

2009

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

**ROAD TRANSPORT (MASS, DIMENSIONS AND
LOADING) BILL 2009**

REVISED EXPLANATORY STATEMENT

Circulated by authority of

Jon Stanhope MLA
Chief Minister

Minister for Transport

Explanatory Statement

This explanatory statement relates to this Bill as introduced into the ACT Legislative Assembly. The Bill is modelled on the national *Road Transport Reform (Compliance and Enforcement) Bill*, (Model Bill) which was developed by the National Road Transport Commission.

It was recognised when developing the Model Bill that jurisdictions, when implementing the national scheme, may need to modify provisions to satisfy their wider legal and policy requirements. The provisions in this Bill have been fine-tuned to reflect ACT criminal law and human rights policy.

The Bill :

(a) provides for the implementation of certain laws that form part of the system of nationally consistent road transport laws for the regulation of mass, dimensions and load restraint in relation to heavy vehicles, and for other purposes.

(b) repeals the *Road Transport (Dimensions and Mass) Act 1990* and enacts the *Road Transport (Mass, Dimensions and Loading) Act 2009* and makes consequential amendments to other Acts.

A number of departures from the model provisions have been made to ensure consistency with the Territory's criminal law and human rights. The major changes include

- The national model provides for penalties for a first offence and for second/subsequent offences. This tiered penalty structure has not been adopted, instead a single maximum penalty is to apply;
- Strict liability replaces absolute liability as the standard for offences under the Act;
- Those offences accompanied by a statutory 'reasonable steps defence' under the model Bill have been revised to provide a 'reasonable steps exception' so that an evidential, rather than a legal burden, is placed on the accused if they seek to raise a statutory defence;
- The Bill provides appropriate protection against self-incrimination, providing a full derivative use immunity as opposed to the use immunity in the Model Bill;
- The time allowed for a prosecution to commence after an alleged offence has been adjusted to align with the standard prosecution limitation periods in Section 192 of the *Legislation Act 2001*;
- The inspection and search provisions have been revised to reflect the standard provisions for the ACT. The major change is that where a police officer or authorised officer wish to conduct a 'search' of premises, a search warrant will be required prior to undertaking such action.

Chapter 1 Preliminary

Part 1.1 Introduction

This part (clauses 1-6) sets out the name of the Act and explains that it forms part of the road transport legislation, which includes the following:

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

Also explained in this Part are when the Act commences; that Chapter 2 of the Criminal Code and the Section 133 of *Legislation Act 2001* apply in relation to offences against the Act; and the general and particular objects of the Act.

Part 1.2 Important concepts

This part (clauses 7-19) defines key terms including:

1. that a heavy vehicle is a motor vehicle or trailer that has a gross vehicle mass (GVM) more than 4.5 tonnes;
2. that a heavy combination includes a heavy vehicle or a combination prescribed by regulation;
3. that a ‘driver’ of a heavy vehicle or combination includes a two-up driver (co-driver) and a learner driver;
4. what constitutes the *base* of a driver of a heavy vehicle or heavy combination;
5. the circumstances when a person is deemed to be the operator of a heavy vehicle or heavy combination;
6. who is the responsible person for a vehicle or combination in various circumstances. For example, a person is regarded as the responsible person for a heavy vehicle or heavy combination if the person has, at the relevant time, a role or responsibility associated with road transport, and this may include an owner, driver or operator of a vehicle, a person who packs goods or loads or unloads goods on a vehicle, a person who consigns or receives goods transported by road and a person in charge of the vehicle’s garage address or the base of the driver;
7. off-road entities such as consignor, consignee, loader and packer; and
8. the meaning of freight container, transport documentation and journey documentation.

Part 1.3 Authorised people

This part (clauses 20-23) provides for the exercise of powers by authorised officers appointed under corresponding legislation. It enables the Minister to enter into an agreement with a Minister of another jurisdiction providing for ACT authorised officers or ACT police officers to exercise corresponding powers in the other jurisdiction and vice versa. It enables the road

authority to designate an identity card issued by another jurisdiction under a corresponding heavy vehicle road law as an identity card for this Act.

There are references in the Act to both a road transport authority and police officer and authorised person. Clause 23 clarifies that the road transport authority may exercise any power conferred by or under a heavy vehicle road law on a police officer or authorised person, other than a power that requires the physical presence of an authorised officer. Thus, references to a police officer or authorised person include references to the Authority.

Chapter 2 Mass, dimensions and loading requirements for vehicles

Part 2.1 Definitions-Chapter 2

This part defines key terms relevant to Chapter 2, including the meaning of mass requirement, dimension requirement, and loading requirement.

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

The main purpose of this part is to make provision for compliance with, and enforcement of, Australian heavy vehicle road laws in circumstances in which a load is, or may be, a factor in a breach or suspected breach of a mass, dimension or loading requirement.

This part does not limit the operation of other provisions of this Act, or any other road transport legislation, in relation to a breach or suspected breach of a mass, dimension or loading requirement.

Divisions 2.2.1 and 2.2.2

These divisions provide definitions and other interpretative provisions in relation to three categories of mass, dimension and loading offences - ‘minor risk’, ‘substantial risk’ or ‘severe’ risk. An explanation is given for determining whether a breach has been committed and in which category the breach falls. A determining criterion is the degree of risk to public safety, the environment, road infrastructure or public amenity.

Subdivision 2.2.2.2

This subdivision (clauses 112-116) sets out the lower limit breakpoints for substantial and severe risk mass and dimension breaches, including load projections, overall width, height and length breaches.

Action to enforce the manufacturers’ ratings for gross vehicle mass and gross combination mass (clause 112(3)) should only be taken when the ratings are below the low limit entitlement. The breach breakpoints should be calculated from the manufacturers’ ratings for that particular vehicle or heavy combination.

Subdivisions 2.2.2.3 and 2.2.2.4

These subdivisions (clauses 117-121) provide for certain breaches to be categorised into a more severe category if the breach occurs in specified circumstances eg. in a declared zone, or in hazardous conditions, eg. at night or in poor weather where there is reduced visibility.

Clause 120 enables higher breakpoints to be applied in regulations where there is less risk associated with a particular breach.

Division 2.2.3 Enforcement powers

In addition to general powers, the model legislation provides a number of powers specific to mass, dimension and loading breaches. These powers are linked to the risk-based offence categories (Division 2.2.2). The objectives of these additional powers are: -

- to confer on enforcement officers powers to administer the mass, dimension and loading regime consistently, efficiently and fairly;
- to enable enforcement effort and resources to be targeted effectively and appropriately at the offences and offence patterns of most concern;
- to provide industry with the confidence that enforcement action following detection of a breach will be applied in a manner that is even handed, consistent and appropriate to the breach; and
- to be sufficiently flexible to allow exceptions to the general rules to meet the needs of particular cases.

Subdivision 2.2.3.1 Definitions

This subdivision defines, for the division, the terms ‘particular RTA instruction’ and ‘suitable location’.

Subdivision 2.2.3.2 Minor risk breaches

This subdivision (clauses 123-127) empowers an authorised person or police officer to permit the continuation of the journey of a vehicle or combination with a minor risk breach (all the way to the intended destination, if appropriate). For minor risk breaches this will be the usual approach. However, the officer has the power to require the vehicle to remain stationary or to proceed to a specified location within a maximum distance of 30km, for the load breach to be remedied. A person commits an offence if the person fails to comply with a direction. The offence is a strict liability offence.

Subdivision 2.2.3.3 Substantial risk breaches

This subdivision (clauses 128-131) empowers an authorised officer or police officer to permit the continuation of the journey of a vehicle or combination with a substantial risk breach, however, that power is limited to authorising travel only to the nearest town, settlement, road house or other *suitable location* for legalising the load. Where that nearest suitable place is the intended destination, then the authorisation can extend to the intended destination.

The authorisation is subject to such conditions as are necessary in the opinion of the enforcement officer to minimise any potential risks to public safety and public assets (roads, road furniture and road infrastructure), the environment or public amenity. Conditions may include route restrictions, reduced speed limits, temporary restraints, and the use of warning signals.

In determining whether an area is the nearest area suitable for rectifying the load breach the officer may consider any relevant factors, including the distance to be travelled, the direction of travel preferred by the driver, the nature of the route, traffic conditions, and likely traffic conditions en route, any animal welfare considerations, the availability of facilities for unloading or storing the load and preserving the contents and value of the load or preventing a hazard.

A person commits an offence if the person engages in conduct that results in a contravention of any condition or direction. The offence is a strict liability offence.

Subdivision 2.2.3.4 Severe risk breaches

This subdivision (clauses 132-135) deals with breaches in the severe risk category. As a general rule, vehicle or heavy combinations offending at this level will be required to remain stationary until the legal requirements are met.

However, in exceptional circumstances, enforcement officers and police officers have the power to authorise the vehicle or heavy combination to be moved, but this power only extends to authorising travel to the nearest *safe location* to adjust the load, where the enforcement officer or police officer believes it is in the interests of protecting public safety, or public assets, or other considerations (for example, animal welfare/disease control) that the vehicle or heavy combination be moved.

Again, the officer may impose such conditions in respect of the authorisation for travel that the officer considers necessary in the circumstances.

In determining whether a location is safe, consideration must be given to the type of load and the availability of equipment suitable for handling the load without creating damage to the goods or causing a hazard. An important distinction is made between what is the nearest ‘suitable’ location for vehicles and combinations with substantial risk breaches to proceed and the nearest ‘safe’ location where the vehicle or combination is the subject of a severe breach. The nearest safe location may happen to be the nearest safe place to park the vehicle off the roadway – irrespective of whether that place can be considered ‘suitable’ in terms of preservation of particular cargo being carried or the intended direction of the driver or any other considerations.

A person commits an offence if the person engages in conduct that results in a contravention of any condition or direction. The offence is a strict liability offence.

Subdivision 2.2.3.5 Miscellaneous

A direction or authorisation under this subdivision (clauses 137-140) has to be in writing, except where moving the vehicle or combination is carried out in the presence of, or under the supervision of, an authorised officer or police officer or in other circumstances prescribed by regulation.

As a general rule, vehicles will be granted authorisation to continue their journey (conditionally or unconditionally) if only minor risk breaches exist and no direction to rectify the breaches has been given or remains in force. However, the clause does not preclude authorised officers or police officers from exercising their powers to direct the vehicle or combination to remain stationary until the vehicle or combination is adjusted to comply with the law.

A component vehicle of a combination can be separately driven or moved if the component vehicle is not itself the subject of a breach of a mass, dimension or load restraint requirement and it is not otherwise unlawful for the component vehicle to be driven or moved.

The officer may attach such conditions to the authorisation as are necessary, in the officer's opinion and within administrative guidelines, to avoid risk to public safety, public assets (roads, road furniture and road infrastructure), the environment or public amenity. The authorisation must be in writing unless the direction to move the vehicle is carried out in the presence of or under the supervision of authorised officers.

A person commits an offence if the person engages in conduct that results in a contravention of any condition or direction. The offence is a strict liability offence.

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

This division (clauses 141-163) establishes the 'chain of responsibility' for breaches of mass, dimensions or loading requirements. New offences are created that impose liability for breaches on those entities that have an involvement in the road transport industry, including off-road parties such as consignors, packers, loaders and receivers of goods, as well as operators and drivers of heavy vehicles or heavy combinations.

A liability is also imposed upon consignors and packers if freight containers exceed the maximum gross weight on the container's safety approval plate (clauses 143 and 148 respectively).

For minor or substantial breaches, a 'reasonable steps' exception will generally be available. The 'reasonable steps exception' is a departure from the national model 'reasonable steps defence' in that an evidential rather than a legal burden is placed on the accused if they seek to raise a statutory defence. Offences in these breach categories are strict liability offences.

A reasonable steps exception is available to operators and drivers for minor risk breaches only other than where there has been reliance on an inaccurate container weight declaration, in which case the exception is available for substantial and severe risk breaches also. It is available to consignors, loaders and packers, irrespective of whether the breach is a minor or substantial risk breach.

For severe breaches, the penalty is related to the degree of criminal intent or responsibility involved in the offence. For example, in a case involving a severe mass breach, the maximum penalty is 100 penalty units where negligence is a factor in the offence, 150 penalty units and 6 months imprisonment where recklessness was involved and 200 penalty units and 6 months imprisonment where there was an intention to offend.

Division 2.2.5 Sanctions - Matters to be taken into consideration by courts

This Division (clauses 164-165) lists the general implications and consequences of breaches of mass, dimensions or loading requirements that the Courts can refer to when determining the kind and level of sanction to be imposed. The factors listed are neither determinative nor exhaustive.

If a court is satisfied that there has been a breach of a mass, dimensions or loading requirement but is not satisfied that the breach is a substantial risk breach or a severe risk breach, this clause enables the court to treat the breach as a minor risk breach.

Similarly, if a court is satisfied that there has been a breach of a mass, dimensions or loading requirement and that the breach is at least a substantial risk breach but is not satisfied that the breach is a severe risk breach, it may treat the breach as a substantial risk breach.

Division 2.2.6 Container weight declarations

This Division (clauses 166-173) applies to a freight container that is *consigned* for transport by road, or for transport partly by road and partly by some other means. It imposes obligations on persons (responsible entities) who consign freight containers for road (or others in their stead) to provide operators and drivers of vehicle or combinations with complying container weight declarations. Operators will have a duty to supply a declaration to the driver of the relevant vehicle or combination and drivers will have a duty to sight the declaration before commencing the journey.

The ‘responsible entity’ in relation to a freight container includes a person who consigns freight for transport by road, the person who arranges for the transport of goods (including those entering Australia) and an Australian agent of an overseas-based consignor.

A similar duty is applied to the operator to ensure that the driver of a vehicle or combination, or any other road or rail carrier that will be transporting the load, is provided with a complying container weight declaration relating to the freight container before the start of the driver’s journey.

While on the road, drivers must keep a copy of the container weight declaration in or about the vehicle or combination at all times so that it is readily accessible to enforcement officers.

A container weight declaration does not comply if the contents of the container weight declaration are not readily available to an authorised officer or police officer, or it is not in a form that satisfies requirements prescribed by regulation.

Failure to provide a complying container weight declaration as required is a strict liability offence. The defendant has the benefit of the reasonable steps exception for the offence.

A consignee is guilty of an offence if the consignee engages in conduct likely to induce or reward a breach of a mass, dimensions or loading requirement if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration contained false or misleading information about the weight of a freight container. The maximum penalty is 100 penalty units.

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

This Division (clauses 174-178) provides for the right to recover from a responsible entity certain losses incurred because a container weight declaration is not provided or is false or misleading. Losses that may be recovered include loss due to delay in delivery of goods, spoilage or damage to goods, additional costs incurred in legalising the load and any fines incurred.

Division 2.2.8 False and misleading transport and journey documentation

This Division (clause 179) creates offences imposing liability on consignors, packers, loaders and receivers of goods where transport documentation is false or misleading in a material particular relating to the mass, dimensions or loading requirements of goods consigned wholly or partly for transport by road. It also creates offences imposing liability on responsible entities and operators of vehicles or combinations if a container weight declaration contains information that is false or misleading about a matter.

The offences are strict liability. The defendant has the benefit of the reasonable steps exception for the offence.

Division 2.2.9 Concessions

In this division (clauses 180-184), if a particular arrangement, under which increased mass or dimension has been granted, expressly makes provision for alternative breakpoints to apply, then those breakpoints will override the normal breakpoints, thereby providing an exception to the general rule. That is, if such “concessions” expressly provide for the breach breakpoints to be calculated from the increased limits, then these alternative breakpoints will apply.

It is an offence to contravene a condition of a mass, dimension or load restraint concession. A person who contravenes the concession is prevented from having the benefit of it in the assessment of breaches by authorised officers. That is, it will be disregarded in determining whether there has been a breach of a mass, dimensions or load restraint requirement and in determining the risk category to which the breach belongs.

Part 2.3 General exceptions to offences

The Bill departs from the Model Bill in that instead of providing a ‘reasonable steps’ defence, a ‘reasonable step’ exception is provided. The model provision placed a legal burden on the accused, and by reversing the onus of proof engaged Section 22(1) of the *Human Rights Act 2004* (right to be presumed innocent). Replacing the defence with an exception changes the burden of proof on the defendant from a legal burden to an evidential one.

Division 2.3.1 Reasonable steps exception

This division (clauses 185-186) provides a ‘reasonable steps’ exception where the person charged did not know and could not reasonably have been expected to know of the breach of the law and they had taken all reasonable steps to comply, or there were no such steps that they could reasonably have taken.

A court may have regard to the circumstances of the alleged offence and measures available and measures taken in determining whether reasonable steps were taken by the defendant.

A reasonable steps exception is available to operators and drivers for minor risk breaches only, other than where there has been reliance on an inaccurate container weight declaration, in which case the exception is also available for substantial and severe risk breaches. It is available to consignors, packers and loaders, irrespective of whether the breach is a minor or substantial risk breach.

Clause 186 provides that an operator or driver charged with a mass breach may rely on the weight stated in a container weight declaration, unless it is established that the person knew or ought reasonably to have known that the stated weight was lower than the actual weight, or the distributed weight of the container and its contents, together with the mass or location of any other load, or the mass of the vehicle or combination or any part of it, would cause one or more breaches of mass requirements.

Division 2.3.2 Other exceptions to offences

This division (clauses 187-190) provides for a special operator’s and owner’s exception, where the vehicle was used by someone not legally entitled or authorised to use it.

An exception is also provided for drivers in relation to a deficient condition of the vehicle or equipment where drivers had neither responsibility nor control, did not know and could not have reasonably ascertained that the vehicle or equipment was defective or likely to be defective or non-compliant.

It is also provided that an offence against the road transport law does not apply if the person charged establishes that the offence was committed in compliance with a direction given by an authorised officer, police officer, the road transport authority or a corresponding road transport authority.

Part 2.4 Additional sanctions for heavy vehicle offences

Division 2.4.1 Preliminary

This division (clauses 191-192) sets out when a person is regarded as an ‘associate’ of another.

It also provides that a court that finds a person guilty of a heavy road law offence may impose any one or more of the penalties available under this Part, provided it considers the combined effect of the penalties imposed. If a supervisory intervention order and a prohibition order are in

force at the same time, the supervisory intervention order has no effect while the prohibition order has effect.

Division 2.4.2 Improvement notices

This division (clauses 193-199) empowers an approved officer to issue an improvement notice where the officer has a belief on reasonable grounds that a person is contravening, has contravened or is likely to contravene any provision of an Australian heavy vehicle road law.

An improvement notice may require the person to whom the notice is issued to remedy the contravention or likely contravention within the period specified in the notice. The notice does not need to state the method to be used to remedy the situation.

An extension of time may be given to assist an offender to comply with the improvement notice, provided the due date for the notice has not passed. An improvement notice may be amended by an authorised officer.

It is a strict liability offence to fail to abide by an improvement notice. The defendant has a reasonable excuse defence.

It is a defence to a contravention of an improvement notice if the person proves that the alleged contraventions that resulted in the improvement notice were remedied by a different method from that stated in the improvement notice (clause 196). A designated officer may issue a clearance certificate to the effect that all or any specified requirements of an improvement notice have been complied with.

The cancellation of an improvement notice may only be done by an authorised officer of higher rank or classification than that of the officer who first issued the notice.

Division 2.4.3 Formal warnings

This division (clauses 200 and 201) confers powers on an authorised officer to issue a written formal warning to a person for a contravention of a heavy vehicle road law, instead of taking proceedings if:

- a) the contravention was minor; and
- b) the officer believes the person had taken all reasonable steps to prevent the contravention and was unaware of the contravention; and
- c) the contravention could be dealt with appropriately by a formal warning.

The formal warning provides an alternative to the infringement notice procedure or taking court proceedings for minor risk breaches committed by those who do not have a significant history of similar offences.

It is considered that the formal warning will act as a specific deterrent to minor risk offenders. The warning will be recorded and may be used by an authority or by the police in deciding whether or not to withdraw a subsequent formal warning or to bring infringement or court proceedings instead. The authority may withdraw a formal warning in favour of taking other

proceedings for a heavy vehicle road law contravention, such as court action or by infringement notice.

Division 2.4.4 Commercial benefits penalty orders

This division (clauses 202 and 203) sets out provision for a commercial benefits penalty order that a court may impose requiring the offender to pay an amount up to three times the amount calculated to be the commercial benefit that was, or would have been derived from the offence up to a maximum amount not exceeding 50 penalty units.

In calculating the commercial benefit that was or would have been derived from the offence, the court may take into account any relevant considerations including:

- a) the value per tonne/km of the particular goods;
- b) the distance over which the goods were carried, or were to be carried; and
- c) the benefit received or to be received for committing the breach.

This penalty is based on the equitable principle that a person should not profit from his or her crime. As such, the penalty is directed against the financial incentives to commit breaches of the mass, dimensions and loading requirements on high-value cargoes - particularly over long distances - and is intended as a powerful specific deterrent.

Division 2.4.5 Licensing and registration sanctions

This division (clauses 204 and 205) provides that the court has the discretionary power to order the modification, suspension or cancellation of a heavy vehicle driver licence and may disqualify the offender from obtaining a heavy vehicle licence for a specified time. In the case of an offence against the mass, dimensions and loading requirements, this power is limited to circumstances where it is proved the offence is a severe risk offence.

A court may, in addition to any other penalty, make an order affecting a heavy vehicle registration for an offence against a heavy vehicle road law. Where the offence relates to mass, dimensions and loading requirements, this must be a severe risk offence. The court will have the power to suspend or cancel the registration of the heavy vehicle of which the offender is the registered operator, and may disqualify the offender or an associate, whom the court determines had a role in the offence, from becoming the registered operator for a specified time. Associate is defined in clause 191.

Division 2.4.6 Supervisory intervention orders

This division (clauses 206-209) enables a court, on application by the prosecutor or a road transport authority, to impose a supervisory intervention order on a person found guilty of a heavy vehicle road law offence if the court considers the person to be a systematic or persistent offender against the heavy vehicle road laws. An order may require the person to do specified things to improve compliance, to conduct monitoring and other practices, to report to the road transport authority and to appoint other persons to assist the person in compliance.

The rationale for the supervisory intervention order is that in some circumstances, a systematic or persistent offender might require supervision and further education to achieve compliance. Such an order would be onerous on the offender, but would not be as harsh a punishment as

orders affecting heavy vehicle licences or registrations and orders that prohibit a person from involvement in the road transport industry.

The supervisory intervention order is not linked to the minor risk, substantial risk or severe risk categorisation of offences. It should be capable of being used by a court to address situations where an offender is habitually using, say, the minor risk category as extra payload, just as it should be capable of being applied to more serious level breaches.

Whilst the supervisory intervention order is based on retributive, deterrent and public protection principles of punishment, its primary purpose is rehabilitative, by providing the offender with an opportunity - albeit under strict supervision - to remain in the industry and improve his or her operating performance.

The court may make a supervisory intervention order only if it is satisfied that the order is capable of improving the person's compliance by having regard to previous offences that a person has been found guilty of committing, or for which an infringement notice has been issued and not withdrawn, and any other evidence considered relevant to the person's conduct in road transport.

The court may require a person found guilty of a heavy vehicle road law offence to provide reports on how the person is complying with the heavy vehicle road law requirements stated in the supervisory intervention order.

The court may amend or revoke a supervisory intervention order on application by the road transport authority or the person who is subject to the order, and the court is satisfied that there has been a change of circumstances that warrant such action.

It is an offence to contravene a supervisory intervention order.

Division 2.4.7 Prohibition orders

This division (clauses 210-212) enables a court, on application by the prosecutor or a road transport authority, to make a prohibition order on a person found guilty of a heavy vehicle road law offence if the court considers the person to be a systematic or persistent offender against the heavy vehicle road laws. An order may prohibit a person, for a specified period, from having a specified role or responsibilities associated with road transport.

The order can only be made if the court is satisfied that the person should not be entitled to do the things which are the subject of the order and that a supervisory intervention order is not considered appropriate. The prohibition order may be in addition to any other penalty or sanction other than a supervisory intervention order.

This is intended to be an extreme punishment that will have grave implications for an offender's future in the road transport industry and livelihood. It is a punishment that a court would not be inclined to order in any but extreme cases, (but not necessarily severe risk breaches) involving elements of premeditation or scheming or habitual offending, and in which the court takes the view that the prime sentencing considerations are retribution, deterrence and public protection.

The court may amend or revoke a prohibition order on application by the road transport authority or the person who is subject to the order, where the court is satisfied that there has been a change of circumstances that warrant such action. It is an offence for failing to adhere to a prohibition order.

Part 2.5 Other provisions about mass, dimensions and loading requirements

Division 2.5.1 Mutual Recognition

This division (clauses 213 and 214) allows for the administrative decisions of an interstate administrative authority to be recognised in the ACT and the decisions of courts in other jurisdictions to be recognised in the ACT.

Division 2.5.2 Declared zones and declared routes

This division (clause 215) provides that the Minister may, by notice in the Gazette, declare that a specified area to be a declared zone for the purposes of this Act; or a specified road, or a specified part of a specified road, to be a declared route for the purposes of this Act.

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

This division (clauses 216-221) makes it a serious offence under the Act for an employer to dismiss or injure or act to the detriment of an employee or contractor because the employee or contractor has assisted in relation to, or given information or complained about, a breach of an Australian heavy vehicle road law.

It is also a serious offence under the Act where a person refuses or deliberately omits to offer employment to a prospective employee or prospective contractor, or treats that person less favourably than another prospective employee or contractor in regard to the terms on which employment is offered, because that person has reported or raised concerns about a breach of the Australian heavy vehicle road laws.

A court may order a person found guilty of such offences to pay the affected employee or prospective employee compensation or make an order directing the employer to reinstate the employee to their same or similar position or in regard to a prospective employee, employ that person in the position which they had applied for or in a similar position.

It is a strict liability offence if a person fails to comply with an employment order issued by a court.

Chapter 3 Investigation and enforcement

Part 3.1 Investigation powers

Division 3.1.1 Preliminary

This division contains interpretative provisions for Part 3.1. The provisions explain the meaning of :

- a) when a person is ‘qualified’, ‘fit’ and ‘authorised’ as it pertains to driving a vehicle or running an engine;
- b) “unattended” which is important when referring to the power to move unattended or broken down vehicles or combinations;
- c) “driver” in relation to a towing vehicle to which a trailer was or apparently was last connected;
- d) broken-down” which is relevant to the power in clause 318 to moving an unattended or broken down vehicle or combination;
- e) when a power is exercised under this Part for “compliance purposes”.

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

The powers conferred in this division (clauses 308 -316) apply to vehicles or combinations on a road or road related area, public places or premises of the authority or other premises that an authorised person may lawfully enter under Section 333.

A police officer or authorised person is empowered to direct a driver of a heavy vehicle or heavy combination to stop the vehicle, keep it stationary and not interfere with the vehicle or its load. A direction to stop may include a direction to stop at the nearest place for it to be safely stopped as indicated by the officer. A strict liability offence is committed by a person who fails to comply with a direction to stop.

The power to stop vehicles is provided for the purpose of exercising other powers under the heavy vehicle road laws (clause 309). In effect, this power allows a vehicle to be stopped to check on compliance or to verify whether there is, in fact, a breach of the heavy vehicle road laws. The power is fundamental to monitor compliance, to ensure timely enforcement and also to ensure a suspected danger to the public is ended immediately.

The police officer or authorised person may direct the vehicle or combination be moved to a suitable location within a maximum distance of 30 km to enable the exercise of other powers under the heavy vehicle road law (clause 311). A strict liability offence is committed by a person if there is failure to comply with a direction to move the vehicle.

The police officer or authorised person is also empowered to direct the driver or operator of the vehicle to move the vehicle or combination where there is a belief on reasonable grounds that the vehicle or combination is causing a danger or traffic obstruction (clause 313). A strict liability offence is committed by a person if they fail to comply with such a direction unless there was a valid reason for not doing so, eg. the vehicle was broken-down and the problem could not be rectified.

Where a driver fails to comply with a direction under this division, an officer is empowered to direct the driver to vacate the driver's seat, leave the vehicle or combination and not to (re)occupy the driver's seat until permitted to do so by an authorised person or police officer (clause 315). A strict liability offence is committed by a person if they fail to comply with such a direction.

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

This division (clauses 317-320) empowers a police officer or authorised person to enter and move an unattended vehicle or combination for the purpose of exercising other functions under a heavy vehicle road law.

A police officer or authorised person may move the vehicle or combination, or authorise an assistant to move the vehicle, but only if the police officer, authorised person or authorised assistant is qualified and fit to drive it. (See Clauses 301 and 302 for definitions of 'qualified' and 'fit' to drive a vehicle or combination).

A police officer, authorised person or authorised assistant may use reasonable force to open unlocked doors to enter the vehicle to gain access to mechanical components to allow the vehicle to be moved.

A police officer, authorised person or authorised assistant is also empowered to enter and move an unattended vehicle or combination that is causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure, or is causing or likely to cause an obstruction to traffic (clause 318). The power, which includes the use reasonable force to enter and move the vehicle or combination, may be exercised by either driving the vehicle or causing the vehicle to be moved, eg. by towing.

The driver or operator must be advised by the authorised officers of the action taken and the location of the vehicle or combination.

Due to the possibility of harm, the police officer, authorised person or authorised assistant need not hold the appropriate licence of the appropriate class if there is a belief on reasonable grounds that there is no other person in the immediate vicinity who is more capable of moving the unattended or broken-down vehicle or combination than the police officer, authorised person or authorised assistant who is fit and willing to drive it (Clause 319).

Clause 303 in division 3.1.1 provides a person is authorised to drive a vehicle if they have the authority of the operator to do so. However clause 320 exempts the application of clause 303 from this division, as it is immaterial whether or not the authorised person or police officer has the authority to drive a vehicle if they are seeking to enforce clauses 318 and 319.

Division 3.1.4 Direction to provide records, information, etc

This division (clauses 321-326) empowers an authorised person or police officer to direct any person with responsibilities associated with heavy vehicles or combinations, or their operation, to provide to the officer any information, documents, records, devices or things in their possession

or control relating to the use, performance or condition of the vehicles or combinations and other specific matters that may assist in checking compliance with the heavy vehicle road transport laws (clause 321).

A police officer or authorised person may inspect, make copies of, take extracts from, or seize and remove documents, records, devices or things produced that are reasonably believed by the officer to provide evidence of a heavy vehicle road law offence. It is a strict liability offence if a person does not comply with a direction to produce the required information without a reasonable excuse.

An authorised person or police officer may, where they believe on reasonable grounds that an offence against a heavy vehicle road law has been or is about to be committed, direct a person to state the person's name, date of birth, home address and business address. It is an offence to fail to comply with this direction, or to knowingly provide a false name or address. It is a defence to a charge of failing to provide a business address that the person did not have a business address, or that the person's business address was not connected with road transport involving heavy vehicles.

If the person directed does not readily comply, the police officer or authorised person must provide a warning that failure to comply with the direction to provide the requested information is an offence. The offence is one of strict liability.

Clause 325 provides that an authorised person or police officer may, to check compliance, direct a 'responsible person' to provide current or intended journey information and to state the name, home address and business address of other responsible people who are associated with the vehicle or combination. 'Responsible person' is defined under clause 12.

It is a strict liability offence to fail to comply with this direction. It is a defence to a charge of failing to provide journey information if the person did not know the journey details. It is a defence of failing to provide the business address of other responsible people if the other people did not have a business address, or that the business address was not connected with road transport involving heavy vehicles.

Division 3.1.5 Provisions about directions

This division (clauses 327-331) sets out how directions by a police officer or authorised person may be given to drivers and operators.

If given orally, a direction under this chapter (except a direction under clause 337) must state whether it is to be complied with immediately or within a specified period. If given in writing, a direction under this division must state the period within which it is to be complied with.

An authorised officer or police officer may amend or revoke a direction given, or conditions imposed, under this Act.

A person is not entitled to refuse to comply with a direction under this part on the grounds that to do so would incriminate the person or make the person liable for an offence (clause 331).

Except in proceedings for an offence against this chapter, the following is not admissible in evidence against the person in criminal proceedings:

- a) a statement made or any information or answer given or provided by an individual in compliance with a direction under this chapter;
- b) information directly or indirectly derived from a statement, information or answer mentioned in paragraph (a).

Any document produced by the person is not inadmissible in evidence on the ground that the document might incriminate the person.

Part 3.2 Enforcement powers

Division 3.2.1 Preliminary

This division defines for Part 3.2 the following terms:

- a) ‘connected’ – when a thing is connected with an offence;
- b) ‘occupier’ – of premises, a vehicle or combination;
- c) ‘offence’ – where reasonable grounds exist that an offence has been, is being or will be committed.

Division 3.2.2 Powers of authorised people

This division (clauses 333-344) provides powers for authorised officers to enter vehicles and combinations that are in or on a road or road related area, public place or Territory owned premises. The power also extends to permit entry to the transport business premises of a responsible person, the garage address of a vehicle or combination, the base of a driver or drivers of a vehicle or combination and other premises. Entry is for the purpose of inspection or examination for compliance with heavy vehicle road laws or an approved road transport compliance scheme. The power to inspect premises under clause 333 does not apply to premises that are used for residential purposes.

Entry is ‘at any reasonable time’ (defined in Section 333(6)), and consent outside usual business hours is required to be sought from the occupier of the premises, vehicle or combination, except where there are reasonable grounds for believing a vehicle or combination has been involved in a serious incident, or in accordance with a search warrant.

A police officer or authorised officer cannot remain at premises or in a vehicle or combination if they do not produce their identity card when asked by the occupier of the premises, vehicle or combination.

Clause 336 sets out the general inspection and examination powers on entry to premises, vehicles and combinations. These powers do not authorise the use of force, but allow the opening of unlocked doors, panels, objects or other things and the moving, but not the removal, of anything that is not locked up or sealed. An inspection may include weighing, testing, checking placard and other information required to be in or on the vehicle or combination, measuring, or taking photographs, taking copies or extracts from records at premises and downloading information stored electronically. Anything, that on reasonable grounds is believed to be connected with an offence, may be seized if seizure is consistent with the purpose of entry, authorised under

warrant, or necessary to prevent the thing being concealed, lost, destroyed or used to commit an offence.

An authorised officer may direct a responsible person to provide assistance to the officer to enable the officer to effectively exercise a power under this part (clause 337). ‘Responsible person’ is defined under clause 12. It is a strict liability offence to fail to comply with such a direction, but it is a defence if the direction was unreasonable, or the direction or its subject-matter was outside the scope of the business or other activities of the person.

A direction can be given to the responsible person to run the engine of a vehicle or combination. If there is no responsible person willing or available to run the engine, the authorised person, police officer or another authorised person may do so.

Division 3.2.3 Embargo notices

This division (clauses 345-348) provides for the issue of an embargo notice in respect of evidence that cannot, or cannot readily be physically seized and removed. An embargo notice is a notice forbidding the movement, sale, leasing, transfer, deletion of information or other dealing with a thing, or any part of the thing, without the written permission of a police officer, authorised person, road transport authority or the chief police officer.

A person commits an offence if s/he knowingly breaches the conditions of an embargo notice or instructs another person to do something forbidden by the notice. A strict liability offence applies if a person fails to take reasonable steps to prevent anyone else from doing anything forbidden by the notice.

Division 3.2.4 Search Warrants

Whereas division 3.2.2 confers powers on authorised officers to ‘inspect and examine’, which only applies in respect to information and documents that are required to be kept under the heavy vehicle road laws or an approved road transport compliance scheme, the power to ‘search’ under this division (clauses 349-353), extends to other information and documents that may provide evidence of an offence.

Clause 349 provides that a police officer or authorised officers may apply to a magistrate for a warrant to enter premises, a vehicle or combination. Such a situation would arise if there are reasonable grounds for suspecting that a thing or activity is or may be connected with an offence against an Australian heavy vehicle road law.

Prior to issuing a warrant, the magistrate must be satisfied that reasonable grounds exist for the officers’ suspicions. The matters the magistrate must consider are set down in subclause 349(4). Subclause 349(5) sets out what the warrant must state, while subclause 349(6) describes the powers available to the officers under the warrant, including the powers to search premises, a vehicle or combination.

Clause 350 provides that an application for a warrant may be made in person or by phone, fax, radio or other means. Clauses 351-353 set out the procedure to be followed for executing a warrant, including a requirement to announce the intention to conduct a search, (except where

such an announcement may jeopardise the safety of a person or the effective execution of the warrant), provide the occupier of the premises or vehicle with details of the warrant and allow the occupier to observe the search being conducted unless this would impede the effectiveness of the search.

Division 3.2.5 Return and forfeiture of things seized

This division (clauses 354-360) sets out provisions for receipting things seized, moving things seized to another place for examination, providing access for the person who is entitled to possession of the thing, and the return of, or forfeiture of, seized things.

Part 3.3 Miscellaneous

This part (clauses 361-364) requires authorised officers or police officers to take all reasonable steps to cause as little inconvenience, detriment and damage as practicable in exercising powers under Part 3 of the Bill. Where damage has occurred, a written notice detailing the damage must be provided to the owner or apparent owner of the item.

Where damage has occurred to premises, a vehicle or combination by the unreasonable use of power or unauthorised force, the police officer or authorised person must take reasonable steps to fully rectify the damage.

A court may order reasonable compensation to be paid to a person who suffers loss or expense arising out of the exercise of power under this chapter by a police officer or authorised person.

The power to use reasonable force against a person is to be exercised only by police officers.

Chapter 4 Court Proceedings

Part 4.1 Liability for offences

This part (clauses 400-403) extends liability for offences under the heavy vehicle road laws to executive officers of corporations, partners in partnerships and managers of unincorporated associations where the offences are committed by these organisations. Also the registered operator of a vehicle at the time of an offence may be proceeded against as the person who committed an offence.

Clause 400 provides that an executive officer (defined) concerned in the management of a corporation, commits an offence if the officer was reckless about whether the offence would happen, and was in a position to influence the conduct of the corporation in relation to the contravention and failed to take reasonable steps to prevent the offence.

In proceedings a court will have regard to any action taken by the officer to influence conduct, precautions taken or due diligence exercised.

A defence is available to an employer who had no knowledge of the offence, was not in a position to influence the conduct that led to the contravention or who took reasonable precautions or exercised due diligence to prevent the offence being committed.

Clause 401 provides that if a person who is a partner in a partnership commits an offence against the heavy vehicle road laws, each partner and others involved in the management of the partnership is taken to have committed the offence unless the person was not in a position to influence the conduct of the offender, or took reasonable precautions and exercised due diligence to prevent the offence occurring.

Clause 402 provides that if a person who is involved in the management of an unincorporated association commits an offence against the heavy vehicle road laws, each person involved in the management of the association is taken to have committed the offence unless the person was not in a position to influence the conduct of the offender, or took reasonable precautions and exercised due diligence to prevent the offence occurring.

Clause 403 states that where a contravention of a provision of the heavy vehicle road laws has been detected, the person who was the registered operator of a vehicle at the time of the offence may be proceeded against as the person who committed an offence against the road transport law. This presumption of liability can be shifted if the registered operator gives to the road transport authority a statutory declaration setting out the name and address of the actual operator of the vehicle at the time of the offence.

Part 4.2 Roads compensation orders for damage to road infrastructure

This part (clauses 404-411) gives power to the court to make a roads compensation order requiring the offender to pay the Territory 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 as a consequence of a heavy vehicle road law offence.

In making a roads compensation order, the court may assess the amount of compensation in such manner as it considers appropriate. Examples of matters that could be considered include the monetary value of all or any part of the road infrastructure or of the damage to it, the cost of remedying the damage and the extent of the offender's contribution to the damage.

Where the road transport authority intends to seek compensation for damage to road infrastructure, it must provide the defendant with a copy of any certificate estimating the damages at least 28 working days prior to the date the matter is set down for hearing.

If the defendant wishes to challenge a statement in a certificate that has been served, then the defendant must give notice in writing to the road transport authority at least 14 days before the hearing date. The written notice of an intention to challenge a certificate should specify the matters in the certificate that are intended to be challenged. If a defendant is intending to challenge the accuracy of any measurement, analysis or reading stated in the certificate, the defendant should specify the reason why the measurement, analysis or reading is inaccurate and what the defendant considers to be the correct measurement, analysis or reading.

If there are other factors not connected with the commission of the offence that 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.

The maximum amount of compensation cannot exceed the monetary jurisdictional limit of the court in civil proceedings. The court may not include in the order any amount for:

- (a) personal injury or death; or
- (b) loss of income; or
- (c) damage to any property (including a vehicle) that is not part of the road infrastructure.

The court has the same power to award costs in relation to the proceedings for a roads compensation order as it has in relation to civil proceedings. Any award of costs is enforceable as if they were a judgment of the court in civil proceedings.

The part also provides that a roads 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.

Part 4.3 Evidence

This part (clauses 412-418) provides that for the purposes of this Act, it is not necessary to prove the appointment of an office holder or a signature purporting to be the signature of an office holder. (Officer holder is defined in clause 412).

The part also enables certain statements or allegations made in prosecutions for heavy vehicle road law offences, such as statements that a specified vehicle was a heavy vehicle or a stated location was subject to stated restrictions, to be prima facie evidence of the matter stated and gives evidentiary effect to matters contained in transport documentation.

The part also contains provisions relating to evidence of the mass rating of a heavy vehicle or component, evidence regarding measuring devices and weighing by a weighbridge or weighing facility.

Chapter 5 Miscellaneous

Part 5.1 Secrecy and information sharing

This part (clauses 500-505) provides that there is a duty on a person engaged or previously engaged in the administration of this Act to ensure that protected information relating to a person about whom it is kept, is not released except as provided for this Act or another law.

This part confers on the Minister, power to make guidelines about making records of protected information and of divulging such information.

A person commits an offence of strict liability if s/he uses protected information for purposes other than for approved purposes.

Clause 504 provides that a record, device or other thing seized under Chapter 3 may be given to a public authority for law enforcement purposes.

The road transport authority may give information to a corresponding road transport authority about any action taken by the authority under a heavy vehicle road law, or any information obtained under this Act. Such information sharing is subject to the *Privacy Act 1988* (Cwlth).

Part 5.2 Other miscellaneous provisions

This part (clause 506) provides that a term of a contract or agreement that purports to exclude, limit or modify the operation of this Act or of any provision of this Act is void to the extent that it would otherwise have that effect.

Part 5.3 Regulations

This part (clauses 507-511) provides a general regulation-making power by the Executive for this Act.

It also provides that a regulation may impose mass, dimensions or load restraint requirements on vehicles and may exclude vehicles, people and animals from this Act or stated provisions of the Act. Such an exemption may be subject to conditions.

A person commits a strict liability offence if the person drives a light vehicle or light combination in breach of a mass, dimensions or load restraint requirement under a regulation.

The part also provides for the regulations to apply a publication of the National Transport Commission or other matters approved by the Australian Transport Council from time to time.

Chapter 6 Amendment and repeal of other legislation

Clause 600 provides the legislation amended by this Act is set out in Schedule 1. Clause 601 lists the legislation, including legislative instruments, which are repealed on enactment of this Act.

Chapter 7 Transitional

This chapter provides for transitional provisions deemed necessary due to the enactment of this Act. The chapter expires 2 years after commencement.

Schedule 1 Consequential amendments

This clause lists the consequential amendments to other legislation resulting from enacting this Act.

Dictionary

The dictionary contains definitions relevant to this Act.