and the Privacy Act, will continue to apply to Territory entities exercising functions under the *Heavy Vehicle National Law (ACT)* or under agreements with the Regulator or by delegation.

Part 3 Legislation Act 2001

Clause 6 Dictionary, part 1, new definition of *Heavy Vehicle National Law (ACT)*

This clause inserts a new term, *Heavy Vehicle National Law (ACT)*, and definition into the Legislation Act to ensure consistent usage of the term throughout the ACT statute book.

Part 4 Magistrates Court Act 1930

Clause 7 Meaning of *prescribed offence* for pt 3.7 New section 116AA (1) (ab)

This clause inserts a new subsection in part 3.7 (Service and pleading by post for certain offences), to insert an additional definition of a ‘prescribed offence’ for the part. The additional definition is an offence against the *Heavy Vehicle National Law (ACT)* for which the maximum fine that can be imposed is \$3 000 or another amount prescribed by regulation.

Clause 8 Section 116AA (2), definition of *road transport legislation*, paragraph (c)

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the definition of ‘road transport legislation’. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of that Act.

Part 5 Road Transport (Alcohol and Drugs) Act 1977

Clause 9 Name of Act Section 1, note 2

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the note which lists laws which are included in ‘road transport legislation’. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of that Act.

Clause 10 Section 1, note 3

This clause inserts an additional note that explains that there are laws other than those included in ‘road transport legislation’ which deal with road transport, in particular the *Dangerous Goods (Road Transport) Act 2009* and the *Heavy Vehicle National Law (ACT)*.

Clause 11 **Meaning of *special driver***
Section 4B (3), definition of *heavy vehicle*

This clause amends the definition of ‘heavy vehicle’ for section 4B (Meaning of *special driver*) to refer to the definition of ‘heavy vehicle’ in section 5 of the *Heavy Vehicle National Law (ACT)*.

Part 6 **Road Transport (Driver Licensing) Act 1999**

Clause 12 **Name of Act**
Section 1, note 2

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the note that lists laws that are included in the ‘road transport legislation’. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of the Act.

Clause 13 **Section 1, note 3**

This clause inserts an additional note that explains that there are laws other than those included in ‘road transport legislation’ that deal with road transport, in particular the *Dangerous Goods (Road Transport) Act 2009* and the *Heavy Vehicle National Law (ACT)*.

Clause 14 **Driver must be licensed**
Section 31 (10), notes

This clause replaces notes about the non-application of section 31 in certain circumstances in the *Road Transport (Mass, Dimensions and Loading) Act 2009*, which is to be repealed, with notes about the non-application of the section in certain comparable circumstances under provisions in the under the *Heavy Vehicle National Law (ACT)*.

Part 7 **Road Transport (Driver Licensing) Regulation 2000**

Clause 15 **Vehicles authorised to be driven by licence classes**
Section 9 (3) (b)

Section 9 (Vehicles authorised to be driven by licence classes) of the Regulation authorises the holder of a driver licence of a particular driver licence class to drive a motor vehicle of a kind covered by that driver licence class, or a lower class in the class hierarchy.

Subsection 9 (3) (b) is amended to provide that the section does not authorise the holder of the licence to drive in contravention of the *Heavy Vehicle National Law (ACT)*. The amended provision removes a reference to the *Road Transport (Mass, Dimensions and Loading Act) 2009*, which is to be repealed.

Clause 16 **Heavy vehicle learners**
Section 23, notes 3 and 4

This clause replaces notes about the non-application of elements of section 23 in certain circumstances in the *Road Transport (Mass, Dimensions and Loading) Act 2009*, which is to be repealed, with notes about the non-application of the elements in certain comparable circumstances under provisions in the under the *Heavy Vehicle National Law (ACT)*.

Clause 17 When authority may vary, suspend or cancel driver licences
Section 87, note 2

Section 87 (When authority may vary, suspend or cancel driver licences) provides for the road transport authority to vary, suspend or cancel a person's driver licence on its own initiative. Subsection 87 (2) also provides that the authority can suspend or cancel a person's driver licence in accordance with an order made by an Australian court. Clause 17 replaces an existing note that provides the additional information that a court can also order a licence variation, suspension and cancellation under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, which is to be repealed, with a comparable note which refers to section 598A in the *Heavy Vehicle National Law (ACT)*.

Part 8 Road Transport (General) Act 1999

Clause 18 Name of Act
Section 1, note 2

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the note which lists laws which are included in 'road transport legislation'. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. Reference to the Road Transport (Mass, Dimensions and Loading) Act is omitted here and elsewhere consequent to repeal of the Act.

Clause 19 Section 1, note 3

This clause inserts an additional note that explains that there are laws other than those included in 'road transport legislation' which deal with road transport, in particular the *Dangerous Goods (Road Transport) Act 2009* and the *Heavy Vehicle National Law (ACT)*.

Clause 20 What is the road transport legislation?
Section 6 (d)

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the definition of the 'road transport legislation'. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) in the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of the Act.

The object of the Road Transport (General) Act is to establish a framework for the administration and enforcement of the road transport legislation, including the review of certain decisions made under road transport legislation and the determination of fees and charges payable under road transport legislation. The *Heavy Vehicle National Law (ACT)* establishes a separate framework for these purposes in relation to certain aspects of the regulation of heavy vehicles and is outside the 'road transport legislation'.

Clause 21 Sections 20 (1) and 21, notes

This clause removes notes which refer to a provision in the *Road Transport (Mass, Dimensions and Loading) Act 2009* for recognition by the road transport authority of identity cards issued to a person under corresponding heavy vehicle law. The Road Transport (Mass, Dimensions and Loading) Act is to be repealed by this Bill.

Clauses 22 to 41 inclusive

Section 591 (Infringement notices) of the *Heavy Vehicle National Law (ACT)* establishes a general power for an authorised officer “who reasonably believes that a person has committed a prescribed offence against this Law may serve the person with an infringement notice issued as an alternative to prosecution in court for the offence”. Section 591 also provides that the procedures followed are to be the procedures prescribed by or under the Infringement Notice Offences Law of the participating jurisdiction. Clause 13 (Infringement notice offences law—the Law, s 5) of the application Bill declares the *Road Transport (General) Act 1999* to be the Infringement Notice Offences Law for the *Heavy Vehicle National Law (ACT)*. Subsection 591 (3) defines a “prescribed offence” against the *Heavy Vehicle National Law (ACT)* as “an offence prescribed by a law of this jurisdiction for the purposes of this section”.

The purpose of part 3 (Infringement notices for certain offences) of the *Road Transport (General) Act* is to create a system of infringement notices for certain offences against the road transport legislation and other legislation as an alternative to prosecution. The effect of the amendments in clauses 22 to 41 is to make necessary amendments to part 3 so that it can operate effectively as a scheme for issuing, serving and enforcing infringement notices for offences under the *Heavy Vehicle National Law (ACT)*.

By way of background, section 591 (Infringement notices) of the *Heavy Vehicle National Law (ACT)* provides that a person who has committed a ‘prescribed offence’ against the Law can be served with an infringement notice. Subsection 591 (3) states that a prescribed offence means an offence prescribed by a law of this jurisdiction. For this purpose, clause 22 inserts an amendment to section 21A, to include a new definition of heavy vehicle infringement notice offence. This definition explains that heavy vehicle infringement notice offence is an infringement notice offence against the *Heavy Vehicle National Law (ACT)*.

In relation to who may serve a heavy vehicle infringement notice for an offence under the national law scheme, the *Heavy Vehicle National Law (ACT)* provides that a police officer or other person appointed under section 481 (Appointment and qualifications) will be ‘authorised officers’ for the Law. To reflect this concept of “authorised officer”, clause 40 amends section 53A of the *Road Transport (General) Act*, part 3 to clarify that an authorised officer for an infringement notice or reminder notice is authorised under the Law.

In relation to the prosecution of offences, section 707 (Proceedings for offences) of the *Heavy Vehicle National Law (ACT)* makes provision for summary proceedings for offences against the Law and establishes the maximum period within which a proceeding must start. As will be explained further in subsequent paragraphs, part 3 is amended where relevant to explain that proceedings for heavy vehicle infringement notice offences will be subject to section 707.

In summary, clauses 23 to 30 amend sections 24, 26, 28, 31 and 39 of the *General Act* to provide for the infringement notice scheme to apply, with appropriate modifications and adjustments, to heavy vehicle infringement notices. In relation to certain aspects of the infringement notice scheme (particularly in relation to who may serve infringement notices and the institution of proceedings for an offence where an infringement notice has been served but is disputed or the alleged offence is otherwise to be determined by a court) the effect of the amendments is to draw a distinction between heavy vehicle infringement notices and other types of infringement notices. This distinction is necessary because the national

heavy vehicle law makes specific provision for these matters, as they relate to specific functions to be undertaken by or on behalf of the national regulator. The substantial details of the processes for service, and most of the requirements for the contents of notices, are otherwise the same for national heavy vehicle law and other infringement notice offences.

Clauses 31 to 36 make further consequential amendments to the enforcement provisions in part 3 of the Act. These consequential amendments include the inclusion of notes and references to the Heavy Vehicle National Law (ACT) Act; the inclusion of references to “proceedings” to take account of the terminology used to refer to the procedures under that law for dealing with offences against that law; and excluding (in cases where the national law makes alternative arrangements) heavy vehicle infringement offences from the operation of particular provisions.

Clauses 37 to 40 amend section 53A. That section deals with authorised people for infringement notice offences, and in summary, provides the power for the administering authority for an infringement notice offence to appoint authorised people to serve infringement and reminder notices for those offences. Under the Heavy Vehicle National Law (ACT) Act, the Regulator will be the administering authority for offences against that law; the amendments in clauses 37 to 40 reflect this fact, and the concept of “authorised officer” (which, under section 5 of that Law, includes a police officer as well as authorised officers of the Regulator appointed under section 481 of the Law).

Clause 41 is a consequential amendment to the power of delegation in section 54, to ensure that the administering authority (in this case, that will be the Regulator) is able to delegate its powers for heavy vehicle infringement offences to an authorised officer under the Heavy Vehicle National Law (ACT).

The amendments in these clauses should be read in conjunction with the amendments to the *Road Transport (Offences) Regulation 2005*, in clauses 49 to 60 of this Bill. Those amendments affect provisions in that Regulation that deal with the administering authority for infringement notices, the service of infringement notices and reminder notice, their contents, and a range of associated matters (readers are directed to the clause notes for a further description). In particular, clause 52 provides that the Regulator is the administering authority for heavy vehicle infringement notice offences.

Clause 42 Police officer or authorised person may require name, date of birth, address and driver licence—driver or rider
Section 58 (1), new note

Clause 42 inserts a new note with the information that a similar power is provided for under section 567A of the *Heavy Vehicle National Law (ACT)* and can be exercised by an authorised officer within the meaning of that term in the *Heavy Vehicle National Law (ACT)*.

Clause 43 Police officer or authorised person may require people to disclose identity of driver
Section 60 (1), new note

Clause 43 inserts a new note with the information that a similar power is provided for under section 567B of the *Heavy Vehicle National Law (ACT)* and can be exercised by an authorised officer within the meaning of that term in the *Heavy Vehicle National Law (ACT)*.

Clause 44 **Court may order disqualification for other offences**
Section 64, note

Clause 44 removes a note providing additional information that a court can disqualify a driver from obtaining a driver licence under section 204 of the *Road Transport (Mass, Dimensions and Loading) Act 2009*, which is repealed and substitutes a note with additional information about a similar power in section 598A in the *Heavy Vehicle National Law (ACT)*.

Clause 45 **Determination of fees, charges and other amounts**
Section 96 (5), new definition of road transport legislation

This clause extends the definition of the ‘road transport legislation’ for the purpose of determining fees, charges, etc. to include the *Heavy Vehicle National Law (ACT)*. Under the *Heavy Vehicle National Law (ACT)*, the Regulator will assume the power to determine fees. However, separate provision of a power to determine fees and charges is necessary. For example, section 159 of the *Heavy Vehicle National Law (ACT)*, contemplates the payment of fees for route assessment by the road manager under the law of a jurisdiction where a road is located.

Clause 46 **Dictionary, new definition of heavy vehicle infringement notice offence**

This clause inserts a new definition for part 3 (Infringement notices for certain offences) into the dictionary for the Act.

Clause 47 **Dictionary, definition of infringement notice**

This is a technical amendment which follows amendments to section 24.

Part 9 **Road Transport (General) Regulation 2000**

Clause 48 **Internally reviewable decisions**
Schedule 1, parts 16.A and 16.B

This clause removes parts related to the *Road Transport (Mass, Dimensions and Loading) Act 2009* and the *Road Transport (Mass, Dimensions and Loading) Regulation 2010* from the schedule of internally reviewable decisions as this legislation is repealed. Matters relating to mass, dimensions and loading of heavy vehicles are dealt with in chapter 11 of the *Heavy Vehicle National Law (ACT)*, which also includes review and appeal provisions.

Part 10 **Road Transport (Offences) Regulation 2005**

The *Road Transport (Offences) Regulation 2005* is made under part 3, section 23 of the *Road Transport (General) Act 1999*. The Regulation prescribes offences as ‘infringement notice offences’. Proposed amendments to part 3 of the *Road Transport (General) Act* include insertion of a new definition for ‘heavy vehicle infringement notice offences’ for the purposes of the part—see clause 22 which defines a heavy vehicle infringement notice offence as an infringement notice offence against the *Heavy Vehicle National Law (ACT)*.

Clauses 49 to 58 inclusive

Clauses 49 to 58 amend a series of provisions that support the infringement notice offence scheme established under part 3 of the *Road Transport (General) Act 1999*. Like the amendments to part 3 of the Act, these consequential amendments enable the infringement

notice scheme to apply, with necessary modifications, to offences under the *Heavy Vehicle National Law (ACT)*.

As previously explained, the Regulator will be the administering authority for heavy vehicle infringement notice offences, and this is achieved through the amendment to section 8 (3) of the Regulation in clause 52. Related amendments in clause 53 replace sections 9 to 11 with redrafted provisions. The redrafted provisions take account of the slightly different requirements that apply under the Heavy Vehicle National Law (ACT) in relation to the service of infringement and reminder notices by *authorised officers* for heavy vehicle infringement notice offences, and the processes applying under the road transport legislation to *authorised people* for other infringement notice offences. Explanatory notes are included to clarify that police officers and other authorised officers under the Law can exercise functions in relation to the service of infringement and reminder notices for heavy vehicle infringement notice offences.

Clause 54 makes a consequential amendment to the provision relating to service of infringement notices to include a reference to the Heavy Vehicle National Law (ACT) Act. Clause 55 makes a consequential amendment to the provision dealing with the content of infringement notices to reflect the process for commencing a proceeding under the Heavy Vehicle National Law (ACT) Act. Clause 56 is a related amendment, that includes a reference to “proceeding” to reflect the processes under the Heavy Vehicle National Law (ACT) Act. Clauses 57 and 58 apply to reminder notices and are similar in effect, respectively, to clauses 55 and 56.

Clause 59 Short descriptions, penalties and demerit points Schedule 1, new part 1.2A and 1.2B

Clause 59 inserts a new parts 1.2A and 1.2B into schedule 1 (Short descriptions, penalties and demerit points) which prescribes infringement notice offences and demerit points for the *Heavy Vehicle National Law (ACT)*. Clause 57 amends schedule 1 to remove parts 1.8A and 1.8B which prescribe offences, penalties and demerit points for offences in the *Road Transport (Mass, Dimensions and Loading) Act 2009* and *Road Transport (Mass, Dimensions and Loading) Regulation 2010*, which are to be repealed.

As noted above, five chapters of the *Heavy Vehicle National Law (ACT)* will be subject to delayed commencement. Offences, penalties and demerit points in the five chapters are not included in new part 1.2A of schedule 1. This is to avoid the situation where consequential amendments are enacted but remain uncommenced for a considerable period.

In addition to the offences agreed nationally, the ACT-specific modifications to the *Heavy Vehicle National Law (ACT)* in schedule 1, part 1.1 of the application Bill provide for two offences that are also prescribed as infringement notice offences in new part 1.2A. These are section 567A (Power to require production of driver licence) and section 567B (Power to require people to disclose identity of driver) and are located at items 90 and 91 in column 1 of the table in new part 1.2A.

These two offences parallel offences in the *Road Transport (General) Act 1999* (sections 58 and 60). Unlike the other offences in the table, the maximum penalties for sections 567A and 567B offences are prescribed in penalty units. The infringement notice offence penalties are specific monetary amounts that parallel the penalties prescribed for the offences under sections 58 and 60 of the General Act.

Infringement notice offence penalties in new parts 1.2A and 1.2B will be indexed subject to section 737 (Increase of penalty amounts) in the *Heavy Vehicle National Law (ACT)*, with the exception of offences under sections 567A and 567B, as the penalties for those offences have been determined by reference to existing ACT offences and are not part of the national scheme. Sections 133 (Penalty units) and 134 (Penalties at end of sections and subsections) of the *Legislation Act 2001*—that provide for the monetary value of a penalty unit where penalties are expressed in numbers of units and for the application of a penalty to a provision—apply to sections 567A and 567B.

In order to ensure the Heavy Vehicle National Law scheme can operate consistently across participating jurisdictions, infringement notice offences, penalties and demerit points have been agreed nationally for the Heavy Vehicle National Law along with a set of national principles and agreements in a ‘Schedule of Infringement Penalties and & Demerits Points’. These principles and agreements are reflected in new parts 1.2A and 1.2B. The text of the nationally agreed ‘Schedule of Infringement Penalties and & Demerits Points’ is reproduced below:

Schedule of Infringement Penalties & Demerits Points

Agreements:

1. *There will be national agreement on the schedule of infringements and demerit points. The schedules will be adopted into jurisdictional law (ie. existing legislation or application law) and the penalties imposed using existing jurisdictional penalty regimes.*
2. *Offences nominated as infringeable will be set at a value of 10% of the maximum court imposable penalty amount. Should the court imposable penalty amount increase jurisdictions will need to reflect this increase in the infringement values.*
3. *Guidance principles will be developed as part of the development of the NHVR training package. This will assist and instruct authorised officers in what to consider when determining if an infringement penalty is appropriate in the event that an offence contains a subjective element. The agreements in relation to infringements on offences with subjective elements are as follows:*

| Subjective Element | Infringement/No Infringement |
|--|---------------------------------------|
| <i>Permit to be used/Must not Permit</i> | <i>Infringement (with guidelines)</i> |
| <i>Reasonable Excuse</i> | <i>Infringement (with guidelines)</i> |
| <i>As soon as reasonably practicable</i> | <i>Infringement (with guidelines)</i> |
| <i>After becoming aware/Becomes aware or has reason to suspect</i> | <i>No Infringement</i> |
| <i>Ought reasonably to know</i> | <i>No Infringement</i> |
| <i>Must take all reasonable steps</i> | <i>No Infringement</i> |

4. *Infringements will attach to all driver offences containing the ‘reasonable steps’ defence (with a notice developed to notify an offender of their rights under the defence).*
5. *Infringements will attach to the following administrative chain of responsibility and record keeper offences containing the ‘reasonable Steps’ defence (with a notice developed to notify an offender of their rights under the defence). Please note: Attaching infringements to extended liability offences and to other parties in the chain of responsibility outside of operator/employer/prime contractor/owner will be explored as part of the 2014 penalty review.*

| HVNL Section No. | HVNL Provision |
|-------------------------|---|
| 82(3) | <i>Keeping relevant document while driving under vehicle standards exemption (notice)</i> |
| 83(3) | <i>Keeping copy of permit while driving under vehicle standards exemption (permit)</i> |
| 132(3) | <i>Keeping relevant document while driving under mass or dimension exemption (notice)</i> |
| 133(3) | <i>Keeping copy of permit while driving under mass or dimension exemption (permit)</i> |
| 151(3) | <i>Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice)</i> |
| 152(3) | <i>Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)-</i> |
| 153(2) | <i>Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation</i> |
| 183(2) | <i>Liability of employer etc. for contravention of mass, dimension or loading requirement</i> |
| 190(1) | <i>Duty of responsible entity</i> |
| 191(1) | <i>Duty of operator</i> |
| 191(3) | <i>Duty of operator</i> |
| 219(1) | <i>Liability of employer etc. for speeding offence</i> |
| 287(3) | <i>Keeping relevant document while operating under work and rest hours exemption (notice)</i> |
| 288(3) | <i>Keeping copy of permit while driving under work and rest hours exemption (permit)</i> |
| 319(1) | <i>Records record keeper must have</i> |

| HVNL Section No. | HVNL Provision |
|-------------------------|---|
| 321(1) | Records record keeper must have |
| 321(2) | Records record keeper must have |
| 341(1) | Period for which, and way in which, records must be kept |
| 341(2) | Period for which, and way in which, records must be kept |
| 341(3) | Period for which, and way in which, records must be kept |
| 376(3) | Keeping relevant document while operating under work diary exemption (notice) |
| 396(2) | Owner must maintain odometer |
| 399(2) | What employer or operator must do if odometer malfunctioning |
| 468(3) | Driver must carry accreditation details |

6. *Infringements will attach to the operator, prime contractor and employer for sections 183(2) – Liability of employer etc. for contravention of mass, dimension or loading requirement.*
7. *Infringements will attach to the following subsections of section 219(1) – Liability of employer etc. for speeding offence:*
- 219 (1)
 - o (a) - *If the speeding offence involves the driver of a heavy vehicle exceeding a speed limit of 50km/h or 60km/h*
 - 219 (1)(b)(i) & (ii)
 - o *If the speeding offence involves the driver of a heavy vehicle exceeding a speed limit of 70km/h or 80km/h*
 - (i) *by less than 15km/h.*
 - (ii) *by 15km/h or more*
 - 219 (1)(c) (i) & (ii)
 - o *If the speeding offence involves the driver of a heavy vehicle other than a road train exceeding a speed limit of 90km/h*
 - (i) *by less than 15km/h;*
 - (ii) *by 15km/h or more;*
 - 219 (1)(d)(i)
 - o *If the speeding offence involves the driver of a road train exceeding a speed limit of 90km/h*
 - (i) *by less than 15km/h*
 - 219 (1)(e)(i)
 - o *If the speeding offence involves the driver of a heavy vehicle exceeding a speed limit of 100km/h or more— (i) by less than 15km/h.*
8. *Guidelines will be prepared to address the administration of infringement notices under sections 183(2) and 219(1) to clarify when the issuing of an infringement notice would be appropriate. This will include having regard to the elements of the reasonable steps defence and when prosecution for an offence should be considered instead of an infringement penalty.*
9. *While it is proposed to remove infringements from the majority of offences with a \$10,000 maximum penalty there is recognition that there are some \$10,000 offences to which it is critical that jurisdictions retain infringements. It has been agreed to attach infringements to the following three \$10,000 offences:*

| HVNL Section No. | HVNL Provision |
|-------------------------|--|
| 30 | Registration requirement |
| 533(7) | Powers for minor risk breach of mass, dimension or loading requirement |
| 534(5) | Powers for substantial risk breach of mass, dimension or loading requirement |

10. For offences with levels of breaches (ie. minor, substantial, severe, critical), only the minor and substantial categories will attract infringements.
11. For offences with levels of breaches (ie. minor, substantial, severe, critical), only the severe and critical categories will attract demerit points.
12. Demerit point penalties will attach to HVNL offences as directed by Model Law.

Clause 60 Schedule 1, parts 1.8A and 1.8B

Clause 60 removes parts 1.8A and 1.8B, which prescribe infringement notice offences, penalties and demerit points for the *Road Transport (Mass, Dimensions and Loading) Act 2009* and the *Road Transport (Mass, Dimensions and Loading) Regulation 2010*, as that legislation is repealed by this Bill.

Part 11 Road Transport (Public Passenger Services) Act 2001

**Clause 61 Name of Act
 Section 1, note 2**

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the note that lists the laws included in ‘road transport legislation’. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of the Act.

Clause 62 Section 1, note 3

This clause inserts an additional note that explains that there are laws other than those included in ‘road transport legislation’ that deal with road transport, in particular the *Dangerous Goods (Road Transport) Act 2009* and the *Heavy Vehicle National Law (ACT)*.

Part 12 Road Transport (Safety and Traffic Management) Act 1999

**Clause 63 Name of Act
 Section 1, note 2**

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the note that lists laws included in ‘road transport legislation’. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of the Act.

Clause 64 Section 1, note 3

This clause inserts an additional note that explains that there are laws other than those included in ‘road transport legislation’ that deal with road transport, in particular the *Dangerous Goods (Road Transport) Act 2009* and the *Heavy Vehicle National Law (ACT)*.

Part 13 Road Transport (Safety and Traffic Management) Regulation 2000

Clause 65 General **Division 2.2.1 heading, note 3, table, item 8, column 3**

This clause amends a table that sets out provisions of the Australian Road Rules (ARR) for which provision is made by other territory laws. The reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009*, which is to be repealed, is replaced by a reference to the *Heavy Vehicle National Law (ACT)* in relation to ARR 311 (1) (c), which refers to exemptions for oversize vehicles.

Clause 66 ARR dict—definitions for dictionary **Section 33, definition of *oversize vehicle*, paragraph (a)**

This clause amends the definition of ‘oversize vehicle’. The reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009*, which is to be repealed, is replaced by a reference to the *Heavy Vehicle National Law (ACT)* to include a definition of *oversize vehicle* in section 5 (Definitions).

Part 14 Road Transport (Third-Party Insurance) Act 2008

Clause 67 Name of Act **Section 1, note 2**

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the note that lists the laws included in ‘road transport legislation’. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of the Act.

Clause 68 Section 1, note 3

This clause substitutes a replacement note 3 that explains that there are laws other than those included in ‘road transport legislation’ that deal with road transport, in particular the *Dangerous Goods (Road Transport) Act 2009* and the *Heavy Vehicle National Law (ACT)*. It also includes a new note 4 that explains that a reference to an Act includes a reference to statutory instruments, including regulations, under that Act.

Part 15 Road Transport (Vehicle Registration) Act 1999

Clause 69 Name of Act **Section 1, note 2**

This clause removes a reference to the *Road Transport (Mass, Dimensions and Loading) Act 2009* from the note that lists the laws included in ‘road transport legislation’. Road transport legislation is defined in section 6 (What is the *road transport legislation*?) of the *Road Transport (General) Act 1999*. References to the Road Transport (Mass, Dimensions and Loading) Act are omitted here and elsewhere consequent to repeal of the Act.

Clause 70 Section 1, note 3

This clause substitutes a replacement note 3 that explains that there are laws other than those included in ‘road transport legislation’ that deal with road transport, in particular the *Dangerous Goods (Road Transport) Act 2009* and the *Heavy Vehicle National Law (ACT)*. It

also includes a new note 4 that explains that a reference to an Act includes a reference to statutory instruments, including regulations, under that Act.

Clause 71 Dictionary, definition of *vehicle standard*

This clause amends the definition of ‘vehicle standard’ reflecting the removal of heavy vehicle standards from the application of the Act. Heavy vehicle standards are covered by chapter 3 of the *Heavy Vehicle National Law (ACT)* and the *Heavy Vehicle (Vehicle Standards) National Regulation*.
