# LEGISLATIVE COUNCIL

## Wednesday 3 July 2013

**The PRESIDENT (Hon. J.M. Gazzola)** took the chair at 14:17 and read prayers.

**The PRESIDENT:** We acknowledge that this land we meet on today is the traditional lands for Kaurna people and that we respect their spiritual relationship with their country. We also acknowledge the Kaurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kaurna people today.

### SUPPLY BILL 2013

His Excellency the Governor assented to the bill.

### WORK HEALTH AND SAFETY (SELF-INCRIMINATION) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### ROAD TRAFFIC (EMERGENCY SERVICE SPEED ZONES) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### MAGISTRATES (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### POLICE (GST EXEMPTION) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### LEGISLATIVE REVIEW COMMITTEE

**The Hon. G.A. KANDELAARS (14:20):** I bring up the 29th report of the committee.

Report received.

### ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

**The Hon. CARMEL ZOLLO (14:21):** I lay upon the table the final report of the committee on Biosecurity Fee.

Report received.

**The Hon. CARMEL ZOLLO:** I lay upon the table the final report of the committee on Small Bars and Live Music.

Report received.

### SOCIAL DEVELOPMENT COMMITTEE

**The Hon. R.P. WORTLEY (14:22):** I lay upon the table the report of the committee on its inquiry into new migrants.

Report received and ordered to be published.

### PAPERS

The following papers were laid on the table:

By the Minister for Agriculture, Food and Fisheries (Hon. G.E. Gago)—

Professional Standards Council—Report, 2011-12

Report on actions taken following the Coronial Inquiry into the death of Neil Wills Heyward—April 2013

Report and Determination of the Remuneration Tribunal—No. 3 of 2013—Travelling and Accommodation Allowances

Report and Determination of the Remuneration Tribunal—No. 4 of 2013—Conveyance Allowance—Judges, Court Officers and Statutory Officers

Regulations under the following Acts—

Aquaculture Act 2001—Fees Increases

Architectural Practice Act 2009—Exceptions—Architectural Engineer

Civil Liability Act 1936—Lifetime Support Scheme

Fisheries Management Act 2007—Licence and Registration Application Fees Increases
Harbors and Navigation Act 1993—Marine Safety—Domestic Commercial Vessel—National Law
Land Tax Act 1936—Prescribed Associations and Exemptions
Marine Safety (Domestic Commercial Vessel) National Law (Application) Act 2013—Fees
Motor Vehicles Act 1959—Third Party Insurance—Lifetime Support Scheme
Police Act 1998—Fees—GST Exemption
Primary Produce (Food Safety Schemes) Act 2004—Plant Products—Compliance with Food Standards Code
Rail Safety National Law (South Australia) Act 2012—Annual Fees
Rules of Court—
District Court—District Court Act 1991—Amendment No. 2
Magistrates Court—Magistrates Court Act 1991—Amendment No. 44
Supreme Court—Supreme Court Act 1935—Amendment No. 1
Distribution Lessor Corporation Charter
Generation Lessor Corporation Charter
Transmission Lessor Corporation Charter

By the Minister for Sustainability, Environment and Conservation (Hon. I.K. Hunter)—

Dog Fence Board—Report, 2011-12
Regulations under the following Acts—
Environment Protection Act 1993—Waste Depot Levy—Fee Units Increase
Tobacco Products Regulation Act 1997—Longer Term—Royal Adelaide Show

By the Minister for Aboriginal Affairs and Reconciliation (Hon. I.K. Hunter)—

Aboriginal Lands Trust—Report, 2010-11

## SNAPPER FISHERY

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:24):** I seek leave to make a ministerial statement on the snapper spawning spatial closures.

Leave granted.

**The Hon. G.E. GAGO:** Since early 2011, Primary Industries and Regions SA (PIRSA) has been reviewing snapper management arrangements. This review was initiated in response to concerns about the future sustainability of the fishery as a result of increasing commercial effort and a concentration of targeted fishing activity on breeding aggregations by all fishing sectors—commercial, recreational and charter.

A number of changes have been already implemented to control the level of commercial impact on snapper stocks and to provide greater protection to snapper spawning aggregations from targeted fishing. Following a six-week public consultation process and targeted consultation with commercial and recreational fishers, local government and also tourism representatives, PIRSA has today announced new management measures that further protect snapper spawning aggregations in South Australian waters.

The state government is determined that snapper at five key aggregation sites will now be protected across their entire breeding season, which is from 1 November 2013 to 31 January 2014. All fishing sectors will be prohibited from being in possession of or taking snapper within four sites on the Spencer Gulf and one site on Gulf St Vincent. Each closure has a four-kilometre radius. These spatial closures are in addition to the statewide snapper fishing closure from midday 1 November to midday 15 December.

These sites are well known areas where snapper form spawning aggregations of groups of thousands of fish that gather together in greater densities than normal with the specific purpose of reproducing. These closures will maximise the opportunity for successful reproduction and recruitment at these key aggregation sites. The government has been mindful of the potential economic, social and tourism impacts of the closures, given the importance of snapper to all fishing

sectors and coastal communities, and it is important to note that the final closure areas have been reduced in size by more than half (previously two eight-kilometre and two 10-kilometre radial closures) and the closure in the Spencer Gulf has been split into two smaller closures.

As well as lessening the potential impact to fishers and regional communities, the reduction in the size of the closures will also facilitate improved vessel movement around the closures, which was raised during the consultation process. There will still be abundant snapper fishing opportunities outside the closure areas, which remain open to fishing between 15 December and 31 January. Throughout the consultation process there was clear support from all sectors for the government to take further action to secure the long-term sustainability of this particular species.

Clearly, any measure we put in place that affects our fishery has an impact on those businesses that rely on that particular species and the local communities where those people live and work; however, we have to weigh those impacts up against the impact of an industry that collapses completely through overfishing and loss of economic viability. Commercial fishers know and understand that and are generally supportive of these measures. They understand how important it is that we have sustainable fisheries here in South Australia.

It is also important to note that other snapper fishing opportunities will remain outside the closed areas, and other key species can be caught during this time; therefore, the new measures may influence a change in fishing practices during this time, rather than stopping activity. PIRSA has consulted widely on the development of the spatial closures with major stakeholders, including RecFish SA, the Surveyed Charter Boat Owners and Operators Association and local government involved throughout the process. I am pleased to note that Mr Mike Fooks, the chairman of the Marine Fishers Association, which represents more than 330 commercial fishers, has welcomed the announcement by PIRSA.

Ultimately these important changes will help to secure the sustainability of our snapper stocks well into the future and, of course, these stocks are a very important part of our fisheries. The spatial closures will be reviewed before the annual closure begins in November 2014 and further information is available on our website.

### CHILD PROTECTION INQUIRY

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:29):** I table a copy of a ministerial statement by Premier Jay Weatherill on the independent education inquiry and the attached royal commission report.

## QUESTION TIME

### FISHERIES COMPLIANCE

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30):** I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the one that got away.

Leave granted.

**The Hon. D.W. RIDGWAY:** South Australian rock lobsters are worth their weight in crayfish. We harvested 1,500 tonnes of these crustaceans in 2009-10, worth almost $86 million. Naturally, these crayfishers are licensed. They pay an annual licence fee, which can be as much as, or more than, $30,000 per licence. Naturally, that is a tax deduction and, naturally, people want to claim it year by year. Equally naturally, the minister's department sends out its yearly invoices in late May or early June so crayfishers can pay their licences and claim their deduction.

Sadly, that is not so this year. Fishers are only now getting their renewal notices and bills. The minister's department was late; it has missed the boat—the cray boat—and in this one by one financial year. My questions are:

1. What inexcusable excuse does the minister have for this delay?

2. How will the minister compensate crayfishers for their significant financial loss?

3. Is it true that the minister's departmental failure was due to a delay in the cabinet process and, if so, what was the reason for that delay?

4. When there is a failure in the minister's department's service delivery, how does that affect the cost recovery for the ministry in the next financial year?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:31):** I thank the honourable member for his important question. The Fisheries Management Act 2007 provides for the charging of fees for commercial fishing licences, the registration of certain types of commercial fishing gear, and other associated costs. The commercial fishing industry in South Australia is required to meet the agreed costs of all services to support the sector, including research (biological and economic), management and compliance, as well as a range of additional services in support of the industry.

I am advised that each year a thorough consultation process is conducted with industry associations to determine the level of the services required and the amount that will subsequently be recovered from licence holders. I understand that PIRSA Fisheries and Aquaculture have completed meetings with the commercial fishing industry in relation to cost recovery licences for the 2013-14 financial year, and these have been placed into regulation. Invoices can only be issued to licence holders once the regulations have been approved, and I am advised that invoices for the 2013-14 financial year were sent to licence holders the day following the setting of these regulations.

I am aware that there has been correspondence from the South Australian Rock Lobster Advisory Council in relation to the issuing of licence renewals. PIRSA obviously undertakes a thorough consultation process with the fishing industry to set these licence fees annually. Unfortunately, there were some discrepancies in the fees that needed to be corrected to reflect the exact outcomes of the consultation with the industry. This led to a delay, I am advised, in the approval and setting of the regulated fees for the 2013-14 financial year.

I accept that the issuing of these invoices was slightly later this year than it has been in the last few years. I understand, historically, invoices were issued in late June, but I do accept that it is later than it is usually. However, in recognition that the invoices were issued slightly later, I am advised that licence holders have been given until 21 July—it is usually 1 July—to make their first instalment payment. Obviously, while these matters are for individual licence holders to determine, it is important to note that these invoices are actually associated with the 2013-14 financial year, not the 2012-13 financial year.

As I said, it is regrettable that this oversight occurred. We have attempted to work with the industry wherever we can to reduce the impact this might have on the sector, and I am happy to keep working with industry to minimise any impact.

## FISHERIES COMPLIANCE

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:35):** I have a supplementary question. What day were the regulations finalised, and will the minister compensate the fishers for this significant financial loss?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:35):** I would have to take the date on notice; I do not have that—

*The Hon. D.W. Ridgway interjecting:*

**The Hon. G.E. GAGO:** I said that there was a delay in the regulation, but I do not have the detail of what date they were put in place. As I said, I am happy to take that on notice and bring that back. And no, there will not be any compensation. As I said, the government has worked hard to reduce any impact, and I remind honourable members that these invoices, as I said, are associated with the 2013-14 financial year and not the 2012-13 financial year. So honourable members need to be very careful in the assertions they make.

## FISHERIES COMPLIANCE

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:36):** A supplementary question, Mr President. What penalties does the minister impose on fishers who are late paying their fees or other regulations?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:36):** In the case of the rock lobster, these late fees have been waived. As I said, we have been working with the industry to minimise any impact. For any

fisher who has been affected by these late invoices and who may be late in their payment, we have already negotiated that we will waive any late fee, so there will be no additional impost there.

## FISHERIES COMPLIANCE

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:37):** I have a further supplementary question. What penalties are charged when fishers are late reporting whether it is an off-species catch, fish deaths or other issues, as required by conditions of their licence? What fees are they charged when they are late?

**The PRESIDENT:** It is hardly related. Minister.

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:37):** There are a number of imposts that are put in place when reporting is late. Obviously, the management of our fisheries is critical. South Australia is incredibly proud of the fact that we have one of the best-managed fisheries not only the nation but in the world, and it has that reputation because of these processes and systems that we put in place to ensure there is an accurate record of what is going on in the industry. That information is then made available to the industry.

This was a small oversight of a matter of weeks. We have worked with industry to minimise its impact, we have waived any late fees associated with that. As I said, we have worked very hard to minimise any adverse impacts on the industry.

## RECFISH SA

**The Hon. J.M.A. LENSINK (14:38):** I seek leave to make a brief explanation before asking the Minister for Fisheries a question on the subject of RecFish SA.

Leave granted.

**The Hon. J.M.A. LENSINK:** RecFish SA say on their website, in their annual report from November last year, that they approached minister Gago about a recreational fishing licence in 2011, that they were going to conduct a survey with results available in February this year. They also made comments in relation to their own funding, indicating that their funding from PIRSA would expire on what I assume is 1 July 2013, so this week. They say:

> In the absence of a RFL [recreational fishing licence] or an ongoing commitment from PIRSA we have no future as a Peak Body.

My questions for the minister are:

1. Has she agreed to extend their funding?

2. What position is she taking on their recreational fishing licence?

3. Has she seen the results of the survey?

4. Is she able to provide the quantum of funding for the *Recreational Fishing Guide* that was produced recently (how much the research, printing and distribution cost)?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:40):** I thank the honourable member for her most important question. I just clarify that the survey that the honourable member is referring to is not the statewide rec fishing survey (that is, who is fishing where, and what sort of fish), but that you are referring to the RecFish survey on rec fishing licences?

**The Hon. J.M.A. Lensink:** Correct.

**The Hon. G.E. GAGO:** Thank you. Yes, I have met with RecFish SA, and they have indicated—and I think they have long held this position; I don't think it is a new position—that the rec fishing industry would significantly benefit from a rec fishing licence. I think South Australia is one of the only (and if not the only, one of the few) jurisdictions that does not require a rec fishing licence. I listened to what RecFish had to say, and they outlined some very compelling arguments for a rec fishing licence, to which I am very sympathetic; however, it is my view that, really, it is a matter for the industry rather than for government to come in with a big stick and create some sort of impost for fishers.

I have said if the rec fishers believe that they have overwhelming industry support from rec fishers—and they were indicating that there was overwhelming support; the rec fishers wanted this—I said, 'Well, if you can show me that there is overwhelming support, then I will look at it.' That is not to say I will implement a fee. I think the government's position in the past has been not to consider a rec fishing licence fee.

I have said to them, 'If you can show me overwhelming support from rec fishers that they want and support the introduction of a fee, then I will take a look at it; but, until you can show me that this is a rec industry-led initiative and that people are really behind this 100 per cent, then it is not a matter that I am interested in looking into.' So, it really has to come from the industry.

The rec fishers indicated that they were prepared to go out and consult with and survey their members. I understand that they still plan to do this. I do not believe that that has been completed as yet, but it has been a while since I have spoken with them. The Hon. Michelle Lensink certainly did not indicate that she knew whether the report had been completed.

**The Hon. J.M.A. Lensink:** They said they were doing a survey in February.

**The Hon. G.E. GAGO:** I don't think they have, though; I am not aware of any survey that has been out. I have not received any report, so I do not think the survey has been done. I am surprised the Hon. Michelle Lensink did not get an update before she came in here with her question. You would think that it would have been well researched and thought through, but obviously she hasn't—she has not bothered to pick up the phone and ask them where their report is, given it is there report. But anyway, that's okay.

**The Hon. J.M.A. Lensink:** Yes, I'll just ask the department.

**The Hon. G.E. GAGO:** It's not my department; this is an independent rec fish industry body. It has nothing to do with government. They are operating completely independent of government, so why wouldn't the Hon. Michelle Lensink pick up the phone and dial and ask them where they are up to? She is so lazy. The opposition are incredibly lazy—incredibly lazy.

**The Hon. J.M.A. Lensink:** Stop digging, minister!

**The Hon. G.E. GAGO:** As I said, I am not aware that any survey has been completed. I understand that RecFish SA still plan to do that survey, and my position remains exactly the same. I have yet to see any evidence whatsoever of overwhelming support from the industry for the introduction of a recreational fishing licence and, until that, the government's position is that we do not support the introduction. If that work is done, then that is fine.

In terms of funding, I have been advised that we are continuing to work with RecFish SA in relation to the survey and PIRSA is considering assisting with some of the funding of that. We are prepared to assist them in these matters. We know that they do not have access to lots of income, so we have indicated that we are prepared to work with them and assist them with that, but it has to be an industry led position.

## RECFISH SA

**The Hon. J.M.A. LENSINK (14:46):** I have a supplementary question. Can the minister advise how much the publication was which appeared in this weekend's *Sunday Mail* which interestingly bears the government of South Australia's insignia and RecFish SA's insignia as the minister tried to say that they operate completely independently?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:46):** RecFish SA is an independent industry body and, like many independent bodies, they receive various fundings from various organisations. But they are independent and I think they would take huge offence at the innuendo of the Hon. Michelle Lensink that somehow they are some sort of an appendage of government. I think they would take enormous offence that they are some sort of mouthpiece or appendage of government. They are not. They are independent. In terms of the publication and the cost of that, I would need to take that on notice and I am happy to bring that back as soon as possible.

*Members interjecting:*

**The PRESIDENT:** Order!

## WATER PRICING

**The Hon. S.G. WADE (14:47):** I seek leave to make a brief explanation before asking the Minister for Water and the River Murray questions relating to the pricing of water.

Leave granted.

**The Hon. S.G. WADE:** On page 19 of the Water for Good annual report 2012, it states:

Under the *Water Industry Act 2012*, ESCOSA is nominated as the independent economic regulator for monopoly suppliers of urban and regional water and wastewater services in South Australia. Under the pricing order issued by the Treasurer in September 2012, ESCOSA has prepared a draft determination of SA Water's regulatory review requirement, which has been out for public consultation in early 2013. Following the Final Determination, SA Water will set prices in accordance with the National Water Initiative pricing principles.

My questions are:

1. Were the 2013-14 SA Water prices set in accordance with the National Water Initiative pricing principles?

2. Why did the government initially announce a drop in the 2013-14 prices when most households and all businesses will pay more?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:49):** I was just looking for my notes to answer the question. The Hon. Ms Lensink asked the Hon. Ms Gago about the recreational fishing insert in the *Sunday Mail* because I understand that was funded by my department, not PIRSA. But I will go to the question asked by the Hon. Mr Wade instead.

As I have said in this chamber previously, on 27 May 2013, ESCOSA released its final revenue determination for SA Water for the amount of revenue that can be recovered for its drinking water and sewerage services. This now means that the price of water for the next three years will increase no more than CPI, we are advised, providing customers with a period of stability. I am pleased also to advise that this year the combined effect of reduction in water prices in the absence of the water rebate means that most households will experience a small increase in their total water bill but less than CPI. The price of water will be cheaper in the coming year and, for the following two years, will not increase any more than CPI, is our expectation.

Eligible low-income earners and pensioners will also experience a small decrease in their total water bill as a result of the state government increasing the concession available by at least $30, and this is a very good outcome for South Australia.

This government advised that last year's price rise was expected to be the last significant increase and was part of the significant investment to ensure South Australia's water security into the future. Water prices have decreased by a nominal 6.4 per cent. I think I have given that advice in the chamber previously. Sewerage charges will increase by 1.6 per cent for metropolitan customers and 2.1 per cent for country customers, and the minimum quarterly sewerage charge will increase by 1.6 per cent and will be about $85 per quarter. The prices are set taking into account a range of factors, including the cost to deliver, maintain and enhance the provision of water and sewerage services. Prices in South Australia are also guided by the pricing principles outlined by the National Water Initiative and the South Australian government's commitment to statewide pricing.

The state government makes a community services obligation payment to SA Water so that customers in regional areas pay the same for water as city customers, even though it costs more to supply drinking water to regional areas.

## POWER COMMUNITY LTD

**The Hon. CARMEL ZOLLO (14:51):** I seek leave to make a brief explanation before asking the Minister for the Status of Women a question regarding Power Community Ltd.

Leave granted.

**The Hon. CARMEL ZOLLO:** Power Community Ltd is the community development arm of the Port Adelaide Football Club. Can the minister please inform us of her recent attendance at the Power Community Ltd Girl Power Leadership Forum?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:51):** Power Community Ltd (PCL) is a separate body created by the Port Adelaide Football Club to plan and deliver community programs in South Australia and the Northern Territory—

*The Hon. I.K. Hunter interjecting:*

**The Hon. G.E. GAGO:** And they do a wonderful job. It is a fantastic organisation, a great team. It aspires to work in partnership with a range of government, corporate and not-for-profit agencies to deliver programs that are focused on leadership, engagement and pathways to employment. PCL currently provides community programs that focus on five audiences: youth, Aboriginal, multicultural, older Australians and young women. I am advised that PCL made the decision this year to extend its secondary schools program, known as the Girl Power program, to also involve a focus on women's leadership and pathways to employment.

The Girl Power program is aimed at young women aged 13 to 16 years who are vulnerable to dropping out of sport and perhaps other things as well. The participants are encouraged to stay involved in team sports during their teenage years, with members of the Port Adelaide Football Club facilitating a coaching clinic and encouraging women to try a new sport. The program also involves women role models visiting schools to discuss positive body image, self-esteem, healthy lifestyles, goal setting and career pathways. I am advised that the program currently engages approximately 500 young women students each year.

Following the decision to include a leadership and employment focus in the program, this year a leadership forum was held to coincide with the Australian Football League (AFL) Women's Round. I was very pleased to be able to speak to year 10 students from Para Hills High School, Banksia Park High School, Gawler High School and Roma Mitchell Secondary College at the forum. They were a wonderful bunch of young women. That was held on Friday 28 June.

I was delighted to be able to share some of my leadership journey and some of my own personal experiences and insights with students, emphasising to them the importance of education, both formal and informal, to the development of their own leadership capabilities. I am advised that over the course of the day the students participated in a series of sessions facilitated by successful women from a range of organisations, including Bendigo Bank, Elders and the ACH Group. These sessions were around the themes of assertiveness and motivation. I understand that as part of the day students and their teachers also attended the AFL Women's Round lunch, with guest speakers Carmel Siciliano, SA Telstra Business Women of the Year and Olympic cycling gold medallist, Anna Meares.

I am advised that at the conclusion of the forum the students were asked to document their career aspirations, and Power Community Ltd is now working to facilitate work opportunities for students consistent with those aspirations. It is an extremely worthwhile cause and one that supports young women from the northern metropolitan areas developing their leadership capabilities and aspirations, and I take this opportunity to congratulate PCL, and all those people who are so committed and work so hard for the organisation, on this most important work. I wish the young women participants every success in their upcoming work experience placements.

## OLYMPIC DAM

**The Hon. M. PARNELL (14:55):** I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question regarding radiation management plans for Olympic Dam.

Leave granted.

**The Hon. M. PARNELL:** In August last year, I applied under the Freedom of Information Act to the EPA for a copy of the radiation management plan for the Olympic Dam mine and processing site. On 17 June this year, 10 months later, I finally received a response.

BHP Billiton is required by the Australian Radiation Protection and Nuclear Safety Agency, also known as ARPANSA, under the Code of Practice and Safety Guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing, to keep updated and relevant radiation management plans outlining their procedures and practices at Olympic Dam. The purpose of these plans, according to ARPANSA, is to control the exposure of employees and members of the public to radiation. Yet, in response to my freedom of information request, the EPA

admitted that the most recent plan is 15 years old (it is dated 1998), and some plans are even older.

Between 1998 and 2013, an extraordinary amount of change has occurred in the regulation of radioactive material, with increasing awareness of the risks to workers and the natural environment and advances in processing. Changes over the last 15 years that should have triggered a revision of these plans include: first, revised commonwealth regulatory standards for the Ranger mine in 1999; the revision of the ARPANSA code in 2005; recommendations in 2003 by the esteemed European Committee on Radiation Risk for worker radiation exposure to be radically reduced (and that is a recommendation that was backed in 2009 by the US-based Institute for Energy and Environmental Research); and, also, commitments that were made by BHP Billiton itself in its environmental impact statement that a revised exposure level for workers at Olympic Dam would be prepared.

Each of these should have triggered the relevant authority, the EPA, to ask BHP Billiton to revise its radiation management plans. At the very least, on page 37 of the code, there is a trigger of 'a change in the order of 30 per cent or more in production capacity'. In 1998, Olympic Dam was producing 220,000 tonnes of copper concentrate; it is now producing around 600,000 tonnes—a near tripling of size and far more than the 30 per cent trigger. My questions to the minister are:

1. Why hasn't the EPA, as the relevant regulator, required BHP Billiton to update its radiation management plans for the Olympic Dam operations since 1998?

2. Does the EPA have the resources to adequately regulate a project of this size and complexity?

3. As minister, do you approve of such a hands-off regulatory approach for one of the most toxic substances known to humankind?

4. When will these radiation management plans be updated?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:59):** I thank the honourable member for his most important question. As a requirement of the Roxby Downs Indenture Ratification Act 1982 (the indenture act) BHP Billiton must provide regular reports to the Environment Protection Authority. The purpose of these reports is to describe results of monitoring, including radiation exposures to workers and the environment. The information is also presented to allow the EPA to monitor trends in radiation exposures.

BHP Billiton must also report to the EPA when events, such as elevation of radiation exposure levels, occur during its operations that trigger radiation protection actions. Once received by the EPA, the reports are assessed and, where necessary, further discussions are held with BHP Billiton to ensure follow-up or ongoing reports are provided to demonstrate that any mitigation measures are effective.

The Hon. Mr Parnell mentioned that he has accessed a number of reports from the EPA through FOI processes. He should know then that those documents that have been released show that Olympic Dam radiation doses from operations have not exceeded regulatory limits. In addition, all incidents reported have resulted in either no dose or insignificant doses to workers or members of the public.

It is important that these statements are made and are made publicly because the honourable member is making certain assertions or accusations about inadequacy of provisions and he needs to be able to sustain the point that there is, in fact, an evil being done here—and there is none. The documentation he has shows that the operations have not exceeded regulatory limits and there has been no dose or insignificant doses to workers or members of the public.

Incidents resulting from abnormal operating conditions that require further investigation are reported to the EPA, including summarising mitigation measures aimed at preventing recurrences. While the documentation shows increased radium in the air sampling between July and December 2011, these increases were noted in ambient air sampling and found to be caused by natural variation in radium levels at depth in soil that was disturbed during routine civil works projects being conducted at the Olympic Dam village.

The documentation also reveals that small traces of polonium 210, which is a decay product of uranium that is present in unrefined copper, are released into the smelterer's dust, leading to a potential exposure source. Exposure to this dust is monitored and controlled through

process changes and work rules for respiratory protection. The EPA has assessed BHP Billiton's monitoring and control strategy and is satisfied, I am advised, with the measures taken to date to control exposures to this emission source. It is also important to note that doses reported by BHP Billiton are worst case, as it assumes no respiratory protection is worn by workers. I am advised that the use of respiratory protection significantly reduces doses.

Overall, the actions taken by BHP Billiton ensure that exposures to workers are kept as low as reasonably achievable and within regulatory limits. BHP Billiton has acknowledged that under the indenture act it is not required to provide the subject reports, but the cooperative relationship maintained by the EPA has been a key factor in the information being made available under the FOI applications that the honourable member mentioned.

## OLYMPIC DAM

**The Hon. M. PARNELL (15:02):** I have a supplementary question. I thank the minister for his answer, which bore no relation to the question. I asked about radiation management plans not reports. My question is: when will these radiation management plans be updated and, if you do need to bring an answer back in relation to that question, will you commit to ensuring that these plans are published in the public realm so that we do not have to chase them under the Freedom of Information Act and wait 10 months for a response?

**The PRESIDENT:** That is stretching the rules about supplementaries, given your opinion and your comment but, minister, you will see fit to answer it as you will.

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:02):** Thank you, Mr President. There might be one nugget in that supplementary, omitting all the commentary, as you suggested. I will have a look at the plans, as the honourable member has asked, and I will consider whether it is appropriate to bring back a response.

## JOURNEY TO RECOGNITION CAMPAIGN

**The Hon. K.J. MAHER (15:02):** My question is to the Minister for Aboriginal Affairs and Reconciliation. Will the minister inform the house about the Journey to Recognition campaign that recently passed through Adelaide?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:03):** I thank the honourable member for his most excellent question. I guess it is not just because he was there at the march, but I am sure he has an ongoing and abiding interest in these matters—and if he didn't, his mother would certainly make sure that he did. Last weekend I had the pleasure, together with many members of this place—and both the Premier and the Leader of the Opposition in the other place—to join the many South Australians on the Journey to Recognition campaign.

The Hon. Kyam Maher has spoken about this campaign in this place previously, but for the benefit of everyone here today I can advise that the campaign, a division of Reconciliation Australia, was born out of the realisation that much more was needed to be done to bring about an awareness of the processes of recognition for Aboriginal people within our national constitution and to bring that awareness to the wider Australian public.

The Journey to Recognition began in Federation Square on 26 May, with former AFL footballer Michael Long taking the first few steps in honour of his long walk to Canberra in 2004 to visit the then prime minister of Australia. The Journey to Recognition, however, serves a different purpose: instead of walking to Canberra to talk to politicians, the journey is travelling all over Australia, talking to Australians in country towns and suburbs and cities, spreading the message of recognition and the campaign for a successful referendum outcome. As I have said previously, this campaign was born out of the realisation much more needed to occur to ensure the electorate was properly informed about the proposed referendum to recognise Aboriginal Australians in the constitution. Accordingly, the federal government has made the decision to delay the original date for the referendum in recognition that much more engagement and discussion within the Australian population is required to ensure the referendum becomes the success that we all hope it will be.

Nevertheless, as an interim step towards recognition the federal parliament passed the Aboriginal and Torres Strait Islander People's Recognition Act in February 2013. In March this year we, in South Australia, passed the Constitution (Recognition of Aboriginal Peoples) Act 2013,

which is a very similar piece of legislation. This act in South Australia recognised the Aboriginal people as our state's first inhabitants and it also recognised the inherent richness the collective Aboriginal communities provide to the cultural fabric of our state. I am sure every member of this chamber would agree that it was an incredibly rewarding process to be part of.

Nevertheless, if we are serious about the act of recognition, serious about proclaiming the identity of our Aboriginal peoples and serious about paying them the proper respect they deserve as our nation's first peoples, we need to alter the nation's constitution—Australia's most important rule book. As every member here knows, amending our national constitution is not an easy thing. There have only been a very few successful referenda in the past and, whilst we are all certainly confident about this reform passing, we need to make sure that every community and every Australian hears about the recognition campaign before they go to fill out their ballot paper in the referendum and that is what the Journey to Recognition walkers have done over the last few months—travelling from Federation Square across Victoria, into South Australia and step-by-step talking to people on a one-on-one basis.

The journey has passed through many South Australian country towns on the way—Bordertown, Keith, Tintinara, Tailem Bend, Murray Bridge and Stirling. On Sunday 30 June the journey made it to Adelaide where they walked right down King William Street and into the Festival Centre where a reception was held for their arrival. There was a great turnout. Walkers and supporters came out in their droves to support the Premier in Victoria Square, who had the pleasure of welcoming them to our city of Adelaide and thanking them for their very keen involvement and also for their blisters.

The journey is now, of course, heading towards Uluru. I am advised that that distance is not being covered by foot, that they will be taking some assistance through motor vehicle access to get up there, but will be passing through Port Augusta and Coober Pedy.

On behalf of most of us in this chamber, probably all of us, we want to congratulate the walkers on their efforts to date and wish them all the best as they continue to spread the message about why this referendum is so important and why we should all be voting yes. The government of South Australia stands by to lend the campaign support and I am sure members of this chamber will as well. I commend their efforts to the chamber.

## CITY OF ADELAIDE PLANNING

**The Hon. D.G.E. HOOD (15:07):** I seek leave to give a brief explanation before asking a question of the Minister for State and Local Government Relations concerning reports about a 'conservative attitude in Adelaide to tall building projects'.

Leave granted.

**The Hon. D.G.E. HOOD:** *The Advertiser* today, as members would be aware, features a report on page 4 about high-profile architects who proposed building a tower of some 108.5 metres tall in the CBD, which would make it the second tallest building in Adelaide. Asked whether such a large-scale project was likely to be approved, the proponent of the project said:

> Probably not, because Adelaide is verging on conservatism and we've got to get it past the Government Architect, the Development Assessment Commission and council, so it's a daunting task.

He added:

> Adelaide has been considered by other states like a circus tent—looking down from Westpac House and fanning out.

My questions to the government are:

1. What measures is the government taking to ensure that this and other significant investments are not strangled by red tape and lost to other Australian capital cities?

2. Given that the height of the building, at 108.5 metres, would only just put it in the top 50 building heights in Australia, why is there not a speedy passage for this development?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:09):** I thank the honourable member for his most important question. Indeed, it goes to some very challenging policy issues. Unfortunately most of those actually come under the purview of planning, so I am happy to refer those questions to the Minister for Planning in another place and bring back a response.

Although this is obviously not my ministerial area of responsibility, nevertheless I do just want to put on the record briefly that this government has indeed been very concerned about some of the matters that the Hon. Dennis Hood has raised today, in terms of issues of being able to expedite developments and to be able to reduce red tape and other regulations around developments and planning approvals. Already the Minister for Planning, the Hon. John Rau, has put in place a number of initiatives to assist with that, and I know that he continues to put his mind to these matters and to look at ways of improving access to developments without compromising, obviously, public amenity, safety and those sorts of things.

One initiative that was put in place some time ago that honourable members will be aware of is that large development projects—I just cannot remember whether it is over five million or 10 million—

**An honourable member:** Ten million.

**The Hon. G.E. GAGO:** Ten million—in the CBD were taken out of the hands of the Adelaide City Council and given to a specific planning authority. That was to address some of the issues of delays and some of the fairly conservative elements that had been in the Adelaide City Council at the time, that were very reluctant or very slow to approve large developments. That is one initiative.

I know the Hon. John Rau has also put in place significant measures around improving the heights of buildings as well, lining up with our 30-year plan, mapping our main transport corridors, and bringing about changes to the height regulation of buildings along those corridors so that we can develop higher density residential developments and other commercial activities along those corridors whilst leaving our green leafy suburbs basically unchanged.

They are a couple of things that we have looked at already. As I said, I know the Hon. John Rau has a particular passion for this area, and I know that he continues to work in this area to bring about improvements. However, as I said, I will refer those questions to the Hon. John Rau in another place and bring back a response.

## ADELAIDE THUNDERBIRDS

**The Hon. T.J. STEPHENS (15:12):** I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the Adelaide Thunderbirds.

Leave granted.

**The Hon. T.J. STEPHENS:** The Adelaide Thunderbirds have had a stellar season, culminating in their winning the second semifinal and going straight into the grand final to be played in Adelaide the weekend after next. I am sure all in this place wish them every success. My concern is that, if they do secure the trans-Tasman championship, this government will immediately acknowledge that success with a state reception, as is afforded to other national championship teams, unlike the appalling way this government forgot to celebrate a recent QUIT Lightning women's basketball success, only acknowledging that after calls from the Liberal Party. My question is: can the government and the Minister for the Status of Women guarantee that, if our state's beloved Thunderbirds win this year's championship, the government will act swiftly to organise a state reception to acknowledge their magnificent season and success?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:14):** Indeed, I was able to spend some time out on the steps of Parliament House before parliament commenced this afternoon with members of the team and was lucky enough to have my photograph taken with some of those incredibly tall women. I am incredibly supportive of our Adelaide Thunderbirds and very proud of them, and I want to put that on the record. Like all members here in the chamber today, we are very proud of their achievements, and we wish them well in the finals, which are coming up in a week or so.

I am also a particularly passionate advocate for netball, and other sports that are dominated by women, where there are often very high levels of participation. Netball is a sporting activity that has one of the highest levels of public participation, yet unfortunately it receives very little recognition, even at the elite level, like our Thunderbirds. Although it is great to see the recognition they have been receiving, I do not believe it is anywhere near the level they deserve.

It is the same with a lot of sports. You see women in golf, in tennis, even at the elite level they do not receive anywhere near the same recognition or, for that matter, the same prize money or sponsorship—

*The Hon. J.S.L. Dawkins interjecting:*

**The Hon. G.E. GAGO:** Well, I don't believe, overall, that our elite sportswomen receive anywhere near the same level of recognition, prize payments or sponsorship deals. There may be some exceptions to that, but they are rare. There is still a great deal of inequity that occurs within our sports, so it is wonderful to see our Adelaide Thunderbirds around town today promoting a wonderful sport, netball. I used to play netball; I was a keen netball player for many years—

**The Hon. J.S.L. Dawkins:** What position?

**The Hon. G.E. GAGO:** First goal, because I was always considered so tall—

**An honourable member:** First goal?

**The Hon. G.E. GAGO:** Defence—with my height it would have to be defence. I always wanted to be a goalie, but I was too tall to be a goalie. Although I was dwarfed out there today, in my time I was considered extremely tall for a women and played first defence, even though deep down I am a frustrated goalie. That aspiration was never to be.

In relation to the sorts of recognition if, and as we hope, these women do win the grand final—and I am most confident—obviously it is a matter for the Minister for Recreation and Sport, and no doubt the Premier will have a view on these matters as well; nevertheless, I can assure honourable members that these women will be given the recognition they deserve. I wish them all the very best.

## BARWELL BOYS EXHIBITION

**The Hon. R.P. WORTLEY (15:18):** I seek leave to make a brief explanation before asking the Minister for Regional Development a question regarding the Barwell Boys exhibition.

Leave granted.

**The Hon. R.P. WORTLEY:** I understand that the minister recently attended an event marking the centenary of the first arrivals in South Australia under the British farm apprentices scheme, known as the Barwell Boys scheme. Can the minister tell the chamber more about this significant event?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:18):** I was delighted to be able to attend an event at the Migration Museum recently. It is a great museum; if members have not been there, or have not been there recently, I urge them to go. It was the launch of the Barwell Boys exhibition, which was fascinating. It is a really important part of our history, and a very interesting part of our state's history as well. The launch of the exhibition was an opportunity to remember the journeys, contribution and legacy of the apprentices to South Australia.

The farm apprentices scheme began at a significant time in the economic history of both Britain, which despatched these young boy migrants, and of course South Australia, which was their destination. Both Britain and Australia were attempting to rebuild and reconstruct industry and community following the horrors of World War I, an event so devastating that it was called The Great War, or the war to end all wars.

The loss of thousands of our young, healthy men in that conflict changed society, our communities and many families. It had a profound effect on a country with an economy based at the time in agriculture—and agriculture which was reliant on people power rather than machines. So, manpower shortages and the need for youth, energy, hard work and support were paramount.

South Australia looked to Britain. Britain in those post-war years suffered high unemployment and, as the economy adjusted from wartime demands to peace, it was a very difficult time for many. It allowed young, mostly teenage, boys to migrate to assist with the shortage and become young apprentice farm workers in one of its colonies.

A daring plan to bring thousands of young men to Australia as farm apprentices first began in 1913-14 but was interrupted by World War I. The 28th premier of South Australia, the Hon. Henry Barwell, supported this plan as a way to help our agriculture-based economy to strive and to help

farmers and soldier settlers. The scheme afterwards took his name, and those young migrants became know as the Barwell Boys.

Some of those young men in the early scheme showed the same sort of mettle as I think our early pioneers did: they were strong, daring and brave. At least five of these young men were mentioned in dispatches during the war; one in particular, Charles William Stoerkel (later known as Charles Tanner) was decorated with the Military Cross and Bar and recommended for a Distinguished Conduct Medal. His medals are on display at the Australian War Memorial, and they and others lay claim to the notion that our farmers were indeed our heroes.

Such heroism was needed in those early years of taking steps on a long journey to the unknown. The brave boys of the Barwell scheme who took the first steps towards migration in South Australia were amongst those who dared travel to the other side of the world. I cannot imagine what it must have been like—foreign and remote, away from their families and their friends, in heat, where the insects bit; they were located in very remote places.

The contribution of the Barwell Boys is significant, as their commitment to work and learn in remote and rural South Australia helped to continue the establishment of excellence in food production and ongoing development in primary industry. Often they travelled hundreds of miles to places which were vasty different to their native Britain. The Barwell Boys were lured originally with advertisements offering endless sunshine and good working conditions and pay, plus room and board.

Over several years, many thousands of applicants flooded to take part in the exodus Down Under. For many of them, although the conditions were very tough here, they were still better than the conditions they faced at home. This migration was supervised by the SA department of immigration, which had responsibility for their placement, employment and welfare. I understand that it was the only Australian scheme administered by a government.

An apprenticeship agreement, setting out working and living conditions and wages, was signed by each boy so that each was assigned to a farmer for three years. The director of the time, Victor Ryan, continued correspondence with the boys and their families abroad. The conditions they met were obviously varied, and in 2001 an apology to child migrants attests to the abuse that unfortunately some of these young boys had to face.

The boys worked for both established farmers and pioneers in many of South Australia's districts, and they were instrumental in ensuring that the state's land was used to its full potential. I am advised that about 89 per cent of the state's arable land was used for growing wheat at the time, and there were boasts about the Barwell Boys' ability to drive particularly large horse teams to cultivate that land.

South Australia has prospered because of the daring and determination of these young pioneers. Their decision to travel to the other side of the world, to try something new, to learn, and to contribute to our ongoing great agricultural and primary industries has had a profound effect on this state. Along with their spirited endeavours, they helped to secure this significant and important part of our ongoing commitment to fine food, farming and primary industries and production. I commend the exhibition to honourable members; I recommend they go and see it. It was a great opportunity. There were many family members there who are direct descendants of the Barwell Boys and they were able to share the most extraordinary stories. I do not have time here today but they were truly remarkable stories, often told with great passion and humour.

## APY LANDS, RENAL DIALYSIS UNITS

**The Hon. K.L. VINCENT (15:25):** I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation questions about the availability of renal dialysis services on the APY lands.

Leave granted.

*An honourable member interjecting:*

**The Hon. K.L. VINCENT:** Renal dialysis services on the APY. Chronic kidney disease is an extremely serious health issue for many Indigenous Australians. While figures vary considerably between different studies, statistics constantly point to a higher rate of chronic kidney disease in the Indigenous community and indicate that it is especially prevalent in remote areas. At present I understand that 21 Anangu people with end stage kidney disease living on the APY lands require renal dialysis to stay alive, the majority of whom receive treatment in the Northern Territory.

Chronic disease is a systemic issue in remote communities and is exacerbated by a range of unique risk factors such as the poor availability of fresh fruit and vegetables, unreliable access to clean drinking water and isolation from essential health services. Given all of this, I was very disappointed to read news reports on Monday that the state's Minister for Health, the Hon. Jack Snelling MP, had turned down the offer of federal funding to establish a renal dialysis unit in Pukatja due to concerns about the costs of running that unit.

This is a service that could significantly improve the quality of life of people with end stage kidney disease on the APY lands. The refusal to even consult with the community regarding the establishment of services represents nothing less than a complete failure by this government to address this systemic health issue head on.

There is far more to this issue than a simple question of dollars. The cost and disruption of sending dialysis patients to Alice Springs or Adelaide for treatment was highlighted by every service I spoke to during my trip to the APY lands last year as a major obstacle in the delivery of primary health services on the lands.

Without the Minister for Health having undertaken the consultation requested by the federal government, I would be interested to know how the Minister for Health has determined that flying all of those on the APY lands who require dialysis to Alice Springs or Adelaide and paying to keep them in hospital is more cost effective than providing a local service in Pukatja. Even if this is in fact the case, I regard making a decision on this matter based solely on the financial cost, without giving proper regard to the social and cultural life of Anangu people to be a grave error.

Given the choice, Anangu people overwhelmingly prefer to receive whatever services they can on their lands. The time is long overdue that we should respect their relationship with the land and facilitate people with chronic illness or disability to remain on their land as long as possible. My questions to the minister are:

1. Given that chronic kidney disease is a serious systemic issue on the APY lands, will the minister intervene to ensure that the consultation regarding the establishment of a renal dialysis service on the APY lands is undertaken?

2. Does the minister believe that a renal dialysis service on the APY lands could significantly improve the lives of many Anangu people living with end stage kidney disease?

3. Does the minister believe, as does the Minister for Health, that the social and health benefits of such a service would be outweighed by the financial costs of running the service?

4. Will the minister undertake to make available to the parliament the exact costings upon which this belief is based?

5. Was the minister aware of the Minister for Health's decision to refuse to consult the community and turn down federal funding for renal dialysis services?

**The CHAIR:** Before I call the Minister for Aboriginal Affairs and Reconciliation, please ignore the opinion and the debate, and also parts of that question should be directed to the minister in the other place.

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:29):** Well, indeed, and that would have been my opening remark. I thank the honourable member for her most important question and her ongoing and significant support for these issues. As you have commented, sir, the matter does fall under the portfolio responsibilities of the Minister for Health and Ageing in the other place, and I think I have answered part of this question at least in the past, so I can reiterate a few points.

Members will probably be aware that, in 2011, the Central Australia Renal Study was released by the Australian government. The study recommended a hub and spoke model of service delivery for dialysis patients from central Australia, with Alice Springs as the hub. Members may also be aware that the Northern Territory government has decided not to progress the development of an accommodation centre for renal dialysis patients in Alice Springs as they are unable to meet the ongoing operational costs of the centre. They handed back $13 million to the Australian government because of that decision.

I am advised that an estimated 12 people from the APY lands are currently receiving dialysis in Alice Springs and a further nine people from the APY lands are receiving dialysis in South Australia. The decision made by the Northern Territory government to not progress the

accommodation centre is unfortunate because it puts pressure on that community, but I am advised that it will not impact the 12 patients currently receiving dialysis in Alice Springs.

I understand that SA Health currently provides payment for South Australian residents treated in the Northern Territory in line with agreed cross-border agreements. I am further advised that there has been no formal offer, although I need to check that given the article in the paper from the Australian government, but I will refer that part of the question the honourable member poses to the minister in the other place and seek a response on her behalf.

## MATTERS OF INTEREST

### REFUGEE EXHIBITION

**The Hon. CARMEL ZOLLO (15:31):** During the month of May, history month, History SA scheduled many events to celebrate, acknowledge and promote our state's history. I had the pleasure of attending the exhibition, Refugees and Australia, 1972-2012, to represent the Premier, the Hon. Jay Weatherill. The Hon. Jing Lee from this chamber was also present.

The exhibition traces the history of peoples from countries as diverse as Vietnam, Poland, Chile, Iraq, Sri Lanka and Somalia who have come to Australia as refugees in the 40-year period since 1972. The panels feature stories of life-changing journeys and all it entails in settling in a new country during a period of immense change and intense debate.

The exhibition represents an historical time line of those years, recording which groups came to Australia as refugees and the reasons why. It includes historical data on not just the refugees but the response from Australians, be it at the legislative level or the community level. There were plenty of statistics and laws but, more importantly, there were personal stories of people who had been refugees or those who supported them. The exhibition also rightly drew attention to the good works of volunteers in the support of refugees.

Minister Chloe Fox launched the exhibition and our Lieutenant-Governor Mr Hieu Van Le also was a guest speaker. The exhibition was particularly personal to him. Indeed, he departed from the normal speech to recount some racism the Vietnamese community received at the hands of pro-Hanson supporters going back a few years now. We forget very easily as a community just how difficult that migrant journey is for every new group that arrives on our shores.

As the Migration Museum rightly points out, there are many challenges that refugees face in starting a new life, including language barriers, lack of employment, not to mention cultural shock for many. It also makes the point with its exhibition that over the last 40 years Australia has reacted in a range of ways to people from different countries, varying from hostility and indifference to offering welcome and giving practical assistance.

I know that all would agree that the Migration Museum is in a good position to put the contemporary debate in its historical context to inform visitors. I agree wholeheartedly with the Migration Museum's words that the exhibition shows that people's attitudes, responses and arguments about refugees have stayed relatively consistent for over 40 years, ranging from people who believe that Australia should have no obligation to take refugees to those who believe Australia does not do enough.

Similarly for asylum seekers, attitudes have remained relatively consistent in either applauding policies of mandatory detention and offshore processing or in protesting against the treatment of asylum seekers.

As was also pointed out by the Migration Museum, the political backdrop has changed several times, but much of the debate has remained the same. The exhibition led nicely into Refugee Week in 2013. The theme for Refugee Week from 2012 to 2014 was restoring hope. As honourable members would be aware, Refugee Week is always held from Sunday to Saturday of the week which includes 20 June, which is World Refugee Day.

As in all things that focus on our multicultural society, the week provided the opportunity to both educate us all as to who refugees are and why they have come to Australia, and also of course to celebrate their presence. I take the opportunity to place on the record that the person who led the development of the exhibition was a former director of the Museum, Ms Christine Finnemore, who passed away in early May this year, just prior to the exhibition launch. Ms Margaret Anderson, CEO of History SA, dedicated the exhibition to her memory.

For over 25 years Christine Finnemore made a significant contribution to the preservation of cultural heritage, the development of public history and the promotion of the arts in South Australia. I know she was tremendously respected in many positions throughout her career in both curatorial and administrative roles in Arts SA and art institutions. Her presence in the preservation of cultural heritage, the development of public history and the promotion of arts in SA will be greatly missed, and I offer my personal condolences to her family and friends. Vale Christine Finnemore.

I take the opportunity to place on the record the good works of all those at the Migration Museum for bringing the exhibition together and urge honourable members to visit the exhibition, which will be running for a whole year.

## CHILD PROTECTION INQUIRY

**The Hon. R.I. LUCAS (15:36):** I rise to discuss the Debelle report, and in particular refer to the damning criticism in that report of ministerial advisers Mr Simon Blewett and Mr Harvey. There is also criticism of Premier Weatherill in that 'he misses the point in his continued defence of their actions'. It is important to note that Mr Weatherill and Mr Simon Blewett are very close friends. They are politically joined at the hip, as has been described to me, and have been long-time factional allies within the Australian Labor Party. It is certainly my view that it is disappointing that Mr Weatherill, in refusing to take any action against Mr Blewett and Mr Harvey, is putting personal friendship and factional loyalty ahead of the public interest.

One of the critical issues in the report is what is known as the missing email—the critical email forwarded to Mr Blewett and Mr Harvey. Mr Blewett indicated—and there is evidence—that he forwarded that email to a person unknown. Curiously, in giving evidence to the inquiry, he could not remember to whom he had forwarded it. At one stage he thought it might have been forwarded to Bronwyn Hurrell, the media adviser, but the inquiry had Ms Hurrell's computer checked and there was no evidence or record of its having been received by Ms Hurrell.

The other possibility, of course, is that the chief of staff to former minister Weatherill forwarded it to minister Weatherill. When they went to check the minister's computer, of course all the files had been erased, and it was unable to be checked as to whether or not Mr Weatherill had received the email. So, there was a search of Ms Hurrell's computer but, for those reasons, it was unable for there to be a search of Mr Weatherill's computer. On reading the report there appears to have been no search of the departmental backup files at all.

I refer to the record of the Cole royal commission, and a former senior federal minister indicated to me that in his view the evidence as a result of the royal commission showed that, no matter what you think you might have done when you deleted an email or cleaned your hard drive, the work of the Australian Federal Police and other forensic investigators is such that they are able to retrieve emails that people believe they had deleted from their computers or hard drives that had been destroyed.

On a quick search, I refer to a statutory declaration by the Director of the Operations Security Section of the Information and Communication Technology Branch of DFAT to the Cole royal commission. In that he refers to work that they contracted with a firm called Data Recovery Services, among others, a forensic technical firm specialising in data recovery, and in his evidence he indicates that:

> Before August 2005, such electronic systems as the Department had for backing up emails on the unclassified email system were limited to the purpose of short term system recovery in the event of, for example, a server crash. These backup systems employ electro-magnetic tapes...Essentially, when a backup is made, the information that is on the email system at the time is copied to a tape, and the tape is then stored and kept until the next backup tape is made. In practice this means that backup tapes could be, and sometimes were, overwritten within forty-eight hours.
>
> The backup systems are not designed to permit emails to be archived or retrieved.
>
> However, with sufficient time and resources, the backup systems can be used to reconstruct historical email files where those files have been captured on the backup tape.

His stat dec goes on to indicate how they were able to retrieve, using that process, some information of value to the Cole royal commission.

It is certainly my view that that searching of backup files and tapes within the department does not appear to have occurred. Whilst there is no evidence that Mr Weatherill received the email, because his tape and hard drive had been cleaned, curiously, there was also no evidence

produced in the Debelle report that Mr Weatherill did not receive the email and that the evidence of that was destroyed through the process that has been described.

In my view it certainly raises some very important questions, which are still unanswered and need to be considered further by way of further investigation and inquiry, including forensic investigation of backup systems a la the Cole royal commission.

## ST VINCENT DE PAUL SOCIETY

**The Hon. D.G.E. HOOD (15:41):** I rise today to speak about the St Vincent de Paul Society, which I am sure is better known to most people by its nickname or shortened version, that is, Vinnie's. Although we know the public face of this organisation—and we know it very well—and something about the various services that it provides, I was not aware of its history and background and I found it most interesting and, hence, the reason for my relaying it to members today.

The St Vincent de Paul Society raises money through corporate and private donations. government grants and the sale of clothing, toys and household items through the familiar Vinnies Family Centres. Most labour is on a volunteer basis which helps to keep costs down. There is a wide range of services provided by the society including an emergency men's shelter for those experiencing homelessness. It is called the Vincentian Centre and has been operating continuously since 1961. It is located in Whitmore Square. This service can accommodate up to 49 men each night. It provides meals, showers and a clean, safe and dignified environment to stay. The centre also links men with other services that assist in breaking the cycle of homelessness.

Throughout Australia the society operates a number of disability vocational services that coordinate supported employment for people with intellectual or physical disabilities. The aim is to provide an opportunity for people living with a disability to learn and develop skills through meaningful employment in a productive and positive environment.

The Frederic Ozanam Housing Association provides affordable housing for low-income earners including the aged, refugees, single-parent families and people living with a disability. Properties are located throughout the metropolitan area.

Trained budget counsellors are available for critical life incidents such as unemployment, displacement or chronic illness. Long-term effects of welfare dependence includes loss of self-esteem and a sense of powerlessness. Counsellors address this by taking the time to assist people to use improved budget strategies and to develop practical ways of living successfully and within their means.

Fred's Van is a service that feeds the homeless and hungry at seven sites across Adelaide, and there is a site in Port Lincoln. This vital service provided over 24,500 meals and distributed some 2,500 blankets and 1,000 books in the last year alone.

The St Vincent de Paul Society also plays an active part in helping newly arrived migrants and asylum seekers at a time when assistance is critical to them. In addition to emergency accommodation, the society provides ongoing counselling, housing and immigration information, material assistance, and advocacy where required. Time prevents me from detailing all the services offered and this is just a short list of some of the main services.

I do wish to provide a short history of the society, however. It has its roots in early 19$^{th}$ century Paris. At that time there was great social upheaval following the French Revolution. Many people moved to the city to find work but, of course, there was very little to be found. In 1832 a cholera epidemic swept through Paris killing up to 1,200 people per day. Slums quickly formed and homelessness, disease and starvation were common.

A young Catholic student by the name of Frederic Ozanam walked through the poorer suburbs on his way to university lectures. He saw firsthand the poverty and hopelessness around him. Ozanam and a group of friends were determined to satisfy their conscience and devote themselves to assisting those in need. They adopted the name, the Society of St Vincent de Paul, after the patron saint of Christian charity. They worked with nuns to visit people in the poor district. Within a year their numbers had swelled to 100, and in its first decade the society spread throughout 48 other cities in France and Italy and membership numbers grew to over 9,000. After some years, the society spread to Rome, England, Belgium, Scotland, Ireland and the United States of America.

Today, the society has about 700,000 members worldwide and operates in 148 countries. Many Catholic volunteers dedicate their time and resources to assist those in need in the

community. In Australia, the society has engaged over 40,000 members and has many more volunteers. Vinnies Youth, the youth membership arm of the society in Australia, engages young people from the ages of 10 to 30 in the society's many works throughout the country.

The society recently held the CEO Sleepout throughout Australia, which members would be aware of, in order to raise awareness of homelessness and raise funds to assist homeless people. Since the inaugural Vinnies CEO Sleepout, Australian executives and members of parliament and others have raised over $8 million to support the society's work for those facing homelessness. The society is an excellent example of how ordinary people who deeply care about those around them can make a real difference to society, and Family First wholeheartedly commends the work they do.

## PATIENT ASSISTANCE TRANSPORT SCHEME

**The Hon. J.M.A. LENSINK (15:45):** I rise to speak about the Patient Assistance Transport Scheme, otherwise known as PATS, and the poor systems which are more than likely denying country patients access to funds they are entitled to.

The PAT Scheme entitles people who live more than 100 kilometres from their nearest treating specialist to subsidies, including a fuel subsidy of 16¢ per kilometre and an accommodation subsidy of $30 a night. A person who is accompanying the patient, known as an 'escort', can also receive a subsidy separately. The number of nights that patients and their escorts are entitled to is not clear, and this is the reason for me raising this issue.

Together with Troy Bell, the Liberal candidate for Mount Gambier, I met with a gentleman last week who outlined his experience with the PATS. He pointed out to us that the physical booklet, which was published three years ago, states that both patients and their escorts are entitled to up to 90 days within a 12 month-period, that the forms do not contain any information and that the website, under the section Patient Assistance Transport Scheme Clinical Criteria for Escorts, states the following:

> Accommodation costs for patients are limited to three months. Accommodation costs for escorts when the patient is hospitalised are generally not supported because the hospital provides active support, and emotional support is not eligible. Accommodation costs for escorts are paid when a patient is hospitalised in a life threatening situation for up to seven days.

The 24-page information booklet on the website does not mention the number of nights but that 'the medical specialist must state on the form the number of nights of accommodation required'. The FAQ booklet on the website, which interestingly is dated May 2013, uses the same discouraging language.

This particular chap I met with Troy Bell last week underwent treatment in February-March and lodged his original application in the second week of March. He received payment for fuel and accommodation but not for his wife as his escort. He phoned PATS and was told that, as his condition was not life threatening, they were not eligible, and he was told to get the specialist to resubmit the form. PATS said that in the original form the specialist used standard medical abbreviations, so the specialist wrote out those things in full.

Several phone calls and visits later, this gentleman was finally paid for 14 days. More calls led to him being paid an additional seven nights, even though his specialist had sought 35 days, so he sought the assistance of the Health and Community Services Complaints Commissioner, who is as frustrated with PATS as this gentleman. The explanation PATS gave to the commissioner is interesting. They define life threatening situations as, for example, 'in an intensive care unit', whereas this gentleman had aortic valve surgery—a fairly serious thing to undergo.

Part of the mix-up, they said, was due to the inclusion of 'medical terminology' rather than PATS terminology, and I found that quite surprising as somebody who spent the first years of my professional life working in the public hospital system. Medical terminology is fairly standard and anybody, from medical specialists through to allied health nursing and ward clerks, understand it, so how PATS has different terminology is really beyond me. Furthermore, they state:

> If a patient in these circumstances had been accessing their health services through a public hospital, PATS could have sought clarifying information from the hospital.

This indicates that private patients are treated differently, which I think is a form of very strange discrimination. The gentleman has had to chase up PATS on several occasions. Until recently, they never used to actually notify people of the success or otherwise of their claims. This is a lot of

money for pensioners with health problems, and it is just through the determination of this gentleman that he has been able to get some of his entitlements.

His chief issue is that there is conflicting information and that the terms of the scheme may be being changed by PATS. Certainly, their verbal advice is in conflict with their printed advice. It is welcome that there is a review being undertaken; however, it does not include the overall funding amount, as it states that it is 'costed within the existing PATS funding envelope', and we know what that means. Interestingly, the dynamic link from the Country Health SA website did not work and told me that the page was not available. Clearly, for a number of country patients this is like pulling teeth.

Time expired.

## STRATHMONT CENTRE LIBRARY

**The Hon. K.L. VINCENT (15:51):** A fortnight ago in this place, I asked questions of the Minister for Disabilities in another place regarding the Department for Communities and Social Inclusion's Strathmont library, a specialist library for the disability sector and the only government library of its type in this country. To date, I still have not had an answer, of course, to the questions I have asked the minister, and I would like to put on the record some of the responses and concerns that have been expressed to me in my office since I asked those questions. I have been contacted by people with disabilities, their families, health professionals and others in the disability sector, including workers, who are angry and disappointed by this decision.

I would like to know what has been the process of this decision. As I understand it, staff first heard that this was a fait accompli in a DCSI update emailed by Peter Bull, executive director for community engagement, on Thursday 6 June. However, I am told by those in the know that it had been planned for some months. It seems that no consultation at all has occurred with staff, clients or unions. In the two weeks since, many staff within disability services have voiced concerns with their colleagues, to managers, and directly to the officer who is in charge of managing the closure.

My understanding is that the two specialist librarians and library assistant have been offered redundancy packages and that no more book purchases are to occur. From 15 July, there will be no more book interlibrary loans; from 31 July, no more loans at all from the collection; and from the end of August there will be no more article interlibrary loans. All staff are to be gone or redeployed by the end of September, and the closure and the collections moved to another site will be effected by the end of October.

It is very important to understand that what is being closed is not just a library. What is being closed is formally known as the 'library and information service'—library and information. It is the latter part of this title that conveys the most significant issues involved. Peter Bull's update made no mention at all of: (1) ongoing funding for maintenance and development of the collection; (2) ongoing funding for article acquisition fees for anyone wanting to obtain published articles via the library in its new location; and (3) the many services that the library provides, other than its shelf collection.

These services include cataloguing and managing loans of professional assessments and resources within the disability system, provision of interlibrary loans, provision of the article acquisition mentioned above, maintenance of electronic and file-based article subject catalogues, expert searches of Medline and similar industry databases, and so on.

What are the implications? First, Peter Bull's contention that moving the library to a community location will improve public access seems pretty shaky. While its location at some central point, such as the Barr Smith Library, may make some sense from an access point of view, I actually think that physical location is of minor importance. Strathmont Centre is closing, so no doubt finding some other location would have been necessary eventually. The real issue in the 'relocation' is the withdrawal of commitment to the library's ongoing maintenance, through updating the collection, and the continuation of personal services carried out by its staff. The relocation is a stalking horse in achieving these further outcomes.

It also seems that the closure will have significant implications for the professional work within disability services. The organisation's professional staff—many occupational therapists, psychologists, social workers, speech pathologists and developmental educators, but also nurses, dietitians, medical officers, physios and music therapists, among others—are relatively small in number and spread thinly across the metropolitan and regional areas. They have enormous but

important workloads and have to contend with the highly complex situations and characteristics of a community experiencing the most complex and disabling situations and conditions.

Disability services has traditionally functioned as the service of last resort to whom the community turns when other services can no longer assist or run out of expertise. Frequently, staff and clients have to contend, together, with a range of physical, health, psychological, behavioural, developmental and social issues with little or no organisational support. It is very clear that this library is more than a shelf collection for people in the community and, with the advent of DisabilityCare or the national disability insurance scheme, this is not a service that we in the community can afford to lose.

## MANDELA, NELSON

**The Hon. R.P. WORTLEY (15:56):** I rise today to honour a personal hero of mine and, I expect, of many in this place. So much of our time here seems to be spent in hostility and combat. True, robust discussion is part of parliamentary life—and I am certainly no shrinking violet when it comes to that—but in a quieter moments I think we would all do well to pause and reflect on what inspires us and what motivates us to keep going in what, to many, is a fairly thankless role.

So I would like to take a moment to look back at the life of one of the most recognisable human rights figures of the 20th century. Nelson Mandela stands with Mahatma Gandhi and Martin Luther King as a towering exponent of human rights for all. Mandela became active in the civil rights movement in his early 20s, studied law and joined the African National Congress in 1942. He spent 20 years organising non-violent, peaceful acts of resistance against the racist South African government, culminating in 1961 in a three-day national workers strike. For this he was sentenced first to five years in gaol and then, in 1963, to life imprisonment for sabotage.

Of Mandela's 27 years in prison, 18 were spent on Robben Island; his cell small, his bed the floor, hard labour his daily lot. He had one visitor a year for 30 minutes, and he wrote and received one letter every six months. Most would crumble, but Robben Island was the crucible that forged the man I salute today.

Mandela received enormous international support during his incarceration; indeed, his refusal to renounce his struggle against apartheid sparked reform in Australia, with the abolition of the White Australia policy during the Holt and Whitlam governments. Fraser was equally committed to reform, often against his own party's wishes, but it was the Hawke government that drove the internationally coordinated economic sanctions that resulted in Mandela's liberation in 1990.

Elected president of the ANC in 1991, he and then president F.W. de Klerk—who had replaced the racist P.W. Botha and allowed Mandela's unconditional release—were jointly awarded the Nobel Peace Prize in 1993 for their efforts to dismantle apartheid. In 1994 Mandela was inaugurated as South Africa's first black president, a position he held until 1999. He presided over the transition from minority rule and apartheid, winning international respect for his advocacy of national and international reconciliation. A friend of Australia, Mandela marked our Reconciliation Day in 2000 by publicly stating his hope that:

> in the near future [Indigenous people] themselves will say 'we now feel we are part and parcel of Australia. All the opportunities are offered to us.'

Mandela wanted neither white nor black domination during his life. He sought democracy, a free society and equal opportunity for all. These are the ideals for which, like Gandhi and Martin Luther King, he was prepared to devote—and to give, if required—his life.

This man of enormous stature yet great humility rests now in a frail condition. It is clear that the strength Mandela provides his country will never be forgotten, and that is why I pay tribute to a true hero, Nelson Mandela, a spirit which he would not allow to be crushed.

## LIQUOR LICENSING

**The Hon. T.A. FRANKS (15:59):** I rise to speak today on the mixed messages this state government is giving on support for live music. I draw members' attention to a recent media report, 'Police hit liquor licensing hurdle', which appeared in *The Advertiser* on 13 June. The story outlines that police have had a major setback, as it is described, in a bid to slap strict new liquor licensing conditions on 13 city pubs. Those pubs—and I would say they are more diverse than pubs—are: HQ Complex, Electric Circus, Lavish Club Lounge, Woolshed on Hindley, Rosemont Hotel, Zhivago, Colonel Light Hotel, The Marble Bar, White Rabbit, Dog and Duck, the Crazy Horse Revue, Strat's 108 Lounge and The Palace. Those venues—

**The Hon. T.J. Stephens:** Do they have live music at The Palace?

**The Hon. T.A. FRANKS:** They do not all have live music, and they are certainly not all pubs, as the Hon. Terry Stephens quite correctly remarks. Those venues were lumped in together by the Liquor Licensing Enforcement Branch to face the courts in June this year after an operation that was conducted the previous year. It was finalised in January this year, which was when the police put forward their case; these licensees first heard about the case in June.

The case, as it unfolded before the Licensing Court, threw all of those licensees together into one pool, with disregard to the fact that White Rabbit and The Marble Bar no longer exist. They lumped them all in together because they claimed to all be on Light Square and Hindley Street. Several of those venues are on neither; certainly, Zhivago is on Currie Street and used to be on Light Square several years ago. But, it is no longer next to Savvy Bar Lounge, where we know there was a murder; I note that bar was not one of those selected by the police to face this strict crackdown.

I draw members' attention particularly to HQ, because the evidence given against HQ drew on reports from Kings Cross, which is even a little further away than either Hindley Street or Light Square, to West Terrace, where HQ is located, and talked about 15 Army personnel who had attempted to enter the premises by force. Police were called to that incident, and I believe capsicum spray was employed. I would draw to the attention of the Liquor Licensing Enforcement Branch that that is not necessarily the fault of that venue, and it has certainly not boded well for that venue in feeling that they can call on the police for assistance.

However, what I am particularly concerned about is that the police have recommended to the courts that the band room in HQ be taken from 1,100 capacity, as it is now, down to a capacity of 700. This would have a massive effect on live music touring bands in this state. It would leave us without a medium-sized venue as an option.

Certainly, in upcoming tours, we would not see the likes of Tame Impala, Boy & Bear or the Foals, or the Hoodoo Gurus, in recent years. There would in fact be no venue between that size of around 700 up to the capacity of the Thebarton Theatre, which is 2,000. So, that would leave a gaping hole in our live music touring schedule and, as I said, it is a mixed message from this government. On one hand, the Weatherill government says 'We support live music', but on the other hand, we are cracking down on these venues.

These venues have all been lumped together yet they are varied in their sizes. The police case put that these venues were also lumped together because of their capacity (that being over 300). I would say that The Marble Bar is under 300, Zhivago was under 300—it is now 350, but as I also said, it does not actually exist on Light Square anymore—Strat's is 250, White Rabbit is 165, and Lavish is 200. These are smaller venues under the government's determination. There is no rhyme or reason why these venues has been picked and, as I said, Savvy Bar, for example, where there was a murder, has not.

I call on the government to also consider why they are doing this, on one hand, when the Late Night Trading Code of Practice, which will implement lockouts, polycarbonate and tempered glass, marshals for the drinks, and monitoring such as metal detectors—all of which HQ currently employs—will take effect from 1 October this year and will come into practice, and yet all these venues have been singled out for this strange dragging through the courts with little regard for the processes of consultation with these venues currently going on with the Late Night Trading Code of Practice.

## ROAD TRAFFIC (OVERTAKING BICYCLES) AMENDMENT BILL

**The Hon. M. PARNELL (16:05):** Obtained leave and introduced a bill for an act to amend the Road Traffic Act 1961. Read a first time.

**The Hon. M. PARNELL (16:06):** I move:

That this bill be now read a second time.

The Greens private member's bill that I introduce today aims to promote the safety of cyclists by amending the Road Traffic Act to provide for a minimum safe passing distance that must be observed by motorists when overtaking bicycle riders on the road. This bill and others like it are being introduced around Australia at the request of the Amy Gillett Foundation, and I want to acknowledge the work of the foundation on this issue.

As many in this house would know, the Amy Gillett Foundation was born out of tragedy—the death of cyclist Amy Gillett, who was hit by an out of control motorist while cycling with her national teammates in Germany. The foundation aims to prevent such tragedies from occurring in the future, and advocating for law reform is a key component for making cycling safer.

I acknowledge the presence in the gallery today of Amy's mother and father, Mary and Denis Safe, and I acknowledge their ongoing advocacy for cycling safety. Mary has written to many members of parliament, urging law reform to make cycling safer. She tells me that the response she has received so far is encouraging. I also acknowledge Amy's husband, Simon Gillett, and also Tracey Gaudry, CEO of the Amy Gillett Foundation, who is here in Adelaide today for the South Australian launch of the Amy Gillett Foundation Share the Road tour which will be held in just a few hours' time.

Also, I need to acknowledge the presence of Senator Penny Wright in the gallery who, as many members would know, campaigned for the Senate from a wheelchair having been hit by a car whilst riding her bicycle in 2010.

**The Hon. T.J. Stephens:** And she has been long suffering.

**The PRESIDENT:** Order!

**The Hon. M. PARNELL:** As everyone knows, cycling is a great sport, it is great recreation and it is a great form of transport. It is good for your health, it is good for the planet, it is cheap and it reduces congestion by occupying less of the road. Another benefit often overlooked is that cycling provides mobility for those who cannot drive, particularly young people. It opens up opportunities and helps develop independence.

According to research conducted by the Cycling Promotion Fund and supported by various state and territory governments, countries where people use active transport have lower rates of obesity. In Denmark where many people cycle to work, it has been shown that commuting cyclists have a substantially lower mortality rate. A recent study of 7,000 Australians showed that those who drive a car to work are 13 per cent more likely to be overweight or obese and are less likely to engage in adequate levels of physical activity. We know that lack of physical activity is second only to tobacco as the most important health risk in Australia. Regular physical activity increases life expectancy and reduces the risk of chronic illness or death.

However, cycling is not without risk and there is still an average of 35 cyclists killed nationally each year on our roads, and a further 9,500 cyclists are seriously injured as a result of collisions. Nevertheless, cycling is not of itself unsafe and, in fact, has lower injury rates than many other forms of sport, exercise and active recreation. In fact, when you look at hospitalisation figures per 100,000 participants in various sports, we see that cycling ranks lower than netball and basketball, certainly lower than the contact sports like rugby and football, and only about a tenth of wheeled motor sports.

Whilst cycling injury rates are far below other activities, they can be improved. Most cycling is conducted on public roads, and that is where the main improvements can be made. In 2011 there were 4 million cyclists nationally and bicycles have outsold cars in Australia every year for at least the last decade. In terms of individual benefits, one study has suggested that regular cycling provides a net benefit to personal health that outweighs its risk of injury by a factor of 20 to one.

For years advertising campaigns exhorting us to share the road have tried to modify attitudes, particularly amongst motorists. Other strategies have relied on the assumption that if we can encourage more cycling then there will be safety in numbers, which was in fact the title of the state government's own cycling strategy, a strategy which has now expired and is yet to be replaced.

The bill before us proposes a one-metre minimum overtaking distance to provide a protective space between bicycles and overtaking cars, trucks and motorbikes. The objective is to reduce the risk of crashes and therefore reduce the rate of injury or death. On higher speed roads the distance needs to be greater, and the bill sets it at 1.5 meters. In a nutshell, that is what the bill does. It is very simple. So why is it needed? At present Australian Road Rules, Rule 144 provides:

> A driver overtaking a vehicle:
>
> (a) must pass the vehicle at a sufficient distance to avoid a collision with the vehicle or obstructing the path of the vehicle;

That rule does not distinguish between a vulnerable road user, such as a bicycle rider, or other vehicles, such as cars or trucks. The phrase 'sufficient distance' is only defined in terms of the outcome.

In relation to cyclists, if as a motorist you did not actually collide with a cyclist or obstruct his or her progress, then the distance must have been sufficient. Clearly that is not good enough. A motorist does not have to actually hit a cyclist to force them off the road or, worse still, under the wheels.

A rule that effectively says you can get as close as you like provided you do not collide is clearly inadequate. Ideally, an amendment to the Australian Road Rules is what is needed, but until that happens we need to take this on state-by-state. I am pleased on behalf of the Greens to be introducing this bill today, but similar bills will be introduced progressively around Australia, mostly by Greens MPs but in some cases other MPs as well.

The Queensland government is actively investigating whether it should legislate, particularly following the death of Richard Pollett, a 25-year-old musician who was crushed under the wheels of a cement truck while cycling in Brisbane in September 2011. Richard Pollett was a virtuoso violinist and was due to perform with the Queensland Symphony Orchestra when he was killed by a truck overtaking him on Moggill Road, which is a two-lane road through the suburb of Kenmore.

In May this year the driver was found not guilty of dangerous driving despite the clear evidence that his decision to overtake a cyclist on a narrow road with oncoming vehicles was the most likely reason the cyclist was killed. As the truck driver's barrister said, his client was under the honest and reasonable belief that there was enough room on the road to safely overtake him. That was enough for the driver to be acquitted. If the rules were clearer, if the understanding of motorists as to a safe overtaking distance was clearer, then perhaps this death could have been avoided.

The Amy Gillett Foundation has been working on this campaign for four years, but the campaign really goes back much further. In my experience, the first two community organisations that I joined when I came to South Australia in 1989 were the South Australian Touring Cyclists Association, now called Bicycle SA, and the Cyclists Protection Association (CPA), now called the Bicycle Institute of South Australia.

The CPA—and I am glad they changed their name—sold a T-shirt, which I still have and occasionally still wear, which has a picture of a cyclist and a car with the caption 'Give Cyclists a metre', and this is what we were wearing on the streets of Adelaide in about 1993. So this campaign certainly goes back a long way. Whilst the campaign is not new, the idea of introducing into parliament an amendment to the Road Traffic Act is new, and I am glad that South Australia is the first state whose parliament will be debating this measure.

Like all road safety initiatives, there are strident supporters and ardent critics. You only have to think about debates over traffic calming, speed humps, speed limits, compulsory bicycle helmets or changes to the graduated licensing system to know that this is an area of mixed opinions, and this measure will be no exception. Some might argue that amending the Road Traffic Act in this way might expose cyclists to more not less risk. The argument goes that, if many drivers were already allowing more than one metre, when you specify a minimum distance in legislation it might encourage them to drive closer to cyclists than they did previously. I do not accept this argument: I do not think it survives any analysis. Drivers who are already doing the right thing in terms of leaving a safe passing distance, and not overtaking cyclists unless it is safe to do so, will continue to behave in this manner.

The real targets of this law are those who have no idea what it is like to experience the road from a cyclist's perspective and who do not understand the impact their driving behaviour has on cyclists. There are also those who think that a few centimetres is plenty of space to leave a cyclist. These are the sorts of people whose behaviour is targeted and whose practices this bill seeks to modify. Without doubt, the beneficial impact of this bill will lie much more with education than it does with strict enforcement.

Then we have those who argue that the real action is separating cars and bicycles through separate infrastructure, rather than seeking to accommodate bicycles on a road network that was designed for cars. Of course, off-road solutions are the right response in some circumstances, but the reality is that every single destination that a cyclist might want to reach is on the public road network. Our houses, our schools, our workplaces, our shops and our sporting facilities are all on roads and streets, and that is how we get to them, whether it is in a car, on foot or by bicycle. All

our roads and streets should be safe for cyclists, and our laws should also reflect the right of cyclists to be on the road, as well as their responsibilities to behave lawfully and safely.

One of the most common reactions to moves of this kind is for people to say that the distance of one metre is insufficient and that no specified distance should be legislated because one metre just will not hit the mark in many cases. That is the argument for leaving it up to the discretion of the motorist. Certainly, in many situations a passing distance of one metre might not be enough, but certainly legislating that as a minimum standard is a pretty good start.

This one-metre rule was not just plucked out of thin air: it has been chosen because it is practical and it is understandable. Most people have a pretty good sense of how far away is a metre. For most of us, it is from the tip of our outstretched arm to our nose—most of us understand this. Of course, if you do not have any understanding of distance, then you should not be driving because many of our road rules require an estimation of distance. For example, you are not allowed to drive for more than 50 metres in the new bus lanes on Currie Street. Most people have a rough idea of how far that is, and accordingly they do the right thing.

It is also worth noting that one metre is consistent with the guidance currently provided to South Australian drivers by the government, so all this bill is really doing is codifying in legislation the advice the government is already giving cyclists, and that will result in less ambiguity for both motorists and cyclists. If you go to the government website, sa.gov.au, and look up under the heading 'Transport, travel and motoring' and go to the subheading 'Cyclist road rules and safety' and then go down to 'Safety tips for drivers', there are six dot points, as follows:

- Scan the road for cyclists.
- When turning or entering an intersection look for cyclists and give way as you would any other vehicle.
- Before opening your car door look behind and check blind spots for cyclists.
- You must not drive, stop or park in a bicycle lane. You can cross a bicycle lane to turn left, enter private property or park in a parking lane.
- Cyclists can legally ride two abreast. Be patient as you approach and overtake and overtake only when safe.

The last dot point is the important one:

- Give cyclists plenty of room—a minimum of one metre clearance when overtaking.

I repeat, 'Give cyclists plenty of room—a minimum of one metre clearance when overtaking.' This is the advice the government is giving motorists at present. In fact, around Australia it is the advice that is being given by state and territory governments to 95 per cent of the population. Six out of eight jurisdictions promote the one-metre standard, including here in South Australia.

What is the situation overseas? I turn to the United States. In America, 21 states have now passed a three-feet law, and all but the youngest of us here would instantly recognise that is a yard, approximately one metre—just a few centimetres less. These states are: Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, Oklahoma, Tennessee, Utah and Wisconsin, as well as the District of Colombia. One state, Virginia, has a two-feet passing law, while Pennsylvania has a four-feet passing law.

What is interesting about the United States as a case study is that it is often held up to be the jurisdiction that has, at the heart of its political culture, hostility to regulation, particularly anything that could even vaguely be described as smacking of a nanny state. To this day, there are still many states in America where seatbelts are only compulsory in the front seat and where enforcement of seatbelt laws requires the commission of an additional offence, such as speeding.

This is also a nation where public health insurance is considered a breach of civil liberties, and the right to bear arms, despite its terrible social consequences, remains sacrosanct. Yet even in that kind of political environment, where there is so much hostility to state intervention in people's lives and behaviour, US legislators have seen the wisdom of this idea. They have stepped in and amended the traffic law to provide for mandated minimum overtaking distances. If legislators can do it in the US, it really should not be that hard here in South Australia.

More broadly, there is precedent outside America; for example, the Netherlands, France, and Nova Scotia in Canada all have one-metre minimum overtaking distances. My information is that the experience overseas has been positive. It is not about conviction rates, it is about cyclist

safety. It is about educating road users and clarifying what is expected in relation to a safe passing distance.

In conclusion, this legislation is not the complete solution to making our roads safer—clearly, it is not. Those of us who were advocating for cycle safety in the eighties and nineties used to talk about the four Es: engineering, education, encouragement and enforcement. I think those principles still hold firm. This measure today is a combination of education and enforcement. All those things are necessary. A good start is to pass this bill. Another good start would be for the government to recommit to a cycling strategy for South Australia that added concrete actions and policies to the rhetoric.

I hope that all sides of politics will join the Greens and support this bill. After all, it is an opportunity for us to show national leadership on the issue of road safety. I also remind members that next year in May the prestigious Velo-city Global conference will be held here in Adelaide. It is the first time this global conference has come to Australia, and the cycling world's spotlight will be on our state and our city. Let's show them that South Australians take cycling and cycle safety seriously. I commend the bill to the house.

Debate adjourned on motion of Hon. K.J. Maher.

## PARLIAMENTARY COMMITTEES (NATURAL DISASTERS COMMITTEE) AMENDMENT BILL

**The Hon. J.S.L. DAWKINS (16:23):** Obtained leave and introduced a bill for an act to amend the Parliamentary Committees Act. Read a first time.

**The PRESIDENT:** The honourable and youthful Mr Dawkins.

**The Hon. J.S.L. DAWKINS (16:23):** There's a saying in Rotary, 'Is it the truth?' Thank you, Mr President. I move:

That this bill be now read a second time.

This is a bill entitled the Parliamentary Committees (Natural Disasters Committee) Amendment Bill 2013. This bill has evolved from the report of the Natural Resources Committee on bushfires and that work started in the previous parliament before I was a member of the Natural Resources Committee and produced an interim report. That work was finalised with a report in 2011.

A feature of the evidence that was given in both phases of that inquiry was evidence from the Hon. Iain Evans, member for Davenport, regarding the risk of bushfires in the rapidly urbanised areas of the Mitcham Hills. I think most members of this chamber would understand that the Hon. Mr Evans has long been an advocate for greater recognition of the risks of bushfire in our heavily urbanised hills areas.

In the final report of the bushfire inquiry of the Natural Resources Committee, the Hon. Steph Key, as the presiding member, wrote a very good foreword and I will quote from one paragraph, if I may:

> The Committee strongly supports Iain Evans' call for a Standing Committee on Bushfires recommending that it may be opportunistically broadened to consider all Natural Disasters, including bushfires, floods, earthquakes, riverbank collapse, tsunamis, extreme weather events, hazardous material and pollution emergencies, pest plagues and agricultural diseases. We emphasise that this recommendation should not be seen as a criticism of the existing structures in place to deal with natural disasters, or the people involved. Rather, the purpose is to raise the profile of disaster management and provide a mechanism for Members of Parliament to contribute.

In that report I think we noted the evidence from the Hon. Mr Evans and his strong view that a parliamentary committee be established to look at bushfires specifically. I would just like to indicate that, during his second appearance before the Natural Resources Committee in March 2011, committee members questioned whether there was sufficient business relating to bushfires to justify a standing committee. Mr Evans, in the committee, replied:

> Absolutely. Look, there are just so many issues that go to the question of bushfire and bushfire prevention. You have building design, the question of safe refuges, the question of whether schools and kindergartens are going to desert or whether the kids are going to stay there, infrastructure capacity, the road infrastructure capacity, safe havens. When they use the word 'safe havens', what the community expects is that, when they roll up to a safe haven, they think they are going to be safe. The reality is that no-one is going to be there, no tent, no first-aid kit; it is just really an area of last resort.

That was taken from the committee transcript, 25 March 2011.

I think that is a valuable quote and, while the committee expressed support for a standing committee, it believed there was a need to broaden that committee to take on all natural disasters.

In saying that, I think it is important to recognise that the types of issues that the Hon. Mr Evans referred to in that quote from the committee transcript could be applied to many other natural disasters in addition to bushfires. I think there are many of the things that people expect to be able to access in a situation of floods or many of the other natural disasters that I talked about earlier in my presentation.

As I say, the committee expressed support for a standing committee but took a mind to broaden it, and as such the committee recommended that parliament establish a standing committee for natural disasters. The purpose of this committee would be to ensure that government agencies and emergency services are fully prepared to deal with natural disasters and to provide an opportunity for members of parliament, as opposed to cabinet, to have input into disaster management. That is taken from recommendation 2 of that report.

That recommendation had unanimous support from what is a tripartisan natural resources standing committee. There are four members of the Australian Labor Party, two members of the Liberal Party and three other members who are either Independent or a member of a smaller party. Subsequently, the committee has continued to support that position unanimously, and I recognise the fact that my colleagues from all persuasions have supported the establishment of that committee over a period of time.

The committee has continued its strong interest in the risk of bushfires, particularly in the Adelaide Hills, so close to the metropolitan area. It has published and reported in this place the Bushfire Tour 2012: Case Study—Mitcham Hills. That report has been presented to this chamber. Members of the committee previously visited the Adelaide Hills, which resulted in that case study report, but more recently—only in the last fortnight—the committee has done a tour to Black Hill, Cleland and other areas, looking at the prescribed burn program that the Department of Environment, Water and Natural Resources has in the public lands in the Adelaide Hills. I must congratulate them on the program in those public lands, but also in lands that are owned by the quarrying industry that are adjacent. I think the committee was impressed with what had been done.

The Hon. Mr Evans initially had drafted a bill to establish a bushfires parliamentary committee. However, he did take note of the thoughts of the Natural Resources Committee that this should be expanded, and he has subsequently presented two bills to the House of Assembly similar to the one I am moving today to establish a natural disasters committee. Unfortunately, both of those were defeated on the floor of the House of Assembly on party lines. In fact, the second of those occasions was quite recently.

There has been a suggestion from some elements of the government that the Natural Resources Committee should pick up the role of examining our preparedness for natural disasters. The committee did not view that in a good sense, I think, or did not see that that was practicable, because the Natural Resources Committee does have a significant amount of work.

We are charged with overseeing not only the levy increases of all the natural resource management boards but also physically going and visiting those boards. As we have learnt in recent times, with our efforts to visit the AW board, it does take a lot of time and effort to get the committee together. I think we are a very active committee, and we did not believe that we could do justice to taking on the role of examining our preparedness for natural disasters.

The functions of the committee, as proposed under the bill, will be to take an interest in and keep under review:

(i) measures that have been taken, or could be taken, to protect life and property from the effect of natural disasters; and

(ii) measures that have been taken, or could be taken, to reduce the incidence of natural disasters; and

(iii) the operation of any Act that relates to natural disasters; and

(b) to inquire into, consider and report on such matters concerned with natural disasters as are referred to under this Act; and

(c) to perform such other functions as are imposed on the Committee under this or any other Act or by resolution of both Houses.

I seek the support of other members of the Legislative Council in the establishment of this committee. I think it is relevant to the work of the parliament and, I think, the future of South Australia.

I should indicate that the bill I have prepared does not make this a remunerated committee. I think there were some suggestions previously that this is just trying to put more feathers in MPs' nests, and that is certainly not my intention. I have also put a measure into the bill that provides that membership of the committee would be an equal number of members from each of the houses. I commend the bill to the house.

Debate adjourned on motion of Hon. B.V. Finnigan.

## O'GRADY, MS K.L.

Adjourned debate on motion of Hon. A. Bressington:

That, in the context of the death of Kirbee Louise O'Grady, this council urges the Attorney-General to commission an inquiry into—

1. The propensity and risk of victims of sexual assault to commit suicide; and

2. How the risk of suicide could be reduced by changes to the following services—

   (a) the investigation and case management of the matter by the police;

   (b) the management of prosecutions by the Office of the Director of Public Prosecutions (ODPP);

   (c) the support and follow-up process of the ODPP pre and post-trial, including when matters do not go to trial; and

   (d) the support from victims, women's and general support services.

(Continued from 5 June 2013.)

**The Hon. R.P. WORTLEY (16:38):** I stand to give the government response to the Kirbee Louise O'Grady motion, and in doing so I would like to move an amendment. I have circulated the amendment and did not intend to read out the actual amendment, but I understand that Kirbee's parents are in the gallery, so I think for them to have an understanding of where the government is going I will actually read out the amendment. I move:

Leave out all words after 'this council' and insert the following words in lieu thereof—

1. Notes that the government's Suicide Prevention Strategy 2012-2016 was released in September 2012;

2. Urges the government, through the Suicide Prevention Strategy 2012-2016, to look at the risk of suicide for victims and alleged victims of sexual assault and ways to better support them during and after their contact with the criminal justice system;

3. Notes that the government released a disability justice plan discussion paper on 21 May 2013;

4. Notes that the disability justice plan discussion paper includes proposals to improve the way the criminal justice system interacts with vulnerable witnesses, including children such as Kirbee Louise O'Grady;

5. Notes that the reforms suggested in the disability justice plan discussion paper include:

   (a) better training for police officers when interviewing vulnerable witnesses and, in particular, when interviewing vulnerable witnesses who are alleged victims of sexual assaults;

   (b) amendments to the Evidence Act 1929 to minimise the number of times vulnerable witnesses are asked to recount their experiences and to allow for evidence to be taken in informal settings rather than in a court; and

   (c) the use of support people or intermediaries during interviews and in court to assist vulnerable witnesses.

6. Urges the government to include training for all participants in the criminal justice system when interacting with vulnerable witnesses, including the courts and the Office of the Director of Public Prosecutions, in the government's disability justice plan.

7. Urges the government to include a review of the availability of support services for vulnerable witnesses in the government's disability justice plan.

The first part of the amended private member's motion of the Hon. Ann Bressington urges the Attorney-General to commission an inquiry into the propensity and risk of victims of sexual assault to commit suicide. The objects of such an inquiry are laudable. It is beyond doubt that victims of sexual assaults are generally in a higher risk category of engaging in suicidal behaviour. The government's Suicide Prevention Strategy 2012-16, released in September last year, recognises this fact.

The amended motion I have moved today asks that the council notes that the Suicide Prevention Strategy is the mechanism best placed to address the issues highlighted by the Hon. Ann Bressington in this place. Rather than asking the government to undertake an inquiry into what is already taken as a fact by this government, the council is instead asked to urge the government to ensure that the implementation of the Suicide Prevention Strategy includes a focus on how alleged victims of sexual assaults can be better supported throughout their contact with the criminal justice system.

The second part of the Hon. Ann Bressington's motion concerns the way the criminal justice system interacts with alleged victims of sexual assaults. The motion points to three areas in need of review, namely, the investigation and case management of allegations of sexual assaults, the prosecution of matters involving alleged sexual assaults, and the availability of support services for alleged victims and their families throughout these stages.

Alleged victims of sexual assaults are defined as 'vulnerable witnesses' under our laws, as are children. Kirbee was, in every sense of the term, a vulnerable witness. Improvement of the way the criminal justice system interacts with vulnerable witnesses is a priority for this government. The government recently released a discussion paper that proposes a number of changes to this system. The discussion paper is the first step towards developing the government's disability justice plan.

I know many people in this council are very interested in this plan and have participated in the consultation process for the discussion paper. What those members will know is that the discussion paper recommends changes to the system that will benefit all vulnerable witnesses, not just those with a disability.

These changes include: better training for police officers when interviewing vulnerable witnesses, and in particular when interviewing vulnerable witnesses who are alleged victims of sexual assault; amendments to the Evidence Act 1929 to minimise the number of times vulnerable witnesses are asked to recount their experiences and to allow for evidence to be taken in informal settings rather than in a court; and the use of support people or intermediaries during interviews and in court to assist vulnerable witnesses.

These changes are all changes that, when implemented, will provide a better criminal justice system for people with disabilities and for all other vulnerable witnesses such as Kirbee. The discussion paper does not explicitly refer to the Office of the Director of Public Prosecutions, nor does it explicitly refer to the need for a review of the availability of support services for vulnerable witnesses.

Accordingly, I have moved that the motion be amended to urge the government to include in the disability justice plan a commitment to training all participants in the criminal justice system, including the courts and the Office of the Director of Public Prosecutions, about their interactions with vulnerable witnesses. The amended motion also urges the government to include a review of the availability of support services for vulnerable witnesses in the government's disability justice plan.

The government commends the Hon. Ann Bressington for focusing on improving the system as a whole; however, the government wants to ensure that this improvement occurs by way of the processes that are already in place so that the change that is needed can happen in a timely manner and the focus that is already on the criminal justice system and vulnerable witnesses is not redirected. I urge the council to support the amendment.

**The Hon. A. BRESSINGTON (16:45):** First of all, I will speak to the amendment put forward on behalf of the government by the Hon. Russell Wortley. I guess it will come as no surprise to the government that I do not support this amendment to the motion. I met with a person from the minister's office earlier today and explained that what the government has proposed is pretty much what you would call the recommendations of an inquiry if it was ever to happen, so it is a bit like the cart pulling the horse really.

I think the government has chosen not to hear the problems around Kirbee's case, and probably many others as well I would say from people I have spoken to, so they have either chosen not to listen or they are deaf—one or the other. The fact of the matter is that as the Hon. Russell Wortley said, the motion that the government has put up has not dealt with the management of prosecutions by the Office of the Director of Public Prosecutions nor has it looked at the follow-up and support process of the department of public prosecutions pre and post trial. I guess in the

general scheme of things, they are the two most important aspects of this motion to the family as well as the dealing of this kind of matter by the police as well.

It is all very wonderful that the government has taken this opportunity to use this motion to point out all the wonderful things that they have already done. The fact of the matter is that with all of these things in place, if this was in place before Kirbee's death, I have no doubt that Kirbee still would have taken the action that she took because none of this relates to the near 11 years she dealt with on a psychological and emotional level. First of all, there is the fact that she was sexually abused by a family member and, secondly, that it has been intimated to me that that family member had connections with the police. Thirdly, when it did get to a point where she thought that this was going to move forward so that she and her cousin could have their day in court, suddenly the rug was ripped out from underneath them.

Whether or not Kirbee was fit to stand trial emotionally or psychologically, as I said last time I spoke to the other motion on this matter, Kirbee's cousin was more than willing to proceed with this and yet files were lost, files were distributed between the Elizabeth Magistrates Court and Port Augusta, I think it was, all over the countryside basically, and that was one of the reasons the family was given that this case could not proceed, because they could not find the files. So this has nothing to do with what the government has proposed about a suicide prevention strategy. There is no mention in here really of processes that are abused or neglected and whether or not, when that occurs, what should happen. What disciplinary action should be taken against this obvious negligence by the investigating officers or the interviewing officers or the DPP and their absolute lack of compassion for both Kirbee and her family while trying to do the best thing possible to try to reconcile what had happened to this young girl and her cousin at a very, very young age?

Kirbee found the courage to talk about what had happened when she was eight. I do not believe that an eight year old would ever imagine that they would have 11 years of trauma ahead of them and then get to the age of 17 and be further traumatised by the system that she had supposedly trusted to do the right thing by her and her cousin.

This whole matter has been a disgrace from the beginning to the end, and that is why my motion calls for how the risk of suicide could be reduced by changes to the following services: (a) the investigation and case management of the matter by the police; and (b) the management of prosecutions by the Office of the Director of Public Prosecutions. These are two very specific points in the motion that I have put forward, and they are there for a reason: because I have no doubt in my mind that Kirbee's case and that of her cousin are not isolated incidents.

We have a huge gap in how we deal with sexual offenders in this state. It is almost like some are a protected species, and I think we have to move past that. We need to look at the fact that, from a government point of view, we do not want it out there how prevalent this is; we do not really want to scratch below the surface of this problem that exists because it is not going to look politically grand. It is going to look quite dirty, I believe. At the end of the day, while we still hold that attitude, many, many more children will suffer. I think it is really time now for the parliament to step up and for each and every one of us, as members of parliament, elected representatives of the people, to now step up and start changing the culture of secrecy that we have and not condone sloppy work by the people who are paid to protect and serve the community.

On that note I reject wholeheartedly the amendment of the government. I might also add that I met with one of the people from the Attorney-General's office the week before last. We sat down and had a discussion about what the government amendment might look like, and I can assure each and every member in this council that it was nothing like what has been laid on our tables today. It is absolutely nothing like what we discussed. Quite frankly, I am sick of this motion being treated like a political football with everybody trying to cover everybody's backside, and being safe in how we execute this. It is now time to get on with it and vote in a way that is going to show this family sitting up in the gallery that 11 or 12 years of pain and suffering is being acknowledged by the people sitting in this room. I commend my motion to the council.

Amendment negatived; motion carried.

## CRIMINAL LAW CONSOLIDATION (DISHONEST DEALINGS WITH CHILDREN) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 May 2013.)

**The Hon. S.G. WADE (16:55):** I rise to speak on behalf of the opposition in relation to the Criminal Law Consolidation (Dishonest Dealings with Children) Amendment Bill 2013. The Hon. John Darley introduced this bill on 15 May 2013. It is a response to the horrific murder of 15-year-old Carly Ryan by Gary Newman. Newman constructed an alter ego through the internet, which he used to lure Ms Ryan to meet up with him before he murdered her at Port Elliot. Investigations found that Newman was a serial predator with over 200 fake identities. He was sentenced to life imprisonment with a nonparole of 29 years for the murder of Carly Ryan.

The Criminal Code 1995 of the commonwealth and the Criminal Law Consolidation Act 1935 of South Australia both include offences relating to the grooming or procurement of children. For example, under section 63B of the CLCA it is an offence for a person to procure an indecent act by a child. However, it is not an offence under the code or the CLCA for a person to lie about their age or identity to a child with the intention of meeting or arranging to meet the child or lying about their age or identity, including with the intention of committing an offence.

This bill would make it an offence for a person to knowingly communicate with a child by electronic means and make a false statement about the person's age or identity and to meet or arrange to meet the child. The maximum penalty would be imprisonment for five years if there is no intention to commit an offence and 10 years if there was an intention to commit an offence.

Senator Xenophon introduced a similar bill in the Australian Senate to amend the commonwealth code. Last Thursday the Senate Constitutional and Legal Affairs Committee reported on that bill and recommended that the bill not be made law. The prevailing view of legal stakeholders is that there are issues with the bills, such as: the bills duplicate grooming and procurement offences; the bills are broadly drafted and could capture innocent conduct; criminal offences should attach to misrepresentation and not merely the intent to misrepresent; and, the bills criminalise a misrepresentation of age to a person under the age of 18 years, even if consensual sexual activity between the sender of the communication and its recipient would not otherwise be a crime.

The Hon. John Darley has expressed his willingness to work with members to address issues with the bill, and the opposition welcomes that. I acknowledge the support of the Carly Ryan Foundation for the bill. The foundation supports efforts at law to give police the ability to investigate and prosecute offenders prior to the commission of any procurement or grooming offence. As I said, the opposition acknowledges the Hon. John Darley, first, for bringing the bill before the parliament and also for his willingness to work with other members to make the law the best it can be. In that context the opposition will support the second reading and looks forward to working with the honourable member to improve the bill.

Debate adjourned on motion of Hon. K.J. Maher.

## DEVELOPMENT (DEVELOPMENT PLAN AMENDMENTS) (NOTIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 April 2013.)

**The Hon. CARMEL ZOLLO (16:59):** This bill seeks to mandate direct notification of all owners or occupiers of land directly subject to the operation of amendments proposed in a development plan amendment or DPA, as I will refer to it through the remainder of this contribution. This will apply to all council and ministerial DPAs, other than statewide ministerial DPAs. The government opposes this bill.

*An honourable member interjecting:*

**The Hon. CARMEL ZOLLO:** Well, we look forward to what the opposition has to say very shortly in relation to the proposed policy by the Greens. I think it is about time we heard what the opposition's policy is in relation to these matters.

While the government appreciates that there is a case to examine ways to increase transparency and openness in planning matters, the proposed bill will create significant workload and resource issues for the government and, more particularly, for councils. The Development Assessment Commission currently relies on the goodwill of councils in the provision of property database information when undertaking public notification of development applications, and the assistance required for DPA notification would be many times greater and place significant pressures on councils.

While statewide DPAs would be exempt, councils and the government undertake many DPAs that apply to extensive areas and tens of thousands of properties. For example, the City of Onkaparinga has approximately 160,000 residents. The administrative and resource issues for any council-wide DPAs or large-scale ministerial DPAs (such as the wind farms or regulated trees DPAs that covered many council areas but not the entire state) cannot be underestimated.

The Development Act 1993 currently provides for direct notification of DPAs in some circumstances—known as process C—and this can be used where it is appropriate and manageable. DPAs that cover large regions or whole council areas may be more effectively communicated in marketing-type advertisements in the paper or other media. DPAs should not be seen in isolation of strategic planning processes and, where extensive community engagement has occurred at a strategic level, further consultation on detailed policy may result in consultation burnout at the local level.

I am certain that honourable members would be aware that the government has set up the Expert Panel on Planning Reform and, given the wide-ranging review of the planning system currently being undertaken by the Expert Panel on Planning Reform, it is appropriate for this matter to be considered by the panel. I understand that the minister in the other place has brought this bill to their attention and it will be considered in the broader context that it deserves to be considered in. It is for these reasons that the government opposes this bill. As I mentioned previously, I look forward to what the Hon. David Ridgway has to say in relation to this policy and what the Liberal Party believes it could deliver.

*Members interjecting:*

**The PRESIDENT:** Order! We are all going to listen very carefully and in silence to the Hon. Mr Ridgway.

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:03):** Thank you, Mr President. I am surprised at the comments from the other side of the chamber saying I am about to announce a policy. I am about to speak to the Development (Development Plan Amendments) (Notification) Amendment Bill 2013, proposed by the Hon. Mark Parnell. I can assure members opposite that there is no way I would ever be announcing a policy: first, I am not the shadow minister responsible; and, secondly, I would never want to do it off the back of a Greens' initiative.

The Hon. Mark Parnell preferences you guys and puts you into government time and time again and he knows that I would not be wanting to rain on his parade or take any of the kudos from what he is doing and put it into a Liberal policy. However, I indicate that the Liberal Party will be supporting the amendment.

I have a number of questions, and I note what the Hon. Mark Parnell has said in his second reading speech—and he talked about a number of events that have brought this about. I think we all have some sympathy for the gentleman whose property was rezoned to a flood plain without being told. I think there is a fundamental issue that we all would agree with—that if it is your property and it has a change in a zoning sense, you are entitled to know, especially if it happens to be your own personal private dwelling. I think that is fundamental and that there is a good case to make sure that people are advised.

I have a number of questions for the Hon. Mark Parnell because he talks in his second reading speech about people who are directly affected so, clearly, other people whose properties are affected. I think he may have made some reference to an owner or occupier of an adjacent property. I would be interested to know his definition of adjacent. Is it an absolutely neighbouring property, or is it one in the district, and how broad is that?

While we have some sympathy for those people who are directly affected—and that is the reason we have agreed to support it today—I think we would all agree that you should be notified. But if it is a much broader scope, it raises a whole range of issues about the cost and the timeliness, and of course we hear constant complaints from our development industry about more red tape and the slowing down of the whole process. In the end, it is not the developers who pay, it is not the taxpayers who pay, it is often the first home owners who pay when there are delays. I would be interested to hear some comments from the Hon. Mark Parnell to set my mind a little bit at rest in relation to how that would take place.

I note in his second reading speech that he talks about reasonable steps. What is a reasonable step? He is a lawyer, and I am not, but what is the definition of a reasonable step in the eyes of the law? If somebody says, 'Well, I wasn't notified,' and the council or government says,

'We took reasonable steps. You just weren't home that day when we knocked on your door,' is that reasonable steps? I can see what he is trying to achieve, but I am not quite sure that the definition of reasonable steps will cover that.

From what I read in the Hon. Mark Parnell's bill, I do not think that this will apply to statewide ministerial DPAs, such as the wind farm DPA. However, given the number of people who have given evidence, and who have been outraged and came to the select committee, maybe there might have been some sense in doing that. It would be very cumbersome and a great burden on the system, the government, local council, or whoever, to notify everybody. Of course, with a wind farm, there will be an argument that if you can see it you are affected, and therefore is it adjacent because it is visible? I guess that also goes to the definition of adjacent. If it is a building that is visible, but you are five blocks away, are you adjacent to it or are you the neighbouring property? I think it raises a whole range of questions.

I am delighted to hear that the government is referring it to the expert panel because I think that is a sensible thing to do, and the opposition, as I said, is supporting it today. We have some sympathy with the people whose properties are rezoned without them knowing. We think that it is potentially a bit cumbersome and that some of the definitions may be a bit ambiguous; I would be interested to hear the Hon. Mark Parnell's explanation when he sums up, and I may ask him a couple of questions. The fact that it is going to the expert panel means that they will report later in the year; is that right, the Hon. Carmel Zollo? She is not quite sure of that.

*Members interjecting:*

**The Hon. D.W. RIDGWAY:** Well, after the election—then that is a very timely thing. If it is after the election, and we are fortunate enough in this state to have had a change of government, the expert panel will be reporting to a new Liberal government. We have indicated that, by supporting the Hon. Mark Parnell's amendment today, we think there are some things that need to be improved in relation to property owners whose property is rezoned.

All the other aspects are somewhat cumbersome, but nonetheless we are prepared to support it today to indicate to the community that we do think, in those circumstances where it is somebody's private property that has been rezoned or they are directly affected, that they have a right to know.

**The Hon. K.L. VINCENT (17:09):** I appreciate that I am not on the list of speakers, but I thought I would just chime in very briefly to put on the record that Dignity for Disability will be very strongly supporting this particular bill. I think it makes absolute sense to let people know what is happening to their own properties. Call me crazy, but I do not think that should rely entirely on what the Hon. Ms Zollo called, I believe, goodwill. I think people should have a legal and very solid right to know what is happening to their own properties.

The other point I would make very briefly is that, of course, as with most issues, we have received quite a high volume of correspondence on this bill in my office, and to my memory—I could be wrong—not one piece of correspondence, or one person who sent us correspondence, has been against this bill. All of them have been asking us to support this, so obviously this is what the community wants and with very good reason. For that reason, I will be supporting this bill very strongly.

**The Hon. M. PARNELL (17:10):** I will begin in summing up by thanking the Hon. Carmel Zollo, the Hon. David Ridgway and the Hon Kelly Vincent for their contributions. I will respond briefly to some of the things that have been said. In relation to the Hon. Carmel Zollo's contribution, I am not in the least surprised that yet another sensible initiative to reform our planning system to make it more accessible to people and to tell people what rights they have is being dismissed by the government. The two main reasons the honourable member offered were in relation to cost and the fact that the government has formed an expert panel. I will deal with both those issues.

In relation to cost, those councils that are already respectfully engaging with their communities will bear no extra cost because they are the sorts of councils which already tell people what is going on. They already notify them of changes that have been planned for their neighbourhoods. The only people who would bear extra cost would be that decreasing number of councils that choose not to tell their community what is happening, not to tell people that building height limits are to be raised or that setbacks are to be changed or, in the example I gave in my second reading speech, that the actual status of their land is being changed via a rezoning. The question we then have to ask is: if those councils have to pay a bit more to notify the residents of

important changes that their residents have a right to comment on, is that a bad thing? The answer is: no, it is not.

Regarding the expert panel, that is now a standard response to any amendment that any member of parliament puts forward between now and next year. To any amendment to the Development Act, the standard response will be, 'We have an expert panel that's looking at that,' and therefore every other idea is all of a sudden premature or out of line.

**The Hon. D.W. Ridgway:** Pre-empting.

**The Hon. M. PARNELL:** Pre-empting, pre-emptive. I do not accept that. I have had a number of conversations with members of the expert panel; I wish them well, but I do not believe that the process needs to stand in the way of this parliament considering very simple law reform initiatives that will make a real difference to people in understanding their rights under the Development Act.

I have a very strong feeling from my conversation with members that this bill will pass this chamber today, and my hope is that it will not just be slotted in next to the previous bill we passed, down in the lower house, with no action and no real intent from the government to advance it. I hope that is not the case, but we will see.

In terms of the Hon. David Ridgway, I will answer the questions he has posed, and I guess that if I miss some we could do it in a brief committee stage, if he would like. He raises the question about exactly who would be notified. The bill makes it very clear that the people who need to be notified are the owners or occupiers of land that is directly subject to the operation of the proposed amendment—so, owners or occupiers. The second tier of people to be notified are those who are owners or occupiers of each piece of adjacent land to land that is directly subject to the operation of the proposed amendment.

The phrase 'adjacent land' is used throughout the planning system, and it has a fairly technical definition. I hope I will not have to come back and correct the record because I do not have the actual provision in front of me, but I am pretty sure it is this simple. If you directly adjoin a parcel of land that is affected—in other words, if you are an immediate neighbour, or perhaps you do not share a boundary but maybe there is a person across the road—that person would also be regarded as an adjacent landholder, particularly, I think, if the distance is within 60 metres. Basically, we are talking about immediately adjoining property owners or people who are pretty close, usually over the road and within 60 metres. I will correct that if I need to, but I am pretty confident that that is the technical definition. We are not talking about notifying people who are kilometres away or who are several streets away; it is the people who are directly affected.

The question he raised in terms of reasonable steps, and what they are, is a good question. It is left deliberately uncertain in the legislation, not for any purpose of trickery or anything untoward, but basically because we want to allow flexibility for the state government or local councils to choose a method that is appropriate to the situation at hand. For example, the Hon. David Ridgway mentioned maybe someone knocking on the door; to be honest I had not thought that that would be one of the methods but, clearly, if you are looking at a spectrum of communication, knocking on someone's door and having a direct conversation with them is, absolutely, a way of notifying someone.

If you work down through the spectrum, the next one would be a personally addressed letter; your name is on the envelope and it is posted to you. Working a bit further down the spectrum and you have something that is put in your letterbox. It does not have your name on it, it might just be addressed 'To the resident' or 'To the householder'. Then you might go one further step down the continuum where it might be, for example, a community newsletter that, I think, all local councils put out. Maybe a feature in that community newsletter would be a rezoning proposal or a development plan amendment, and a reminder to people that they have a legal right to comment. So that is the spectrum of activity that could fall in the definition of 'take reasonable steps to give notice'. As I said, the bill has not specified it. If there were only three properties affected, I would expect that a personally addressed letter, at least, would be required.

However, the fact that someone does not get notified is not fatal. This is a very important part of this bill, because a lot of this bill is educative in many ways for local councils. What we do not want is someone to say, 'My property has been rezoned. No-one knocked on my door, no-one put anything in my letterbox, there was not even a community newsletter. Therefore the rezoning is invalid because I was not directly notified.' I have specifically written into this bill that, if that

situation arises, it does not invalidate the development plan. In other words, you cannot use the technicality that you were not directly told to somehow say that the plan is invalid.

What we also have to remember is that this method of notification is in addition to the existing statutory measures, which are a newspaper and the *Government Gazette*. There are always those positions. So people who will not be directly notified are still able to make submissions and put them in either to the council or the Development Policy Advisory Committee and turn up to the public hearing, even if they did not get anything in their letterbox.

I think that is the answer to the member's question. I would expect that the more people affected, the less personal would be the notification. I would have thought that, if there were only a few hundred people, or a few thousand people, affected, then something in the letterbox—preferably timed with council's routine communication with their ratepayers—would be the way to go. When you put all that together, the only councils for which this would be an extra expense would be those who are not routinely engaging with their local communities, and I would say that they should be. They should be talking to their communities about what is going on in the neighbourhood.

The Hon. David Ridgway drew attention to the fact that I have excluded statewide DPAs, and mentioned the wind farm one. The reason for that was simply one of practicality. I do not know how many dwellings we have in South Australia but it might be three-quarters of a million, and the need to personally notify everyone in Unley that the rules have changed throughout the state for wind farms seems to be a bit over the top.

**The Hon. D.W. Ridgway:** Unley was excluded.

**The Hon. M. PARNELL:** The Hon. David Ridgway points out that Unley was excluded. A good point, but not everyone, even in country areas, whose development plan does technically include them, would necessarily need to have that direct information. The argument is that if it is statewide, if it affects every council area—a good example is one of the Bulky Goods DPA that was statewide—there are various that have been done to avoid the expense of having to notify every property owner in South Australia; I have excluded those.

The vast majority of rezonings that people would want to comment on do affect their local communities. The example of Mount Barker springs to mind. Certainly, the number of properties affected would be in the dozens—I do not think it would be in the hundreds—and the number of neighbours to those properties again would be in the dozens, or even less, because it would only be the periphery, given that many of these people were neighbours.

I do not see that there is a great deal of extra effort that councils or the state government will be forced to go through to simply make sure that people are advised of their democratic rights, with the important proviso that failure to take reasonable steps—failure to notify someone—does not invalidate the plan. Really, in many ways it is a best endeavours measure, and it is left up to each individual council to determine what might be the best way of letting their residents and ratepayers know what is going on.

I think that has pretty much covered the issues and questions that were raised. I again thank those members who have spoken and other members who have privately offered their support, and I look forward to the committee stage of this bill.

Bill read a second time.

In committee.

Clause 1.

**The Hon. D.W. RIDGWAY:** The Hon. Mark Parnell raised the issue of Mount Barker. I cannot recall, so I am just going to ask him: how many of the landowners' properties that were rezoned were unaware that that was going to happen? My understanding is that most of those had options, or they had sold, or they were going to be joint ventures. Most of the owners were aware that that was happening, and so it was possibly only the neighbouring properties that may or may not have been aware. I remind members that we had 500 people give evidence to the DPAC hearing over three or four nights—

**The Hon. M. Parnell:** Five nights.

**The Hon. D.W. RIDGWAY:** 'Five nights,' the Hon. Mark Parnell says. Members could easily think that all 500 would have received a letter; clearly, they would not have, because there

are only perhaps a dozen that would be adjacent landowners. The Hon. Mark Parnell might be able to clarify that, because, certainly in some discussions that I have had with people, they think this is a good bill to support because all the people in Mount Barker would get a notification. Clearly, that is not likely to happen.

**The Hon. M. PARNELL:** I thank the honourable member for his question, and his analysis is basically correct. Certainly, as to the number of properties of people directly affected by a change of zoning (in that case, effectively from farm land to residential land), the property developers who were behind the rezoning had actually already acquired a fair chunk of that land, either by purchase or by options to purchase; certainly, they knew about it.

I would be surprised if there were too many people who owned properties in that area who did not subsequently find out because of the massive community outrage at the proposal. It was on the front page of every edition of the local paper; people in neighbourhoods talk to each other, and it was the talk of the town. In that particular case, I think that there was pretty good coverage. I would be surprised if there was anyone who was not either affected or a neighbour of someone affected who did not ultimately know that that was the case.

The point that I make is: that is a particular example of a controversial, large-scale rezoning. There are plenty of others where the consequences are not necessarily that well known. People often do not pay attention to newspapers or the *Government Gazette*. I think there are plenty of other cases where we will actually, through this bill, be telling people what is going on.

Bear in mind that the only consequence that flows from it (of someone being notified) is that they know they have rights. They know have the right to put in a submission and they know they have the right to attend a public meeting. The tragedy that we are trying to avert here is where someone with a genuine legitimate interest, in fact, does not find out that changes were afoot and, therefore, does not exercise their right or go to the meeting. Remember the example that I gave earlier, which was from my earlier professional experience, about the chap who found out his house had been rezoned as flood plain. No-one told him. No-one was obliged to tell him. It had not been in the local paper.

**The Hon. D.W. Ridgway:** Was it near a river?

**The CHAIR:** Order!

**The Hon. M. PARNELL:** The Hon. David Ridgway interjects out of order, 'Was it near a river?' Absolutely it was but it was—

*The Hon. D.W. Ridgway interjecting:*

**The Hon. M. PARNELL:** No, it was near a river but it was far enough away that it had always been zoned residential and the government in that case redrew all the flood maps mainly in relation to climate change and predictions of increased frequency of flooding, so that is how that particular case came about.

The point is if your house is zoned residential, you have an expectation that authorities have had a good look at whether that is an appropriate zoning and, when they have another good look and they change it later on, they should certainly tell you about it. It is not to say that individuals who are notified will be able to change the outcome but it may be that they have a submission which improves the outcome. It may be that there is additional land that needs to be included, there may be some land that could be excluded. So, when you do not have the people on the ground with the knowledge knowing that there is a process afoot, not putting in submissions, we do not get the best information on which to base these important town planning decisions.

Clause passed.

Remaining clauses (2 to 5), schedule and title passed.

Bill reported without amendment.

**The Hon. M. PARNELL (17:27):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

## MARRIAGE EQUALITY BILL

Adjourned debate on second reading.

(Continued from 17 October 2012.)

**The Hon. T.A. FRANKS (17:28):** I move:

That this order of the day be discharged.

Motion carried; bill withdrawn.

**ADOPTION (CONSENT TO PUBLICATION) AMENDMENT BILL**

Adjourned debate on second reading.

(Continued from 19 June 2013.)

**The Hon. K.J. MAHER (17:29):** I rise to speak in favour of this bill and, in doing so, I am pleased to see that members in the other place right across party lines are resolved to pass this bill. As it now stands, South Australian parents who have adopted a child must first obtain permission from the chief executive of Families SA or a court to have themselves or their child identified in the media as parties to an adoption.

While the legislation has the benign intention of protecting the privacy of adoptive families, it intrudes on the right of adoptive parents to make decisions about the welfare of their children. Although a fine has never been served in relation to this act, failing to seek approval from the chief executive could warrant one.

The government considered these matters relating to the Adoption Act and regulations that the member for Morialta brought to the House of Assembly. Additionally, an intercountry adoption parents support group, the South Australian Chinese Adoption Support Association, has lobbied for change. The amendment that was passed in the other place aims to enable families to make decisions about being published in the media without being required to seek consent from the chief executive.

In 2009, through the national Intercountry Adoption Harmonisation Working Group, under the auspices of the then community and disability services minister's advisory council, South Australia agreed in principle, along with all other jurisdictions, that all Australian adoption legislation should allow parties to a legally completed adoption to give their consent to be identified. This amendment settles that agreement. In relation to the media provisions in the Adoption Act, the government supported an amendment to section 31 so that:

- any adult party to a legally completed adoption may consent to being identified in the news media as a party to an adoption;
- where the adoption is legally completed, an adopted child can be identified in the news media as such, provided consent is given by the parents or legal guardians of the adopted child; and
- where any child who is placed with prospective adoptive parents but who is still under the guardianship of the chief executive (for example, where the adoption has not been legally completed), approval to be identified in the news media as a party to adoption proceedings must be granted by the chief executive or the court.

This amendment reflects the chief executive's role as guardian during the processing of an adoption application and the changing nature of the word 'guardian'. It also preserves the safeguards during the process of changing guardianship while ensuring that, once an adoption is complete, families are no longer required to seek permission from the chief executive or the court. The decision will be in the hands of those best placed to make it: the child's parents. I commend the amendment to the council.

**The Hon. D.G.E. HOOD (17:31):** The Adoption (Consent to Publication) Amendment Bill aims to correct an unfortunate anomaly in the law. Children are, of course, the future of our nation. Whilst adoption is becoming increasingly rare, it remains an important process that deserves support. I have a personal understanding of the issues surrounding adoptions as both my wife and my father were adopted I make that statement with some hesitation as it is not completely clear that the present law allows me to publicly state this, although I understand that I have protection. This hesitation makes it clear in my mind that this law is in need of abandonment and substantial change.

It is a matter of concern to Family First that the number of adoptions is in long-term decline. In the year 1987-88, there were 416 adoptions in South Australia. In 2011-12 there were just 24,

which is a decline of some 94 per cent. Of those 24 adoptions, 23 were from overseas countries and the other one was adoption by a relative. In other words, no children were offered for local adoptions in South Australia in the 2011-12 year. The state government website mentions various reasons for this, including the option of abortion that so frequently occurs where the pregnancy is unwanted or unplanned.

The government website also gives some information regarding changes in attitudes as to the identities of children being made public. It says that from the first adoption legislation in 1926 until 1966, there were no provisions preventing the fact of adoption from being made public, and information was often shared. However, from the 1960s adopted children were often brought up without being told that they were adopted. The fact of adoption was likely kept secret, as it was in the case of my father until he was in his teens. In line with that prevailing view, the restrictions were enacted in 1966.

The website goes on to state that in the 1980s people's attitudes changed and many believed that the child should be told of the adoption. It also says that people came to understand that a birth mother did not simply forget about the child after giving birth but often thought about the child after adoption and at times suffered ongoing grief about the loss of the child. Today, medical science is coming to a much greater understanding of the extent of the grieving process that occurs after the loss of a child. Indeed, there are even physiological effects.

The provisions requiring the fact of adoption to be kept secret were well intentioned at the time they were enacted but, as the proponent of this bill has explained, situations do arise where public disclosure is appropriate. The example he gave in his contribution was of adoptive families at a public rally about the adoption process. The rally concerned adoption procedures, so it was clear that the children present were likely to have been adopted. However, if the parents had allowed any adopted child at the rally to be identified in the media, they risked a $20,000 fine. This is just silly. The present law allows a court or the chief executive of Families SA to grant an exemption. This bill allows the family to make that decision.

If the child is over 18 years, that child can decide, as they should, otherwise the parents can make the choice, and this is appropriate. Family First supports this bill, which gives powers to parents to decide what measures are appropriate for their children, rather than having to seek a decision from a government official. We commend the member for Morialta in the other place for introducing this bill and look forward to its passage.

**The Hon. T.A. FRANKS (17:35):** I rise briefly to again welcome this bill and indicate that the Greens will support it and to commend the work of the member for Morialta in bringing this before us. I was certainly pleased that he held a forum, open to all members of parliament, and certainly at that forum you could not help but be persuaded that not only was this an issue that needed addressing but that it needed addressing urgently and in fact was far overdue.

Simple celebrations of children's achievements could not necessarily be put in school newsletters. Parents were afraid to post pictures on Facebook, and certainly where a child was able to be a performer in a well-publicised event—a festival or a musical where they were performers—there was great uncertainty for those families about not simply complying with the law but an inability to celebrate the great achievements of those families. With those few words, I commend the bill to the council.

**The Hon. J.S. LEE (17:36):** It is a great day indeed that all parties come together to actually agree on a sensible measure. I place on the record my sincere thanks to all honourable members for their interest and support for the Adoption (Consent to Publication) Amendment Bill in the Legislative Council. In particular, I especially thank the Hon. Kyam Maher, the Hon. Dennis Hood and the Hon. Tammy Franks for their contributions. By giving your support to pass this bill to amend the Adoption Act 1998, we join with Mr John Gardner, the member for Morialta, in taking a strong stand for freedom of speech by removing the gag rule against adoptive parents talking publicly.

I extend my heartfelt congratulations to the member for Morialta, Mr John Gardner of the other place (he is in the chamber at the moment), and also to the many advocacy groups, including SA Chinese Adoption Support Incorporated for its persistency in a long, hard campaign to rally for this important issue. They now can look forward to a positive outcome.

The intent of the bill is clear: to amend section 31 of the Adoption Act so that we have the ability to provide reassurance to all loving parents, including those who adopted children, that they have a voice and are free to contribute to public policy and debate without fear of retribution. It is

indeed wonderful to know that honourable members have agreed that parents are best placed to make decisions, when it comes to the welfare of their children and families, and not the government. It is great to see that, finally, South Australia will now remove this gag rule, which will place us into line with the rest of the nation. I support the second reading of the bill.

Bill read a second time.

Bill taken through committee without amendment.

**The Hon. J.S. LEE (17:40):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

## STATUTES AMENDMENT (GAMBLING REFORM) BILL

Adjourned debate on second reading.

(Continued from 18 June 2013.)

**The Hon. R.I. LUCAS (17:41):** I rise to continue my remarks on the second reading of this legislation that I commenced some two or so weeks ago. On that occasion, I outlined on behalf of Liberal members the broad position the Liberal Party would be adopting in relation to the legislation. We indicated then that, broadly speaking, we would be seeking to split the bill; that is, we would support broadly those provisions which relate to the Casino operations in South Australia to allow the Casino redevelopment deal—which the government has done with the Casino operators—to proceed.

The Liberal Party's position is that we, together with the government, support the proposed redevelopment of the Casino and that we understand that this legislation—or at least those aspects of the legislation that relate to the Casino—are important from their viewpoint in relation to the prospects of that redevelopment proceeding, and we are prepared to assist that.

However, broadly speaking again, in splitting this bill the Liberal Party will be opposing all the other measures that relate to the clubs and pubs section of the gaming industry. We do so for good reasons, and I want to address some of those in my contribution this evening. In particular, as we indicated last time, this proposition from the government has been developed with virtually no consultation with the clubs industry. We in the Liberal Party are strong supporters of community clubs in South Australia.

I indicated on the last occasion that I am a member of the West Adelaide Football Club, and I declare that interest. The Liberal Party is a strong supporter of community clubs in South Australia. We believe they do much good for the community, and we are most concerned that the government—the Premier, in particular, and minister Rau—are intent on killing the club industry through the legislation that they are seeking the parliament support.

That is not the language that has been chosen explicitly by Liberal members of parliament; that is language being used by those who represent the club industry in South Australia. They are the ones who have described this bill as a 'club killer', and anyone who supports the legislation, with or without amendments, will be responsible for killing clubs in South Australia. That is, and ought to be, clear to members in this chamber who I know, in some cases, are still forming their views, but the government members are intent on destruction. They are intent on killing clubs in South Australia. They are intent, through this legislation, in ensuring in particular that the viability of the smaller clubs is affected, but as we have also heard from the South Australian National Football League, the bigger clubs are also concerned about their ongoing viability if this club killing legislation by the government is supported by other non-government members in the parliament.

The importance of the legislation, therefore, cannot be underestimated and it is certainly not going to be underestimated by Liberal members in this chamber. We will fight to the end on behalf of community clubs, sporting clubs and other clubs in South Australia in trying to defend their interests in terms of the important work they continue to do.

After the last session of parliament, minister Rau went out and made some extraordinary claims in the media about the Liberal Party position. One extraordinary claim was that Liberals oppose measures to reduce problem gambling. Parliamentary language will not let me describe accurately what I thought of that particular claim, but let me make it quite clear on behalf of Liberal members that the claim that the Liberal Party opposes measures to reduce problem gambling is absolute rubbish.

I think it is fair to say it is also rubbish in relation to any member of parliament whether they are a minor party, Independent or otherwise, or even Labor Party members. I am sure that for all of us, for the 0.4 per cent of the population who have been defined as problem gamblers, no-one enjoys the problems and the miseries that they go through and they put their families and their friends through, but what we are addressing here in practical, realistic terms is what measures you can institute to help reduce problem gambling.

The government claims, as I will highlight again this evening, that this measure is going to reduce problem gambling. My challenge to the minister and to the government and those who support the bill is to provide the evidence. I challenge the minister to table in this chamber the evidence which indicates that the provisions that they are talking about—increasing the number of machines in venues by 50 per cent from 40 to 60 and by providing an extra 500 machines to the Casino—are going to reduce problem gambling.

**The Hon. T.A. Franks:** 505.

**The Hon. R.I. LUCAS:** The Hon. Tammy Franks indicates it is 505. In the converse I am one, and let me put my view in relation to this, who is unconvinced that the number of machines in the South Australian community, within the realms of what we are talking about, will make any impact by an increase or a decrease on the 0.4 per cent of problem gamblers. I have said before and I say it again—if you are a problem gambler, you will crawl over cut glass to get to the gambling outlet to satisfy your particular addiction, whether it be gaming machines, etc.

I had a long argument many years ago with the Hon. Nick Xenophon indicating that, if restrictions are placed on gaming machines, the problems in relation to mobile phones, interactive computers, gambling on the internet, etc., would soon swamp the sorts of problems that we are talking about in relation to gaming machines and the need for national regulation in relation to this sort of area. He took a different view at the time, and that is his prerogative, but I think the reality is, as we look at sports betting and the use of mobile phones, computers and interactive technology that everyone has available in their pocket or in their home, that the issues that we confront with gaming machines, whilst important, will in my view be swamped over the coming years, if not already, by the problems we see in the other areas.

This particular press release, 'Liberals oppose measures to reduce problem gambling', was just a nonsense. We can have a different view as to whether or not this legislation is going to reduce problem gambling, as we do, but it is a nonsense to claim that we are opposed to reducing problem gambling. We just happen to disagree that what the government is proposing is going to reduce problem gambling.

Later on tonight we will go through the budget papers to look at the estimated gambling revenue to come into the state, obviously predicated on the basis of these amendments going through, and the projected growth in the gambling and gaming revenue would not seem to indicate that the Treasury believes that these measures are going to have a significant impact on gaming revenue.

When I last spoke, I indicated that the position that we were adopting was that we were seeking to split the bill, and to do so in part to allow proper consultation with all the stakeholders, and in particular the clubs industry. As they have indicated to all members, they spent two years trying to consult and negotiate with the Labor government in South Australia and they were steadfastly ignored.

Their letters were ignored; their emails were ignored; their telephone calls were ignored. Ministers ignored them; premiers ignored them; senior bureaucrats ignored them; junior bureaucrats ignored them. Every Tom, Dick and Henrietta in the Public Service and in the government ignored the clubs industry for two years as they sought to indicate that they wanted to sit down and negotiate the future of their industry and the impact of any legislation. Then, at the death knell (I use that term advisedly) the government says, 'Here's what we intend to do.'

I note in the two press releases issued on the 20th and the 19th of this month by minister Rau that he talks about the consultation they had with the concerned sector, or the community sector, and also with the hotels industry. Here is the direct quote:

> The government has worked with the community sector and the hotels industry to negotiate a comprehensive package of reforms supported by both sectors.

The government is at least bold enough to say, 'Well, we only consulted with the community sector and the hotels industry in relation to this, but a critical sector such as the clubs industry we have

just frankly ignored because we do not believe they are important enough; we do not believe that they are deserving of being consulted in relation to legislation which is critical to their ongoing viability as an industry.'

The extraordinary nature of that is, in recent times, as you would know, Mr President, in the vexed or controversial debate in relation to the small bar legislation, because on that occasion the hotels industry had taken the same general position as the Liberal Party, the Premier said:

> ...it's pretty obvious that AHA have got right in behind them with some big donations. They have backed in behind the big venues' position on this. It's pretty obvious the connection between their support and the Liberal Party's position.

Afterwards, in another interview he said:

> ...flinging quite a big lump of money to the Liberal Party and it's easy to see why; the Liberals have been bought by the big end of town to actually squeeze out the small entrepreneurs.

I think that is a puerile way of interpreting that particular debate by the Premier and the government ministers, but if one wants to use those standards and that assessment, what we can say on this occasion is that the Premier and the Labor Party have got into bed with the hotels industry, with the big end of town, with big business, and have responded to the donations that they have received from the AHA over recent years in relation to this legislation, which is intended to kill off the clubs industry.

As I said, I think that is a puerile way of entering public debate on an issue, but that is the standard of debate the Premier used in relation to the position of the AHA and the Liberal Party over small bars legislation. Well, here we are, and the Premier is supporting the same 'big end of town'—in his terms, not mine—the hotels industry, in relation to this, intent on killing off the small and community-based clubs which do so much good work in the community.

I repeat: that is not my description of the hotels industry. I have too much respect for the hotels industry, over many years, to use that sort of characterisation to describe it. However, sadly, that is the sort of nonsense that masquerades as public debate under this Premier and Deputy Premier, minister Rau, on these and related issues.

Minister Rau went on, in his press release of the 20th, to indicate what the Liberal Party was going to oppose: we were going to oppose precommitment, we were going to remove on-screen warning notifications, and a range of other things like that. The position we are adopting is to say, 'Look, you have not consulted with the clubs industry. Go off—either of you, if there is to be a new government after March 2014—and negotiate with the clubs industry and other stakeholders, and then come back with a package of measures where you can say that you have properly consulted with everybody.' Some of these measures may well be in there and some of them may not, or they may be in there a different way, but the least everyone will have had a fair go in terms of being consulted on something that is critical to their industry.

If it is a Labor government, they may still take the view that they want to kill off community clubs in South Australia and introduce this package of measures as it is, but at least the clubs industry would have had a chance to sit down and be part of the discussion and the debate, put their point of view and, if it is a Labor government, still get shafted by that Labor government. Alternatively, and hopefully, the government, having sat down with the clubs industry and the other stakeholders, might come up with a package of give and take from everybody that is capable of being supported broadly by everyone. My suspicion, in this area, is that that is always pretty hard to achieve; nevertheless, at least through that mechanism everyone would have had the opportunity to be consulted, in part, during that process.

From the Liberal Party's perspective, we would obviously wait and see what measures came up. We may well agree with the position that is negotiated or we may well disagree, but we would do that if and when we got to that position. Certainly, if this has not been resolved by March 2014 the sort of position I hope a Liberal government, if elected, would adopt would be a commitment to sit down with all stakeholders, not just say to the hotels and community sector, 'We will negotiate a package with you and stuff the community clubs. We'll leave you out of the discussion and negotiation.'

I say to the non-government members in this chamber, the minor parties and the Independents that I know the government will want to negotiate and seek a deal, make a tweak and a change here and there, but ultimately I hope that this chamber, or at least the majority in this chamber, will be prepared to stand up to the government and say, 'Your whole process is wrong in

that you haven't included a critical stakeholder, such as the community clubs, in the negotiations.' It is fine to tweak here and there and try to do a deal with enough members in this chamber to get the bill through, but if you do that it will still be done on the basis that the community clubs have been frozen out of the negotiations or discussions, and they will be left high and dry in terms of being at least equal participants in a discussion that impacts on their future.

Given that the federal legislation is to come into operation over a period of time in the future, much of what we are talking about here is just a race to be first; it is just a race to say, 'We have done the same things as the federal government package, only a year earlier,' or two years earlier, or whatever it might happen to be, with all the problems that that might engender or create as well. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

*[Sitting suspended from 18:00 to 19:45]*

## ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 16 May 2013.)

New clauses 15A and 15B.

**The Hon. S.G. WADE:** I move:

Page 7, after line 11—Insert:

15A—Amendment of section 71—Manner of voting

(1) Section 71(1)—delete 'An' and substitute 'Subject to subsection (2), an'

(2) Section 71(1)(b)—delete 'in the case of an elector entitled to do so by virtue of subsection (2)—'

(3) Section 71(2)(b) and (ba)—delete paragraphs (b) and (ba)

(4) Section 71(2)—before 'entitled' insert 'only'

(5) Section 71(3)—delete 'In addition, a' and substitute 'A'

15B—Amendment of section 73—Issue of voting papers

Section 73(2)—delete 'ground of the applicant's entitlement to make a declaration vote' and substitute 'prescribed kind'

This is the first of two sets of amendments addressing postal votes. One set proposes to make postal voting more broadly available. The other set seeks to ensure that, as the Electoral Commission takes over the exclusive right to distribute postal vote applications, the commissioner should maintain distributions of postal vote applications. I want to be clear that they are two separate issues. A member could support one but not the other, although the opposition would welcome members' support on both.

This amendment relates to broadening the availability of postal votes. All the members in this chamber are democratic activists. We campaign, we represent, we encourage others to exercise their democratic rights and we, like other Australians, vote. Unlike many democracies, our democracy does not just give Australians the opportunity to vote, we compel them to do so. Voting is not merely a right: it is a duty. Some people object to compulsory voting and think people's votes are only worth counting if they take the initiative to go and vote. This restrictive approach says that a voter should only be able to have their say if they overcome all the barriers that are put in the way, that a person has somehow earned their vote by virtue of having to run the gauntlet.

In the opposition's view this same restrictive approach is evident in the arguments for narrow eligibility for postal voting. The government seems to think that people only deserve a postal vote if they go through the trial by ordeal first to be qualified to get a postal vote and, second, to go to the inconvenience to get one. On both counts the opposition differs.

When we compel people to exercise a right, it is incumbent on us to make it as easy as possible for citizens to fulfil their duty. We say that everyone should have the best possible opportunity to cast their vote. Barriers to a person exercising their democratic vote should be removed as far as is practicable so that a free, unhindered choice can be made.

The government's attitude is that voters should be forced to vote at a polling booth on a specific day within a specific window of time. We think the focus should be on the voting, not the manner of the vote. Let us remember that many voters lead busy lives, juggling work, family and other commitments, and they are often starved for time. Many voters live unpredictable lives. With increased casualisation of labour, many workers only have hours notice of whether or not they are required to work. Many voters with significant disability and mobility issues live independently. Often they are coping with minimal support. On most days they would be able to get to a polling booth; on a bad day or when their support fails, they would not. None of these groups are eligible for a postal vote.

In the modern world it makes sense to increase opportunities for people to vote at a time and in a manner of their convenience. Currently, without certainty, a person is not eligible for a postal vote. No-one should have to hope that they will be able to vote. This amendment proposes to remove the restrictive criteria that are in place as a barrier for postal voting. This amendment will provide an assurance that, despite the unpredictability of life, people's democratic lives will be assured.

Another attitude often expressed is that postal voting should be discouraged, that voters should be forced to endure the entirety of an election campaign before they make up their mind. This is the equivalent of an audience in a theatre being kept captive and only let out of the auditorium when the performance is finished, despite the fact that they were well and truly capable of deciding what they thought of the performance soon after it started. It also potentially reduces the number of people that will attend.

The local government experience in South Australia shows that that postal voting facilitates participation. In 1995 voter turnout at local government elections was at its lowest ebb. The overall turnout in metropolitan areas was only 13.8 per cent. Statewide it was an average of 18.8 per cent. When all but 11 councils opted for all-out all-mail ballots at the following election in 1997, overall turnout rates increased to 34 per cent in metropolitan areas. Voter turnout increased from 13.8 per cent to 28.8 per cent. In country areas voter turnout increased from 28.6 per cent to 49.8 per cent. At the following election in 2000, only postal votes were used. Turnout rates again increased from the average of 34.4 per cent to 40.1 per cent.

The opposition is not suggesting that all ballots should have to be cast by post. I suspect that booth voting will still be available in state elections. Where they are not available in local government elections, there would be fewer than 40 per cent of voters who would choose a postal vote. However, there is a clear link between the provision of voting services by mail and more voter engagement.

The amendment we are proposing is similar to the no-excuse postal vote system used in 27 states in the United States of America and in the District of Columbia. It is also used in Canada. If anything, providing options for voters to vote by post reduces the impact of polling day skulduggery, as we saw displayed by the Labor Party at the last election. The effect of dubious last minute announcements that do not leave time for an opponent's response is reduced, the impact of questionable material at polling booths is reduced, and the risk of administrative problems affecting a large number of voters on polling day is reduced. Removing the strict eligibility requirements on voting by post may increase the number of postal votes cast, but this does not necessarily mean a greater administrative burden on government to process them.

One of the Electoral Commissioner's concerns at the last election was about the administrative burden on determining whether a postal vote met the criteria required by section 71. We suggest that our amendment addresses this burden by removing the hoops voters have to jump through to cast a postal vote. Given the declaration vote module technology available to the commission, processing postal vote ballots is also now easier and less onerous than in the past, but easing the process of voting should not be our primary consideration—assisting voters to vote should be. The opposition amendments help us to do that, and I commend them to the committee.

**The Hon. G.E. GAGO:** The government opposes this amendment. I want to ask the Hon. Stephen Wade whether he consulted, discussed or sought advice from the Electoral Commissioner, and who else did he consult with in putting these amendments together?

**The Hon. S.G. WADE:** This reminds me of a letter I received from the Attorney where he posed a similar question. It was about the distribution of postal vote applications. He said:

> I wonder if you have discussed these with the Electoral Commissioner. If so, could you please see her comments before the debate in the Legislative Council...'

I found this rather curious. We are constantly told by bureaucrats and officers that we should seek briefings through the minister, but in this case I do not think it is particularly relevant. With all due respect to the Electoral Commissioner and the minister's comments in relation to her, her duty is to implement the Electoral Act as put forward by this parliament. Is the minister really suggesting that we should let the Electoral Commissioner dictate to us the shape of our democracy? I find that extraordinary. I did not see the need to consult the Electoral Commissioner. In fact, as I have said in my comments, if anything it would make it easier for the Electoral Commissioner, not harder.

**The Hon. G.E. GAGO:** I am gobsmacked, absolutely gobsmacked. The Electoral Commissioner has expressed serious concerns about the Hon. Stephen Wade's amendment in its current form. The Electoral Commissioner is a fairly independent authority, is responsible for the administration of the act and is a technical expert when it comes to the act, particularly in understanding the issues around security concerns, which she has raised in relation to this amendment. I am gobsmacked that the opposition would put forward an amendment that has such serious implications for our electoral system, and he has consulted with nobody, not even the administrative and technical independent expert in relation to this legislation, who will be required to administer the amendments put forward by the Hon. Stephen Wade. Again, I challenge him to outline who on earth he did consult with. If it is not the Electoral Commissioner, who did he consult with?

**The Hon. S.G. WADE:** I would like to ask the minister what security concerns the Electoral Commissioner expressed in relation to this matter—what security concerns?

**The Hon. G.E. GAGO:** I am happy to outline those, and I will be doing so in outlining the reasons for my opposition, but it begs the question before I start. The fact that he has no idea about the concerns, including the security concerns, the Electoral Commissioner has raised is irresponsible and incredibly alarming. In response to his amendment, once it has already been tabled and, no doubt, he has already lobbied, he is wanting me to outline the issues that an independent, technical, administrative expert has raised.

**The Hon. S.G. WADE:** Two points. The main reason I asked the question about the minister's concerns is that I suspect that she is reading the notes for the wrong clause. That is the main reason for asking the question. My second reason is that, if the minister is suggesting that the Electoral Commissioner has significant concerns, as a statutory officer, you would expect that she would raise them with members. Apparently, the minister claims that the Electoral Commissioner has raised significant concerns. If that is the case, let the Electoral Commissioner contact the opposition, or let the government table the advice it has been given.

We have seen, time and time again, assertions by this government that statutory officers have made claims in relation to our amendments, and they are proved wrong. Let me remind honourable members of the case of the correctional services parole legislation. We were told by the government that the police insisted on it—time and time again, we were told that they insisted on it. So, in the deadlock conference context, we adjourned so that we could meet with the police commissioner and senior police, and they told us that the government's amendment would not work. So, with all due respect, until the minister tables the advice she has received, I do not believe a word of it.

**The Hon. G.E. GAGO:** I do not think I have ever seen such unprofessional conduct in this chamber before. I am completely astounded that the honourable member believes that the onus is on the commissioner to get on the phone and ring him when he is proposing an amendment that potentially has this significant impact, and he has failed to consult with anybody, not the commissioner, not with anybody. He was awake one night, probably with insomnia, and thought, 'Gee whiz! Whiz bang, this is a good idea. I think I've got an amendment here. I won't consult with anyone. I won't talk to anyone at all who might have any other expertise in this area but here goes this fabulous amendment.' Anyway, I can see that this is not going to get anywhere, and we have a lot of work to do tonight.

The government is extremely concerned by this amendment. This proposal seeks to fundamentally change the nature of elections in this state. South Australia and, indeed, Australia as a whole, has a very proud tradition when it comes to elections. Elections are an attendance ballot. In consultation with the minister, the commissioner has raised significant concerns in relation to this amendment, particularly around the lack of clarity in terms of what is intended. The commissioner has advised that, if it is parliament's intention to move away from an attendance ballot, it should exercise caution and consider the full implications of such a move and how it will address those

implications, for example, in relation to the identity of electors, security of ballots, logistical requirements for the commissioner, etc.

If there are concerns meaning that there is a need to relax the criteria because the Hon Stephen Wade has identified a group, for instance, that is not adequately being captured, he should raise that with the commissioner and seek to address that directly, not in the way in which he is doing it. Apart from the fact that this amendment is incomplete and poorly thought through, if the intention is to remove the eligibility criteria to fundamentally change the nature of the ballot away from an attendance ballot, the government is opposed to that measure.

Elections should, as much as possible, be a snapshot of the population on the day, not a moving feast over the last two weeks of the campaign. One of the great strengths of the political process in Australia is that we have our elections on a single day, with votes cast in polling places where they can be actively scrutinised. This scrutiny is a key strength to our electoral process. Marked ballots are not moved before they are counted, and there is cross-checking to account for every ballot. They are then moved once to a division returning office, where all ballots cast for a district can then be tallied together. There is minimal handling and maximum accountability for the marked papers.

This proposal seeks to fundamentally weaken our electoral process by allowing people to vote by post out of convenience alone and, basically, however many people—for instance, you could have everyone voting by postal vote. The government believes that requiring electors to attend at a polling booth once every four years is entirely reasonable. We recognise and completely support that many people have a legitimate need to vote by post or to attend pre-polling locations to vote early. The government completely supports the continued need for postal voting and would obviously never move to disenfranchise people, particularly the vulnerable.

This amendment has a significant cost associated with it, a cost to the quality of one of the world's best electoral systems, and it is easy to take that quality of our system for granted, and this amendment clearly does that. It marks a fundamental and detrimental shift in the way elections in this state would be carried out. Further, it fails to recognise and address the major implications arising from such a shift. It is for those reasons that the government strongly opposes this and also the next amendment.

**The Hon. S.G. WADE:** I would like to address the issue the minister has raised in relation to the integrity of the election. I really doubt whether the government had its heart in that one. This is the government that shifted towards postal votes for local government. Are we seriously saying that local government elections in this state have been fundamentally compromised?

Let me explain why I believe that this proposal, particularly lifting the eligibility criteria, will improve the security of this voting system. Voting by post will usually have as much integrity as voting in person. To vote in person, a person must only answer the questions put to them at the booth, which are, under section 72:

> (a) such questions as are necessary to establish the identity and address of the principal place of residence of the claimant; and
>
> (b) the following question: Have you voted before in this election? or Have you voted before in these elections?

I refer the government to the report, time and time again, of the Joint Standing Committee on Electoral Matters in the federal parliament, which has constantly raised concerns about identity at polling booths. We all know the stories about Labor Party voters registered at vacant blocks—I think that was in the Rostrevor/Newton area. Then, of course, we had reports of multiple voting. These claims to vote can only be rejected if they refuse to fully answer the questions or if they answer in a way that indicates that they are not entitled to vote.

The polling booth officer does not have the power to request any sort of formal ID from the voter or to ask them to produce substantiating information; it is purely verbal. The officer only needs to ask enough questions to satisfy themselves that the person is who they say they are; they only have the elector's name, the date of birth and the address on the roll to make that assessment.

The reason why a person was able to allege that they had voted around 150 times at the 2010 election was that they could go around to every polling booth in the electorate and vote under the same name multiple times and, subsequently, under different names without producing any ID and without producing any substantiating documentation.

That simply could not happen with postal votes because they are processed one at a time. This is the key point: you have a person running around and voting 150 times with no way to stop them, but with a postal vote application they have to be processed one at a time; no further votes can be lodged against that person's name. There is only one active electoral roll at any one time with postal voting.

In contrast to the low-level identification process used for election day voting, postal vote applications must be signed by the applicant and must provide all those details plus a contact number and the signature of the person. The signature can be checked against their electoral registration form. That is significantly enhanced security compared with a polling booth.

Secondly, you have to have an authorised witness there. You do not have a person turning up at the polling booth vouching for your identity, but you do with a postal vote. This argument about a lack of security is a weak squib from this government against reform. This information is also required for the declaration ballot papers themselves. You do not have to go through that process once, you have to go through it twice. This is double security.

*The Hon. K.J. Maher interjecting:*

**The Hon. S.G. WADE:** Excuse me, they can choose not to do it. You are saying you cannot have the choice unless you have no choice. We say people should have the choice, and I agree with you. If I had the choice, I would go every day to a polling booth, but why should people be denied the choice? The Hon. Kyam Maher can vote with the government. I appreciate that is what his obligation is as a whip, but I will be standing up with a Liberal position which I believe is strongly democratic and has strong integrity.

While we acknowledge there is a risk of voter fraud with postal votes, we think there is more risk of fraud through an over-investment in polling booths, particularly for people with disabilities. I constantly have people with disabilities raising concerns. In fact, it came up in the joint select committee on electoral matters. People were constantly concerned about the security of their votes when they go to a polling booth. You cannot be guaranteed that you will get an electoral system of your choice.

With postal voting, you have control. You can decide when and where you will fill in your ballot paper, and if you are not comfortable that you are going to have your anonymity, your security, protected, you will not vote. You will keep the ballot paper in your pocket. In our view, voting by post provides more integrity and more security to the system than in-person voting on election day.

The person must have first applied to vote by post and provided their name, their address, their date of birth and their phone number. As I said, it also needs to be signed by an authorised witness. It must provide all the person's details and then must again be signed by an authorised witness. In our view, this is a significant enhancement in security, not the degradation the minister is postulating.

**The Hon. G.E. GAGO:** The honourable member is unable to really demonstrate in any genuine way how the current system does fail voters. Our voting system is considered all around the world as having one of the highest levels of integrity and security of any voting system, so we are right up there, but if the honourable member is genuine and believes that the system needs even greater integrity, such as voter ID, let him move an amendment to say that voters should take their ID to the polling booths with them and have their ID identified on polling day—if he was genuine, but of course he is not, and that is why he has not moved an amendment of that type.

**The Hon. S.G. Wade:** I am happy to report progress to do that one.

**The CHAIR:** Order!

**The Hon. S.G. Wade:** No, she has dared me to. I am very happy to do it.

**The CHAIR:** Order!

**The Hon. G.E. GAGO:** Also the honourable member talks about people with disabilities. As I have said, this government has no intention of changing the current provisions that allow for those people who believe that they have a genuine and good reason to receive a postal vote to do so, and that includes a lot of people with disabilities. The honourable member mentions people with disability. They are already covered by their ability to access postal votes.

The comparison with local government is just bizarre. The local government elections are completely different provisions from those our state system involves. The local government elections involve voluntary elections for a start—they are not compulsory—and they have a number of classes of different types of voters, some of whom, such as businesses, have to register to get onto a roll, etc. It is a completely different voting system, and I have to say that if you look at the participation rate it is appalling, absolutely appalling, in local government. You would not want to go there. We have a system of incredibly high integrity with a high participation rate compared with a system that has very poor voter turnout.

I just wanted to outline the list of services that the Electoral Commission does provide, particularly for those people with disabilities. They provide a teletypewriter number that is available and advertised on material published by the commission. All election television advertisements are text captioned. Election information and provisions for the vision impaired at polling booths were promoted by the RSB newsletter. Election advertising is aired on 5RPH, in addition to all major ethnic metropolitan and regional radio stations across the state. Letters are sent in large print (22 point) to all vision impaired electors who were registered, etc. A braille version is sent to registered braille users, an audio CD is sent to registered audio clients, and the Electoral Commission websites contain an audio file of a letter to electors. The radio advertisements are made available on audio files and the Electoral Commission website text could be enlarged by using certain provisions on the keyboard.

Polling places with full or assisted wheelchair access are indicated in information material on polling locations. The Electoral Act allows the manager of a polling place to provide an elector with papers outside the polling location if required. Each polling place is issued with a desktop voting compartment, allowing electors to vote while seated. Electoral visitor teams visit declared institutions, including hospitals, nursing homes and aged care. That is not a complete list. These are just some of the services provided to people with disabilities by the commission.

**The CHAIR:** The Hon. Mr Maher.

*The Hon. S.G. Wade interjecting:*

**The Hon. K.J. MAHER:** It might be easier if I ask a question. You might be able to answer this as well as responding to the minister.

*The Hon. S.G. Wade interjecting:*

**The CHAIR:** The Hon. Mr Maher, you have the call.

**The Hon. K.J. MAHER:** One of the main reasons the Hon. Stephen Wade gave for his amendments was the ease of voting reducing the barriers and getting more people to vote. I am wondering if he can perhaps answer whether he is in favour then of online voting or voting by SMS. If this is really your reason, are you in favour of moving to ways that might make it even easier than this?

**The Hon. S.G. WADE:** Can I suggest that the honourable member might want to report progress, because I am very attracted to the voter ID suggestion that the minister made. I am even happy to have a joint party room meeting to seek that amendment, because we have been arguing as a Liberal Party year after year for that at the federal level, so if the government is open to that, that would be great. Could I now turn to the real issues rather than—

*The Hon. K.J. Maher interjecting:*

**The Hon. S.G. WADE:** He can play games.

*The Hon. K.J. Maher interjecting:*

**The CHAIR:** The Hon. Mr Wade has the call.

**The Hon. S.G. WADE:** I am not obliged to move amendments on the whim of some Labor hack!

**The CHAIR:** You have the call; just relax. Continue on.

*Members interjecting:*

**The CHAIR:** Order! The Hon. Mr Wade, you have the call.

**The Hon. S.G. WADE:** Thank you, Mr Chair, and I am glad to see that the Liberal opposition can show more respect for your position than the government.

*Members interjecting:*

**The Hon. S.G. WADE:** No; they were doing it by their actions, Mr Chair.

**The CHAIR:** The Hon. Mr Wade, will you get on with it?

**The Hon. S.G. WADE:** I am going to focus on people with a disability, because clearly this government and the electoral administration of this state do not appreciate the challenges that people with disability face. Section 71(2) of the Electoral Act states:

> An elector…
>
> (b) who…
>
> (iii) is, by reason of illness, infirmity or disability, precluded from voting at a polling booth…
>
> is entitled to make a declaration vote.

What this government does not seem to appreciate is that people with disability are different one from the other. A person with a disability might have a severe disability. I can remember when I was on the board of Julia Farr Services, we had four people who were in constant need of care and could not do anything for themselves in a ward of their own. That is high dependency at one end of the spectrum. There are other people who are experiencing psychiatric disability that might be extremely episodic. They do not know if they are going to have a bipolar related incident on election day, but people like that want security. What this government is saying is, 'Unless you can show that you are precluded, you are not entitled to a declaration vote.' What we say is that those people, together with a whole range of other South Australians, would benefit from flexibility.

As mentioned in my comments earlier, we have a huge diversity of living situations for South Australians. I highlighted particularly voters with significant disability and mobility issues living independently. Often they are coping with minimal support and on most days they would be able to get to a polling booth. On a bad day, or when their support fails, they would have no hope of getting to a polling booth. Why should those people not have a bit of assurance? Why should they not be able to say, 'Well, okay, I do not want to take the risk. I'd like to have a postal vote. Okay, I'm not precluded from voting on polling day. I'm living independently and my disability hardly ever gets in the way; but why should I have to take the risk?' We, as a party, are saying that people should have choice, that is all; but the government says 'No; unless you are so severely disabled that you can be sure you cannot get there, we are not going to give you that choice.'

**The Hon. K.L. VINCENT:** I will just chime in very quickly to, I guess unsurprisingly, support the Hon. Mr Wade in this amendment. As he has already said, this is absolutely about choice. Dignity for Disability's mantra is, of course, dignity through choice, and I do not think it is a dignified attitude for this government to take towards people with disabilities, to say that they do not deserve the right to choose to vote in the way they want to, unless they are disabled enough. This is the government, yet again, waiting for people to get to crisis point before they can have access to what should be a basic and simple service.

The other point I will make is that to say people are already covered by postal votes is, in itself, a very concerning attitude, because at the end of the day this is about choice. People should be able to use a postal vote if that is the choice that suits them, whether that is because on a particular day they are suffering exacerbated symptoms or whether it is just their choice. If we say that people are covered by postal votes we are basically saying, 'Don't worry about people with disabilities having the opportunity to leave their house, to get out into the community, to go to a polling booth if that is what they want.' This is absolutely about choice. It is a very simple amendment that enables a bit more choice for people who have, quite frankly, gone without it for long enough.

Whether this is relevant to the amendment or not, one thing I will flag is that we have a long way to go when it comes to accessibility to voting in this state for people with a disability. It does not start and end with postal voting. We have many people with intellectual disabilities who are of adult age who would like to vote, but they are not even enrolled; they have not been given the support they need to fill out the forms because, in the view of a family member or a support worker and so on, they do not have the capacity, yet you can tell by talking to them that they have just as much capacity to vote as anyone else in this state or country. Are we really going to pretend that everyone in this country who goes to vote on election day really understands, exactly and to the letter, what they are doing? I think the short answer is no.

So while this is an important issue, I guess what I am trying to flag is that it does not start and end with the issue of postal voting. Having said that, we absolutely do support the issue of choice when it comes to postal voting.

**The Hon. K.J. MAHER:** I appreciate the Hon. Kelly Vincent's contribution. She is absolutely right: we do not want to discourage people from voting. I was not really going to participate in this debate, but I want to say a couple of words now. I think the Hon. Stephen Wade's silence on my last question is most instructive. He regularly talks about other people and the arrogance of not answering things, but I think the fact that he refused to—or more likely could not—answer that question shows that he has not really thought through the nature and the effect of what he is proposing.

The system we have in Australia for voting on a particular Saturday, and the way we do it, is one of the world's best systems. It has stood the test of time and I am absolutely convinced that we do it better than nearly any other voting system. You turn up to a particular place on a Saturday to vote, you secretly mark a ballot paper, and these ballot papers are securely stored in the original ballot boxes at the polling booth. At the conclusion of the day the ballot boxes are opened at that polling booth, in front of other scrutineers, in a very transparent way. These ballot papers, at the polling booth, once the doors have been locked, are then counted in front of scrutineers and an initial tally done. After that the boxes are sealed, but they can be rescrutinised booth by booth over the coming weeks.

This system has stood the test of time and it is a very secure and certain way to protect the integrity of our system. There are many other systems around the world, and in the US many states differ in the way they allow elections to be conducted. There is full postal voting in some US states, other states have computerised voting (which I think has some dangers) and some have punch cards, with chads, that you have to use. I still maintain that, compared to nearly all of these, our system is exceptionally transparent in the way you do it. It is scrutinised on the day and afterwards, to have a look at votes.

One thing I want to mention is the rules we have for postal voting. I would like to quote part of a speech made by the member for Bragg at the end of last year on a bill from the member for Fisher on optional preferential voting. This is what the member for Bragg said, the person who is the possible alternative attorney-general in the Liberal government, and on this one she makes a lot more sense, frankly:

> I think it is important that we have a civic duty to make sure that we take advantage of this opportunity we have for democracy to be able to vote for our elected representatives, a right which many around the world fight for and which, frankly, too often we take for granted. So I am not into having an electoral system just to make it easy or to cover for those who are just too ill informed or will not deal with the fact of what the rules are in relation to voting. It is not that difficult.

I do not think I would use that language that the member for Bragg used in talking about this but I think it is instructive. I assume there are differences of opinion. I assume from that language that the member for Bragg would want to maintain the integrity and the ease of scrutiny of our system.

What this highlights for me in a very good example is that at the last federal election people from right around the state voted in their federal electorates. In the federal seat of Boothby at the 2010 election, there were 2,977 votes excluded. Good people had gone along to cast their vote whose votes were not counted on the day.

For the benefit of the Hon. Stephen Wade, I was going to ask him does he know why they were excluded but, given he does not understand questions and I am pretty sure would not know the answer to the question, I will give him the answer without waiting for it. These were declaration votes that were not handled properly. These votes would have counted had they been at a polling booth on the day. I am sure that as someone who has a law degree, the chain of custody is an important principle in criminal trials. The simpler and the less handling of votes, the easier it is to maintain their integrity, and these declaration votes (nearly 3,000) from the Boothby election were not handled properly. Had they been voted on the day, there would not have been the problems with the chain of custody. I am giving the Hon. Stephen Wade the benefit of the doubt. I will assume that he does not really believe in this but has been put up to this amendment.

**The Hon. S.G. WADE:** The Hon. Kyam Maher, you just wonder if he is my employ. In my comments in supporting this amendment, I said the government seems to have this view that people have to earn the right to vote by postal vote because it is some sort of trial by ordeal, that people have to earn the right to vote because it is some sort of trial by ordeal, and that is basically

what he has just argued. He is basically saying why we should not be forced to the inconvenience every four years to go to a postal vote.

**The Hon. K.J. Maher:** That would be the member for Bragg you would be disparaging here.

**The Hon. S.G. WADE:** No, excuse me. I have the call. I will just remind you that I have the call.

**The CHAIR:** Order!

**The Hon. S.G. WADE:** Because apparently you do not seem to understand how this house works. If I could just go back to the point when the Hon. Kyam Maher said that I was somehow not willing to explain my amendment because I was not willing to answer his questions on SMS and online voting. Give me a break. What is the connection? I do not mention SMS once, I do not mention any use of computers. I have indicated that I am going to be risking the wrath of my party room by embracing the suggestion of the honourable Leader of the Government that we would be willing to support the introduction of identification at polling booths.

But I am sorry, I will actually discuss SMS and online voting with other people, but what I do know is that time and time again academics and political operatives have shown that there is fraudulent identification at polling booths. It has been a recurring theme in the federal parliament. So, the Hon. Kyam Maher says Chris Pyne, let me send you a pile of press releases. There for one, the Joint Standing Committee on Electoral Matters, both majority reports and minority reports, the member needs to read more widely.

In relation to the beautiful sanctity of the polling booth that the honourable member reminds us of, where was that when an elector claimed they voted 150 times at the last election? The member is honestly telling us that a person turning up, saying their name and address, answering a question as to whether they have voted before is a highly secure environment. I would be much more comfortable with a person who on two occasions has had to sign a form which is in the form of a statutory declaration. You actually commit an offence if you incorrectly claim a declaration vote. I am actually very confident in my assertion. I believe that a postal vote system would actually improve the integrity of the electoral system, but even if I am wrong, people should have a choice. We actually force people to vote; we should not be forcing the manner in which they vote.

**The Hon. M. PARNELL:** The debate on this clause started off as a fairly simple choice and it has become more complicated as the debate has progressed. The choice, as it first appeared, was whether or not the preferred and overwhelming default position should be one of attending at polling places versus an arrangement that I think is inherent in the Hon. Stephen Wade's amendment, where I think over time the default position would become one of postal voting.

The Hon. Stephen Wade does not agree because a person would still have the ability to go to a polling place or the ability to fill out a postal vote form, but the removal of eligibility criteria would mean that you no longer have to have a reason other than your own convenience. That could be regarded as an exercise in simple free choice, but it does seem to me that it is quite a significant change from the culture of voting in Australia to move overwhelmingly from attending a polling booth to postal voting, because I think that would be the inevitable consequence.

I have had a quick look at the changes to the numbers of people who have voted by post over the years and it has gone up considerably in recent years. I think a big part of that has been the involvement of political parties in the distribution of postal vote application forms and, through this bill, we are removing that. I would have thought that if we did not do anything else, the number of people postal voting might probably fall.

I want to address some of the points the Hon. Kelly Vincent made, because I think they are good points. When we look at the eligibility criteria in section 71 of the act, I think it is clear that the criterion, 'A person by reason of illness, infirmity or disability is precluded from voting at a polling booth' probably could do with some work, especially in the situation where a person may not know whether or not they are going to be fit and able, as it were, to attend a polling booth. The minister might have a comment on this, but I think part of the answer to that is that it seems from the statistics that a lot of people who apply for postal votes are approved by the commissioner and ultimately do not end up using them.

I had a quick look at the statistics for the 2010 election—and I stand to be corrected if I am wrong—and my recollection is that there were 20,000 fewer people who cast a postal vote than

people who were given permission, as it were, to vote by post. What that means is that the 20,000 people who ultimately did not vote at all, or the 20,000 people who changed their mind, as it were, turned up at a polling booth and voted in person. It may well be that that is part of the answer: that a person can have a fallback position of a postal vote but, if they are fit and able and want to exercise their democratic right in a more communal way, they might want to attend at the polling place.

The arguments about security I think are interesting, and certainly where there is a will, there is a way. If people want to rort a system, whether it is a face-to-face system or a postal system, there are ways of doing it. It is possibly a bigger debate that we can have today, but I do see that under both systems—postal voting and face-to-face voting—there probably is room for reform.

The position that the Greens have settled on is that we support the ability of people to vote by post when they cannot attend a polling booth, and that includes support for the current system, where you need to provide a reason. If there was something before us which was a change to the eligibility criteria, a change to the list of reasons, then we would consider that.

My understanding is that it is effectively a self-selecting process. I do not have a current postal vote application form in front of me, but I think you have to declare your reason for being eligible to lodge a postal vote. In some ways it reminds me of when I was a solicitor very many years ago and my firm had the job of prosecuting people who failed to vote in compulsory local council elections. The letter would go out:

Dear Madam, you have failed to vote; unless you provide a good reason, we're going to fine you $25—please turn over for list of good reasons.

The number of men who were heavily pregnant on polling day was remarkable. I do not think too many people were fined—it was a self-selected process.

As the Hon. Stephen Wade said, it is an important process, it is part of the democratic process, and you need to declare your eligibility, but it seems to me that it is not that onerous, and maybe we can come back and fix up some of the eligibility criteria. The Greens' position is that we do not support a de facto shift away from voting in person to voting by post, and we think that that is the likely outcome of the Hon. Stephen Wade's amendments, so we are not inclined to support them.

**The Hon. S.G. WADE:** I will be very brief because I would not want members to be left with the assumption the Hon. Mark Parnell has had. He is assuming that, if we made postal votes more generally available, they would become the default position. I do not believe that is the case—27 states of the United States of America have 'no excuse' postal vote systems. I am not aware of anywhere that it is seen as a default.

**The Hon. D.G.E. HOOD:** I rise briefly to indicate that Family First will support the amendments. I indicate for members' interest that we would support amendments, if they were so tabled, that insisted on identification being produced when one attends a polling booth to vote.

**The Hon. J.A. DARLEY:** I indicate that I will support the amendments.

**The Hon. A. BRESSINGTON:** Yes, I am supporting the amendments.

New clauses inserted.

Clause 16.

**The Hon. S.G. WADE:** I move:

Page 7, after line 13—Before subclause (1) insert:

(a1) Section 74—before subsection (1) insert:

(a1) The Electoral Commissioner must, in respect of an election, send a form for the application by an elector for the issue of declaration voting papers to every address on the electoral roll for the electoral district, or districts, to which the election relates.

I suggest to honourable members that this is a good example of the fact that the Liberal Party does consult. We have consulted extensively with the government and crossbenches. We have drawn heavily on the joint select committee on electoral matters report. Our original proposals did not receive support; we have come back with alternative proposals. Let me just outline that for honourable members.

As members would be aware, the Liberal Party was originally proposing that the Legislative Council support amendments to implement the sixth recommendation of the Select Committee on Electoral Matters Related to the General Election of 20 March 2010. Let me pause there to remind the committee that those recommendations were supported by all members. The Hon. Bernard Finnigan and the Hon. Russell Wortley, representing the Australian Labor Party, were supportive of that recommendation. I would have looked forward to the support of the honourable member in this place, but that was not to be because in our consultation with the crossbenches that particular recommendation was not supported. Let me remind members what the recommendation said. It said that postal votes—

**The CHAIR:** Mr Wade, when you say 'the joint select committee', are you talking about the select committee of this place?

**The Hon. S.G. WADE:** The joint Select Committee on Electoral Matters Related to the General Election of 20 March 2010.

**The CHAIR:** A select committee of this place?

**The Hon. S.G. WADE:** Did I say 'joint'? Sorry, I did not mean to say 'joint'.

**The CHAIR:** Yes, we were not joint with them.

**The Hon. S.G. WADE:** Yes, sorry. I appreciate that the Victorian parliament and the commonwealth parliament have joint select committees on electoral matters. If the minister would like to taunt me about moving for a joint select committee on electoral matters, I am also happy to be taunted there as well.

**The CHAIR:** I am seeking clarification—

**The Hon. S.G. WADE:** Thank you, Mr Chair. You are quite right; I did mean the Select Committee on Electoral Matters Related to the General Election of 20 March 2010. For those who want to be more precise, I am referring to the interim report, not the final report, because, as the Hon. John Darley knows as a member of that committee, we dealt with a range of electoral matters, both state and local government. So, having clarified that I am talking about the select committee, I remind members of recommendation No. 6, which states:

> That postal vote applications (but not accompanying material) distributed by entities other than the Electoral Commission should be subject to content and process requirements specified by regulation, including clearly indicating which entity is providing the application and which entity holds the return address for the application.

Of course, the mischief that this recommendation was focusing on was, again, the behaviour of the Labor Party at the 2010 election, which was seen by a number of electors as being misleading. People felt that the postal vote application material they were getting was not being honest and frank about where it came from and where it was going. This recommendation responded to that by saying that, if political parties wanted to distribute material, they should comply with content and process requirements. I seem to recall that we were stimulated by the practice of the Queensland electoral system.

As members know, that particular recommendation was not picked up by the Labor government. The government has chosen instead to move to ban party involvement in the distribution of postal vote applications, and they are doing that without any guarantee that the Electoral Commission will assume that responsibility. The provision proposed in the government's bill is said to reduce the number of postal votes being cast. The government wants to discourage the number of people casting votes by post to hinder thousands of voters from exercising their democratic rights.

I would suggest to this committee that we have just had an important vote which says that postal voting is okay—it is actually okay to exercise your democratic rights through a postal vote. That being the case, why should we be discouraging people from using a postal vote by making sure that they do not dare get a postal vote application in their hand unless they go to the bother of going to the Electoral Commission or a post office to get hold of it?

We had and continue to have serious reservations about a proposal that aims to limit voter choice to services that facilitate their democratic choice, so we proposed an amendment consistent with the select committee recommendation. As I said, the clear feedback from the crossbenchers was that, as long as democratic choice was maintained, they would support a ban on party political involvement. We accept that position. We have withdrawn that amendment; I am not moving it.

What I am moving is that we say that, whilst we are not opposed to removing political parties from the process of a postal vote, we insist that they have a guarantee that they are at least offered an application for a postal vote. We are not prepared simply to remove the service that was being provided by political parties without some guarantee that voters will not be disadvantaged by that change. To achieve this, we are proposing that applications to vote by post are sent to every household by the Electoral Commission.

I understand that members have received a letter from the Electoral Commissioner, through the Attorney-General, saying that the cost of doing such a mail-out would be around $650,000. The costing, however, is not a costing of the opposition proposal. The commissioner's figures are based on direct mail pieces being sent to every person on the electoral roll. That is not our proposal. Our proposal was, and only ever was, that the form should be sent to each household by unaddressed household delivery.

We have sought a prudent estimate of the cost of doing the mail-out to each household. The quotes we have received amount to a total of $168,000, including printing, envelopes and distribution. That is also based on a distribution of 800,000 households, even though we understand that there are presently only 751,000 delivery points on Australia Post SA's address list. So, it is a very prudent estimate. I suggest to honourable members that it is probably the budget blowout you have when you inadvertently employ a public servant you did not budget for. From my point of view—

**The Hon. A. Bressington:** That hasn't happened.

**The Hon. S.G. WADE:** That has not happened, not that I can recall, certainly not since the budget was brought down. We think that $168,000 is a very affordable investment in the strength of our electoral process to provide every reasonable opportunity for South Australians to cast their vote. We also think it is reasonable and fair to ensure that voters will not experience a loss of service as a result of political parties being excluded. Our first and foremost concern is ensuring that those who want to participate in our democracy can in a form of their choosing, and I commend the amendment to the committee.

**The Hon. G.E. GAGO:** The government opposes this amendment as indicated by the Hon. Stephen Wade. The commission has identified a cost of more than $650,000 for a statewide mail-out alone. It is worth noting that as at 1 July Australia Post will be increasing fees meaning that the figure initially provided by the commissioner and distributed to members is likely to underestimate the cost. I note that there has been a number of questions led by the Hon. Stephen Wade about this being a high estimate and that there may be less costly ways to distribute the forms. I find it highly presumptuous that the Hon. Stephen Wade would question or even direct how the commissioner should comply with legislation.

In consultation with the commissioner, the government has been advised that the commissioner has philosophical objections to general mail-outs addressed only to 'the householder' for this end. The commissioner considers it appropriate to engage and address electors directly, reflecting their entitlement as reflected on the electoral roll.

As the commission is a statutory office independent from government, the government believes that it is highly inappropriate to direct the commissioner otherwise. It would also result in assumptions of entitlement where those electors who are either not on the roll or whose details have not been updated will reasonably assume that they are entitled to vote, or to vote in a particular district. There are then costs associated with posting the ballots that have been requested. There is also potential for additional work and associated cost, and I would remind members that at the last election the proportion was already more than 10 per cent of the population due to the involvement of major parties in the postal vote process.

If members are concerned that people may not be provided with the information about services available during elections, I would draw their attention to section 8 of the Electoral Act, which outlines the responsibilities and obligations of the Electoral Commissioner. Section 8(1)(c) specifically provides that the commissioner is responsible for the carrying out of appropriate programs of publicity and public education in order to ensure that the public is adequately informed of their democratic rights and obligations under the act.

I am more than happy to report back to the Attorney-General if anyone would like to report specific concerns or would like to engage with the commissioner on other specific electoral matters. For the reasons stated, the amendment is opposed.

**The Hon. S.G. WADE:** Again, I am amazed that the government is putting forward these arguments. We had the furphy that it is inappropriate to direct a statutory officer. Let me refer you to the Electoral Act, section 8(1)(a) which states that the Electoral Commissioner is 'responsible to the Minister for the administration of this Act'; section 26(2) states that the Electoral Commissioner must, on request, provide a member of the House of Assembly with an up-to-date copy of the electoral roll; section 31(8) states, 'If an application under this section is rejected, the Electoral Commissioner must take reasonable steps to notify the applicant in writing'; section 38, Register of Political Parties, subsection (1) 'the Electoral Commissioner must establish and maintain a register'—and we could go on.

The fact of the matter is that the Electoral Commissioner is not the chief controller of the electoral system. They are the custodian of the Electoral Act. It is the responsibility of this parliament to craft our electoral system, not that of an independent statutory officer.

In relation to the suggestion from the minister that the Electoral Commissioner has philosophical objections about unaddressed mail, again, I would love the minister to table the correspondence she is referring to. I would say to the government: is the government serious in that suggestion?

At the last election the select committee on electoral matters was told about the electoral kit that was distributed. I think it had a green young man with a hood on it, but I might be confusing myself with a poster. Still, there was electoral material distributed. There is a lot of electoral material that is distributed unaddressed. To suggest that somehow the Electoral Commissioner has a philosophical objection to an application form being distributed unaddressed, I find hard to understand. It is not a prerequisite for a vote; it is an opportunity. Political parties have been doing it for decades. The government is suggesting that the political parties should stop and that somehow it is philosophically inappropriate for it to be done by the Electoral Commissioner.

In relation to the proposal to ban the distribution by political parties, I would ask members to reflect on what would happen if this were done but not done at the federal level. This coming September or October, whenever Kevin Rudd has the courage to go to the people, electors will get a postal vote application from the Liberal Party, Labor Party and a number of other parties. Some of them will choose to use it, some of them will not. When the next election comes around, they will expect the same again. Some of them will actually wait for that postal vote application to arrive.

The government is saying, 'We are going to stop you doing it, but do not expect us to do it,' so people are going to have a different service between federal and state elections. I would urge members to support this proposal. At $168,000 it is cheap. If the government would actually listen to my contribution, they would realise that we have never—and I reiterate never—suggested a fully addressed mailing. We believe that unaddressed mailing of general electoral material is relevant. It is not a prerequisite for their vote; it is an offer of a service.

**The Hon. G.E. GAGO:** I just remind the Hon. Stephen Wade that section 8(1) outlines the powers and functions of the Electoral Commissioner. It outlines what her functions are and basically what her obligations are, and paragraph (b) states that she 'is responsible for the proper conduct of elections in accordance with this Act' and (c) 'is responsible for the carrying out of appropriate programmes of publicity and public education in order to ensure that the public is adequately informed of their democratic rights and obligations'. These are the responsibilities, these are the obligations—

**The Hon. S.G. Wade:** No, we give her the act.

**The CHAIR:** Order!

**The Hon. G.E. GAGO:** —that the commissioner is obliged to do under the act, and she is well aware of those and has been acting in accordance with those. If the honourable member wants the details of her concerns about the filling out of householder postal votes, then I refer the honourable member to the *Hansard* of Thursday 27 June, Estimates Committee A, at page 100, where she outlines these in considerable detail.

**The Hon. B.V. FINNIGAN:** I am with the Hon. Mr Wade in the sense that it is up to this parliament to decide what our electoral law is and it is up to the Electoral Commissioner to administer it, so I do not think parliament should be hesitant in setting down how things have to be under the Electoral Act.

I take issue with his assertion that people will be expecting to get postal vote applications. If they live in a marginal seat, they can expect to receive three or four. Increasingly Labor and

Liberal, at least, have been pioneering the two-hit postal vote applications—one direct mail and one householder, so if you live in a seat with a 2 per cent margin, you may well be inundated with postal vote applications, but if you live in a safe seat you will almost certainly not receive any, depending on whether the local member decides to send one out. I do not think the people necessarily are expecting them from their political parties because that may well depend on where they live.

I think it does make sense that everybody receive a postal vote application, but the way the Hon. Mr Wade (and I hope I have the right amendment here because there are quite a few on file) has worded his amendment it says that the commissioner must send a postal vote application to every address on the electoral roll. I do not see how that can be achieved without direct mail because an unaddressed Australia Post householder is not necessarily going to tally up with the electoral roll; in fact, it almost certainly will not.

In order to meet that legislative requirement to send papers to every address on the electoral roll, that does not mean an Australia Post unaddressed mail service will do it. You would have to send it direct mail to every address on the electoral roll, so I think in respect of the way that clause is worded I cannot agree with his submission that a householder would do it. It does not say 'as far as reasonably practicable'. It does not say that the commissioner will take steps to ensure that every household, inasmuch as it is possible, receives an application. It says that the sending out of applications has to match addresses on the electoral roll, and I do not see how that can be done, apart from direct mail.

**The Hon. S.G. WADE:** I thank the honourable member for his comments in terms of the role of this parliament in relation to the Electoral Commissioner. He clearly does understand section 8(1)(b), which the minister has quoted, that is, the Electoral Commissioner 'is responsible for the proper conduct of elections in accordance with this Act'. I have already highlighted a number of cases where not merely have we given the Electoral Commissioner an act to implement but we have given the Electoral Commissioner duties to fulfil in implementing the act. I think the point is well made by the honourable member.

I certainly take the member's point in terms of the fact that the amendment could be better drafted, and I am happy for that to be done by way of reporting progress, if that was the wish of the government or, alternatively, to consider it as an alternative amendment when it goes to the house. In any event, I think it is very clear to honourable members and to the government what is intended here. It is not a direct mail. It is not a $650,000 direct mail; it is $168,000 unaddressed. We have a range of electoral material that goes out in the unaddressed form; that is all that the Liberal Party would assert is needed to make sure that people do not have a diminution in service.

The Hon. Bernard Finnigan raises a good point, that there is a disparity in distribution. I do not welcome that. I think that even people in safe seats have democratic rights. In defence of my party, I would make the point that, in some elections at least, the Liberal Party has done statewide distribution of postal vote applications. I would also make the point that under this government local members are entitled to use their global allowance to distribute postal applications. If it is such a sin, why is the government doing that?

I think the government is hypocritical. I believe that this is actually a partisan attempt to try to discourage older voters, voters with disability, voters in rural and regional areas, and we strongly assert that if we want to ban political parties and strengthen the integrity of the electoral system this may well be a way of doing it, but to maintain the service, to maintain choice for people with disability, people in rural and remote areas and older South Australians, $168,000 ain't a bad investment in maintaining quality of the electoral system.

**The Hon. K.L. VINCENT:** Just very briefly, Dignity for Disability will be supporting this amendment in principle. The Hon. Mr Wade and I have had many conversations about this bill, of course, and he is well aware that my support for some of his amendments is at this time somewhat tenuous, I suppose. I guess this is one of those arguments where I can see both sides. I am completely on side with the principle of what the Hon. Mr Wade is trying to achieve, but I can also quite easily see that there may be some complications in its implementation. At this point, we are happy to let the amendment pass in principle and work to make it better. My office is currently undertaking research and consultation into how to do that. If we can make it better, let's do that.

**The Hon. M. PARNELL:** I want to make a brief observation on the mechanics and then talk about the general principle. In relation to the mechanics, some of the issues that have already come out—especially the Hon. Bernard Finnigan's contribution and the Hon. Stephen Wade's

reply—are that if you are to guarantee that the form will go to every address on the electoral roll, and you are not going to do it by personally addressed mail, you effectively have to send it to every address in South Australia knowing that the people at No. 5 are not eligible, that the people at No. 7 are not eligible; they will not be on the roll.

Presumably you would possibly still save money, even though some of the applications for postal voting would fall on fallow ground because they would be people who do not want them, do not need them, or are not eligible to vote. So that is your choice: you either just send it to addresses on the electoral roll, in which case it is addressed and there is a stamp on each one and it costs more money, or you blanket the whole state.

The second technical point I will make is that I know that at one stage my household had five eligible voters registered at the one address: we had three adults and two kids who were able to vote. If it was a form that was sent to each address, then it is not impossible for that form to have multiple spaces for the different electors registered at that address to put in their names. But you have to get that right, otherwise the first person to get the mail would be the one who got the information. So there are some technical aspects.

The more general point—and I concede that this is very consistent with the amendment that the committee previously passed in relation to postal voting, and I think the Hon. Stephen Wade and I will continue to disagree on this—is whether the cumulative effect of these amendments is to transition the voting system in this state away from an attending a polling booth system to a postal vote system. I have no doubt that if this amendment gets up, the government ultimately accepts it, and it goes through, the Electoral Commissioner will write neutral letters. The Electoral Commissioner will not say, 'Never queue again! Don't run the gauntlet on polling day! Here's the form. Fill it out. We'll even pay the postage for you!', but that will be the subtext. That will ultimately be the tradition that develops, and, from 10 per cent of people voting by post, under this arrangement we will get to 20 or 30 or 40 per cent.

The Hon. Stephen Wade says that there is no evidence of that, and he cites voluntary voting regimes in America. I am not aware of any compulsory voting regime that has open eligibility for postal voting that would not ultimately move in that direction. I could see a stage where only half of voters turned up on polling day and the other half voted by post. Obviously that has implications for Independents and minor parties because the only way they are going to reach those people is by letterboxing them or posting to them. In fact, letterboxing is not much good because you will not know who they are; you would have to blanket letterbox.

Certainly, the ability of a small Independent, running in one seat, to get friends and family out on polling day at the polling booth to reach most of voters is gone under this arrangement.

*The Hon. S.G. Wade interjecting:*

**The Hon. M. PARNELL:** The Hon. Stephen Wade is itching to counter it, but it seems to me that in that situation an Independent running in a lower house seat who just needs to get 20 or 30 friends to cover all the polling booths on the morning, who will therefore reach voters with their material in a fairly inexpensive way, will have to use other methods to try to guarantee that they reach every person—for example, by letterboxing every house in the electorate. That is certainly possible, but it would be beyond the scope of many Independents contesting just one seat.

I maintain that the cumulative effect of these amendments is that the culture of voting will change—not forever, but for as long as these amendments survive—and that we will find that vastly increased numbers of people go down the postal voting path because it will be seen as the easiest method of voting. I am not convinced that is the right message we want to send.

**The Hon. S.G. WADE:** The Hon. Mark Parnell respectfully says that we are likely to continue to differ, and I suspect he is right. I simply say that I do not expect to be voting by postal vote. If I have to get an application form for a postal vote, fill it in, get a witness, post it in, wait for the postal vote to come back, fill it in and get a witness both times, I am going to drop into a polling booth—particularly when I am likely to be there from before dawn until after scrutineering anyway.

If I could pick up the point about the value of this mail-out, I fully expect that the Electoral Commissioner—if the commissioner is given this duty under this amendment to the act—will not simply send out the form. The great benefit of the unaddressed mail-out being proposed by the opposition is that with the fixed date for the elections that we put in the bill earlier, the Electoral Commissioner knows exactly the first postal day in the electoral period.

So I expect that they will have bagged up first-day material—let us call it first-day material, because I think that might help clarify it—lodged with Australia Post a week or two before polling. It hits the mailboxes on day one. On day one it could not only say, 'By the way, you can vote by postal vote at this election', but it might do other things. It might tell them what day it is. It might actually be a good opportunity to remind people that on 15 March 2014 they have an opportunity to get rid of this rancid Labor government. It might also take the opportunity to say—

**The Hon. M. Parnell:** I don't think the Electoral Commissioner would say that.

**The Hon. S.G. WADE:** Sorry; words to that effect, I am sure. It might also take the opportunity to say, 'Okay, on this date, I think in 10 days' time, the rolls close. You might like to take the opportunity to update the electoral roll.' Considering the Greens claim that they are keen to involve young people in the electoral process, why not have an unaddressed mailing on day one that offers you a postal vote application?

The honourable member is suggesting that it is wasteful to send that to people who are not already enrolled on the electoral roll. No, I think it is of great benefit. You would pick up lots of people who should be enrolled, lots of people who have failed to update their contact material. The $650,000 Rolls-Royce will actually be less efficient than my $168,000 Morris Minor, because my Morris Minor will encourage people to update their electoral enrolments, perhaps get on the roll for the first time. I would have thought that the Greens would be rejoicing at the opportunity for increased participation.

**The Hon. M. Parnell:** Just leave the postal vote bit out of it; do all the other stuff.

**The Hon. S.G. WADE:** Do all the other stuff, he says. In terms of multiple electors at the one address, let us remember that there is nothing sacred about this form. People can get a postal vote by ringing up the Electoral Commission. Nobody in the Parnell household will be fighting to get that blessed postal vote application form. Mark Parnell, of course, will already have told the Electoral Commissioner not to send him one because he finds them morally offensive, but the other members in the Parnell household will not need to fight over them because the form will no doubt tell them that they can download this from the Electoral Commission.

Remember that most of the people who got a postal vote application form at the last election did not get it from their Labor member using their global allowance; they actually downloaded it from the Electoral Commission website. I expect that more and more of that will happen. There might only be one form, but it might also say, 'If you need more, photocopy it. If you don't want to photocopy it, download it from the Electoral Commission website.'

This is all about growing our democracy. We did not become one of the best electoral systems in the world by sticking with a bill that was passed by the colonial legislature last century. We have incrementally improved and fine-tuned our electoral system. I believe that an unaddressed mailing going to those wretched people who have not enrolled in the first place, failed to update their contact details, actually strengthens our democracy, and it is $168,000 well spent.

**The Hon. B.V. FINNIGAN:** It is a bit odd to hear a member of the Liberal Party encouraging greater enfranchisement since they are normally very keen not to have people update their enrolment details before an election. In response to the Hon. Mr Parnell's point, I think the measures that are in this bill will discourage, or at least make less likely, people taking up postal votes because—

**The Hon. M. Parnell:** Less likely to take them up?

**The Hon. B.V. FINNIGAN:** Less likely, I believe, because if they are not receiving these constant mail-outs from political parties or from their local member, then I think that is less likely. Certainly they are less likely to want a postal vote if they are not being encouraged, in a sense, by their political party. You may say that that is at odds with the idea of sending everybody an application, but I think the fact that, at the moment, if people are in a marginal seat they may be getting multiple postal vote application forms in ways that certainly can be characterised as encouraging a postal vote. I know from chatting to electoral officials certainly there are those who view the increase in postal votes as very much because of the political parties, whether overtly intending it or not, encouraging postal voting by constantly blanketing electorates with the form.

I am not sure that just receiving a communication from the Electoral Commissioner, whether it be the actual forms or whatever, would necessarily increase the number of people wanting to postal vote. I again raise the issue of the way the clause is worded but, as the honourable member has indicated, that can be fixed relatively easily.

**The Hon. D.G.E. HOOD:** Family First supports the amendment.

The committee divided on the amendment:

AYES (12)

| | | |
|---|---|---|
| Bressington, A. | Brokenshire, R.L. | Darley, J.A. |
| Dawkins, J.S.L. | Hood, D.G.E. | Lee, J.S. |
| Lensink, J.M.A. | Lucas, R.I. | Ridgway, D.W. |
| Stephens, T.J. | Vincent, K.L. | Wade, S.G. (teller) |

NOES (9)

| | | |
|---|---|---|
| Finnigan, B.V. | Franks, T.A. | Gago, G.E. (teller) |
| Hunter, I.K. | Kandelaars, G.A. | Maher, K.J. |
| Parnell, M. | Wortley, R.P. | Zollo, C. |

Majority of 3 for the ayes.

Amendment thus carried.

**The Hon. S.G. WADE:** Considering that we are moving to the provision of registering information, I wonder whether I can ask some questions in relation to the government bill.

**The CHAIR:** The Hon. Mr Wade.

**The Hon. S.G. WADE:** Thank you, Mr Chair. In relation to section 16(2) of the bill, can the minister inform the committee how often the Electoral Commissioner intends to provide the information to parties about electors who have requested a postal vote?

**The Hon. G.E. GAGO:** I am advised that, during the election period, on a daily basis.

**The Hon. S.G. WADE:** What information about an elector will be provided to the parties?

**The Hon. G.E. GAGO:** I am advised the information that is outlined in the act.

**The Hon. S.G. WADE:** I take it from that answer that is all information in the registry, so can you explain what information will be in the registry?

**The Hon. G.E. GAGO:** I have been advised their name, address, postal address if that is different and, if they are going to be away, a nominated address and the district where they are residing.

**The Hon. S.G. WADE:** The minister has given an assurance that the updates will be daily, but can the minister give us an assurance how timely they will be? How soon after a postal vote application has been received will the parties be advised that the person has been granted a postal vote?

**The Hon. G.E. GAGO:** I am advised that all the applications processed that day and the information gained through that will be available that evening.

**The Hon. S.G. WADE:** In what format does the commissioner intend to provide the lists?

**The Hon. G.E. GAGO:** I have been advised that at present the commissioner has costed making it available on a website. People can then log onto that website and access the material. A number of options have been costed and attempts made to make the format as convenient as possible.

**The Hon. S.G. WADE:** In that context, so that we are not just talking about a major political party that has the time and money to invest in significant IT infrastructure, is one of those formats Microsoft Excel?

**The Hon. G.E. GAGO:** Sorry, I could not hear that.

**The Hon. S.G. WADE:** I understand that you said it could be downloaded in a whole range of formats; would one of those be Microsoft Excel?

**The Hon. G.E. GAGO:** I have been advised that it is a format designed to be compatible with the systems that are currently already in use.

**The Hon. S.G. WADE:** I will not pursue that any further. I would just like to put on the record that we are not interested, as a party, in a cosy arrangement that locks out minor parties and Independents because of using inappropriate software. We would expect that it would be available in commonly available formats so that Independents and minor parties could have access to it. In relation to the data that is provided, will it be segmented between new applicants and those who are on the standing register of postal voters?

**The Hon. G.E. GAGO:** I am advised that the standard register is already available under the act.

**The Hon. S.G. WADE:** Yes, I appreciate that, minister; that is why the act says that there shall be one. I was asking: will the data be segmented between the new applicants, the ones who are not on the standing register, and those who are?

**The Hon. G.E. GAGO:** You are asking about temporary applicants, are you?

**The Hon. S.G. WADE:** Ones who are not on the standing register. There are ones who were registered before the election.

**The Hon. G.E. GAGO:** I am advised that there are permanent and temporary applicants. I am just trying to understand your question in respect of that. The government's bill relates to temporary applicants.

**The Hon. S.G. WADE:** To the extent that I am anticipating [Wade-1] 4, I had assumed that the government was intending to provide the register of voters as well. I would make the point, and this is probably an appropriate point for me to move [Wade-1] 4.

*An honourable member interjecting:*

**The Hon. S.G. WADE:** Sorry, another member has indicated they have a question, so I will desist and address that issue when I move my amendment.

**The Hon. M. PARNELL:** I want to pursue a little bit further the line of questioning about the format in which the information will be provided because, if we are going to get down to it, the whole purpose of making this information available, as to people who are going to be or likely to be postal voters, is because candidates and parties know that the only way they are going to reach those people is if they write to them. We are not going to see them at the polling booth on polling day.

So, if you have a big budget and you think you can reach everyone through other advertising that is fine but, for those who do not have a big budget, if you want to reach a postal voter with material suggesting how they might want to vote, you are going to have to do it by post. I know the minister's answer previously said that the material would be provided in a form that is currently used.

*An honourable member interjecting:*

**The Hon. M. PARNELL:** Yes, certainly I understand Liberal and Labor parties would have systems that they currently use; most other parties do not, and that comes back to the Hon. Stephen Wade's point that if the information were provided in some sort of readily accessible way, something that could be opened by a Microsoft product or, even better, by an open source software, some form of database program, that would be useful. Can the minister just clarify how they envisage this material will be provided?

**The Hon. G.E. GAGO:** The intent is certainly to make it conveniently available to as many people as possible; that is the intent behind it. In terms of further detail, I have been advised that after logging into the system an applicant may retrieve a single report in CSV format which contains data relating to all postal applications, up to and including the previous day of processing.

**The Hon. B.V. FINNIGAN:** I am tempted to ask what font it will be in, as it is about the only thing we have not covered. Forgive me if this has been covered elsewhere, but is there any capacity for an elector to opt out of having their information provided? I know there are penalties for misuse, but I could understand if someone were going overseas, for example, why they would not necessarily want bundles of mail turning up at their address, even though the other address would be provided. What provisions are there, I suppose, if any, to address potential privacy concerns?

**The Hon. S.G. WADE:** Another member has suggested that all they need to do is stop their Australia Post mail. I think that is a big party/Greens approach. The fact of the matter is that I expect there will be a lot of small Independents who will actually ask their volunteers to do a postal

run, to get on a bike and deliver a whole series of postal vote related how-to-votes. I think the honourable member does raise a good point even if someone has got an Australia Post stop on their postbox.

**The ACTING CHAIR (Hon. G.A. Kandelaars):** Minister, were you going to answer the Hon. Mr Finnigan and the Hon. Mr Wade's questions?

**The Hon. G.E. GAGO:** Sorry, I thought I already had.

**The ACTING CHAIR (Hon. G.A. Kandelaars):** The question was in relation to whether people can opt out.

**The Hon. B.V. FINNIGAN:** Just to repeat, I asked if there were any provisions for opting out of having your information provided to candidates. Has there been any consideration of privacy concerns?

**The Hon. G.E. GAGO:** I have been advised yes.

**The Hon. S.G. WADE:** Could the minister outline where people will be able to opt out?

**The Hon. G.E. GAGO:** I am advised that your name is not included on the register if you elect to suppress your address.

**The Hon. S.G. WADE:** With all due respect, I think the minister is missing the broader point that I understand the Hon. Bernard Finnigan was making, and he will indicate if I, in turn, am missing the point. A person may not actually be eligible to be a silent elector but still might not want their letterbox overflowing with 10 candidates' material leading up to election day. I do not think it is just silent electors that might want that option.

**The ACTING CHAIR (Hon. G.A. Kandelaars):** You are seeking a clarification?

**The Hon. B.V. FINNIGAN:** I was not really referring to silent electors. This is going to be available to all the candidates, including all the Legislative Council candidates, so we could be talking 50 different people, and a person may not wish those candidates to know that they have applied for a postal vote and potentially an alternative address. Now, they may be concerned about that number of people, despite the penalties for misuse, knowing that they are away or whatever it is. They do not particularly want that information to be shared with candidates. Is that something they can opt out of, or is that just the price of democracy?

**The Hon. G.E. GAGO:** I am advised no, there is nothing in the bill that would enable opting out in those circumstances.

**The Hon. S.G. WADE:** Obviously, there will be a discussion between the houses on this bill and perhaps that is an issue that could be addressed in that context. It may well be something that could be addressed by regulation; it would be worth looking at. I wonder, Mr Acting Chair, whether it is an appropriate time for me to move my amendment.

*The Hon. M. Parnell interjecting:*

**The Hon. S.G. WADE:** No, sorry, it is quite inappropriate, in fact.

**The Hon. M. PARNELL:** This took me a bit by surprise, this idea of opting out. I know the minister said there is nothing currently in the bill, but it would seem to me that, if we are going to a system where you no longer need to provide a reason for postal voting—it is your choice, it is your convenience—and you can say to the Electoral Commissioner, 'And by the way, don't tell anyone my address,' then all of a sudden we have a potentially huge swag of people who are unreachable through the normal political process.

I think that would be a worry, because if it was made a default option, when people signed that form and were accepted as a postal voter, if there was a box to tick 'Would you like your address suppressed?' they would think 'They are all going to start writing to me if I don't tick that box,' and they tick the box, and all of a sudden we would have people less able to be contacted by candidates and by parties. I think that is a worry.

I know the bill currently does not have that in it. The Hon. Stephen Wade suggested that maybe regulations could allow that, but it seems to me this slippery slope is getting even slipperier. Not only are we going to a default postal voting system, but if we start suppressing all the addresses as well, then the ability for people to engage with electors is very much diminished, and I think that is bad for democracy.

**The Hon. S.G. WADE:** Whenever a conservative stands up to speak on bills like this, I expect the slippery slope argument to come out, and sure enough it has. I take the Hon. Mark Parnell's point. I was not suggesting the Liberal Party was moving that tonight. I was suggesting that between the houses it would be an issue worth discussing. Considering that there is not an opt-out provision in the bill, or in any amendment before us, would the minister be able to show us what would prevent a silent elector's materials not being provided under proposed section 74(6a)(a)?

**The Hon. G.E. GAGO:** I have been advised to refer the honourable member to section 21—Suppression of elector's address, which provides:

> Where an electoral registrar is satisfied that the inclusion on a roll of the address of an elector's place of residence would place at risk the personal safety of the elector, a member of the elector's family or any other person, he or she may suppress the address from the roll.

**The Hon. S.G. WADE:** That does not provide me with any reassurance. I am not talking about the roll; I am talking about the register of postal voters under section 74(6a)(a). Nonetheless, that is another matter that we can talk about between the houses. Third time lucky, Mr Acting Chair; would now be an appropriate time for me to move my amendment?

**The ACTING CHAIR (Hon. G.A. Kandelaars):** I think that might well be the case.

**The Hon. S.G. WADE:** That being the case, I move:

> Page 7, lines 18 and 19 [clause 16(1), inserted subparagraph (ii)]—Delete:
>
> > who has applied for the issue of declaration voting papers under subsection (1)(b)

The discussion we just had actually highlights that this may be needed more than I thought it was needed. The amendment seeks to authorise what is, I understand, current practice, but it may not be. I thought that parties could receive the name and address, including the postal address, of all people issued with a postal vote at a given election.

My understanding is that that has occurred in practice for those on the registry of declaration voters, but the amendment makes it clear that the parties will be notified of all persons included with declaration postal votes whether from the permanent registry or for that election alone. Notification of who has been issued with a postal vote allows political parties to ensure that voters are presented with information to cast an informed vote, as the Hon. Mark Parnell recently reminded us.

**The Hon. G.E. GAGO:** I rise to oppose this amendment. Before I do that, though, I will just finish off the answer to the previous question relating to the suppression of information from the register. If the honourable member goes to section 74(4)(c), it then makes a fit between those in section 21 and the postal vote. It provides that the Electoral Commissioner must maintain a register of electors who are declaration voters containing the following information in relation to each elector 'other than in the case of an elector whose address has been suppressed from publication'.

In relation to the amendment before us, as I said the government opposes this amendment. It introduces unnecessary duplication through the existing provision of the electoral roll to members of parliament and candidates. There is already access to registered postal votes. This amendment will mean that these registered postal votes will be included in the list of election-specific postal vote applications. This is an unnecessary duplication and is opposed.

Further, though not directly related to this amendment, there are implications arising from this provision. The commissioner has communicated potential concerns to government. The government bill provided that information would be provided to ensure that candidates and political parties would still have an opportunity to provide campaign material to electors in exchange for removal of political parties from the process of procuring a vote.

The policy justification was that the Electoral Commissioner would provide details of postal vote applicants because political parties were being removed from the process. Consequently the provision sought to provide a level playing field so that all parties, big and small, could access the same information. The opposition seems intent on retaining the advantage afforded to parties with greater financial capacity by insisting that party involvement is maintained, despite this being contrary to the recommendations made by every Electoral Commission report since 1997. To conclude, returning specifically to the amendment before us, this is an unnecessary duplication and is opposed.

**The Hon. S.G. WADE:** I suppose one question you could ask if you are encountering duplication is: where is the best place for it to be? If I understand the minister correctly, what she is suggesting is that for people on the registry, it is already provided, it is on one list. We shouldn't provide it on the second list because that is duplicating what is on list one. For the humble candidate or party, that means you have to mail merge two lists. Why not provide them as part of the one distribution? I do not think that this is unnecessary duplication. Perhaps we should stop sending list one.

**The Hon. G.E. GAGO:** I am advised that currently information about permanents are already provided. That information is already provided and the Hon. Stephen Wade's amendment would duplicate that.

**The Hon. S.G. WADE:** If we are going to restate our positions, cancel list one. Go with list two.

**The Hon. G.E. GAGO:** I did not understand that, sorry.

**The Hon. S.G. WADE:** The point I was making was that the government is suggesting that the provision of the registry of declaration votes is already happening.

**The Hon. G.E. GAGO:** For permanent.

**The Hon. S.G. WADE:** Yes, and the people who are applying for an election specific involvement, they will be provided on the second list. What we are proposing is: why can't they be provided on the one list? It would be particularly important for individual candidates and small parties instead of having to manage two lists for mail merge purposes, they will only manage one.

**The Hon. M. PARNELL:** I might just ask the Hon. Stephen Wade. What I do not understand about what he is saying is that he is talking about the advantage of having a single list, yet earlier he was asking about whether we could get the new additions separately from the permanents.

**The Hon. S.G. WADE:** If I could remind the member what the question was, the question was at that point at clause 16(2): will the data be segmented? The candidate may well want to ask: is this person just a oncer, for want of a better word, or is this person an established? We believe the data in what I call list two should be segmented but to be honest with you I am a bit surprised that this amendment is so difficult. I thought that it would be efficient for both the Electoral Commissioner and for the parties for it to be one list so that you get one list. It will have all the details that were mentioned in response to the earlier questions and you will know whether they are a registry postal vote, declaration vote or a non-registered postal voter.

**The Hon. D.G.E. HOOD:** Family First supports it.

**The Hon. M. PARNELL:** The minister has pointed out that if the Electoral Commissioner sees some difficulty with it but if the recipients of the information are going to get segmented information which shows people who are permanent postal voters, for want of a better term, and you can segregate those from the once-off postal voters, then if there are technical difficulties with the honourable member's amendment that the Electoral Commissioner has identified then we will not support the amendment.

**The Hon. G.E. GAGO:** I am advised that what will be gained from the bill is that people will be provided with information that is not currently available to them. The amendment simply duplicates that.

**The Hon. B.V. FINNIGAN:** Nothing exercises a bunch of politicians like electoral laws. I think this amendment is far too micro-managerial and I oppose it.

Amendment carried.

**The Hon. S.G. WADE:** I move:

Page 7—

Lines 28 and 29 [clause 16(2), inserted subsection (6a)(a)]—Delete 'who have applied for the issue of declaration voting papers under subsection (1)(b)'

Lines 32 and 33 [clause 16(2), inserted subsection (6a)(b)]—Delete 'who have applied for the issue of declaration voting papers under subsection (1)(b)'

These amendments are consequential to [Wade-1] 4, the one we just passed.

Amendments carried; clause as amended passed.

Clause 17.

**The Hon. S.G. WADE:** I move:

Page 8—

Line 15 [clause 17, inserted section 74A(1)]—After '(an application form)' insert 'except in accordance with subsection (1a)'

After line 16—After inserted subsection (1) insert:

(1a) Despite subsection (1), a person may, on receipt of a written request for an application form from another person (an *applicant*), distribute, or cause or permit to be distributed, an application form to the applicant.

The clause in the bill aims to stop non-authorised persons from distributing postal vote applications to any other person. As I have raised previously, the Liberal Party is concerned about maximising the opportunity for individuals to vote. At the same time, we have cooperated with the removal of political parties from the broad distribution of postal vote applications; however, some commonsense needs to be applied in implementing such a blanket ban.

The clause as it is worded prohibits any distribution of a postal vote application by anyone not authorised by the commissioner. There is no discretion, no exemptions, no reasonable cause excuses. It is the opposition's view that there are plenty of examples where on a case-by-case, individual-by-individual basis it would be quite reasonable for a person to provide another person with a postal vote application form and not undermine the principle of commission-directed distribution. A lot of people go to their local parliamentarian's office in an election period seeking a postal vote form. Under this bill it is a sin to give them one.

We do not think it is reasonable to impose a maximum $5,000 fine on a carer who might be passing on an application to the person in their care. We do not think that a $5,000 fine is reasonable for a person who may seek a form on behalf of an elderly relative or a person who downloads it and emails it to a colleague. These situations are not the kind of mischief the bill is aimed to prevent and, as such, we think there should be an exemption to cover these kinds of circumstances so that where a person is requested by another to provide a postal vote application form and the person provides it to them, they will not be committing an offence.

To avoid any misunderstanding that this could circumvent the ban of distributing postal vote applications, we have included a requirement that the request be made in writing from one individual to another. If questions are raised as to whether a person had requested a form, the request can be substantiated. We think it is a simple, common-sense amendment, and I commend it to the committee.

**The Hon. G.E. GAGO:** The government rises to oppose this amendment, which we see as linked with the next amendment, (1a), which seeks to introduce a provision that can allow the continued involvement of political parties in the procurement of postal votes by stealth. Let me provide an example of what could happen: a political party could provide a mass mail-out of little cards which have written on them, 'Please provide me with a postal vote application form, along with other election material. Just write your name here and stick it in a letterbox,' or, using the roll, the party could make it so that all they need to do is tick a box.

The Hon. Mr Wade will obviously play innocent on this one but, while he may not have come up with this, and he may believe that it is legitimate, I would wager that someone in his party has already come up with this scheme, and Mr Wade can try to sell it with his best efforts of righteous indignation. The government opposes this amendment and calls on other members to think twice about these two amendments and what will be their actual effect because it is not in line with what Mr Wade has likely told people.

**The Hon. M. PARNELL:** This is interesting. This clause appears to be the key operative clause that gets political parties out of the equation when it comes to distribution of postal vote application forms. When we superimpose this onto the Liberal amendment that was passed earlier, where we are having unaddressed Electoral Commission application forms being sent to households, if you like, but not to individuals, if the next-door neighbour says, 'We got a form from the Electoral Commissioner. We've got three voters in our house, but they only sent me one form. You've got a photocopier,' you say to the neighbour, 'photocopy a form and give it to us'. Then you have to sign an application form that it was a request. It seems that this is starting to get a little bit out of control.

I take the minister's point that, if we are serious about getting political parties out of the distribution process, we have to get them out, and you have to create an offence if they try to get back in, which I think is what this clause does. If we look at the Hon. Stephen Wade's amendment [Wade-6] 4, it requires a person to put in a written request for an application form. He gave the example of carers, and you could think of plenty—

**The Hon. S.G. Wade:** Next-door neighbours.

**The Hon. M. PARNELL:** —next-door neighbours—plenty of examples, but with the combination of all the amendments passed so far today we will have a bit of a dog's breakfast that will have to be sorted out probably between the houses because it strikes me that you would not want to make it an offence for the next-door neighbour who owns the photocopier. I can see that it is a problem with what the government has, but it is a problem that has now been compounded by other amendments that have been passed.

I am not convinced that this is necessarily the way to go. It may well be that an alternative form of amendment that specifically referred to political parties or associated entities might be the way to go to specifically preclude those people from distributing it, but ingenuity knows no bounds, and I can imagine that all of a sudden there would be not third parties but fourth and fifth parties that get in on the distribution bandwagon and start delivering material. This is quite a dilemma we have created for ourselves; I just make that observation for now.

**The Hon. B.V. FINNIGAN:** I agree with what the Hon. Mr Parnell has said, and I urge members not to accept this amendment in its current form because I think it certainly would be a Trojan horse (or a Greek horse, actually) for political parties to get back into postal votes. In fact, I can recall an election (I cannot remember whether it was state or federal), where the parties were told, 'You can't distribute postal vote forms. You can tell people how to get one, but you can't distribute the forms.'

There was a bit of argy-bargy about that, and I certainly recall that the parties, nonetheless, sent out lots of letters saying, 'Do you want a postal vote? Send this back, and then we'll send you the application,' and there was a two-tier process. The wording of this clause would certainly make that legitimate. It would be okay to send people a letter saying, 'Do you need a postal vote? Sign this request, and we'll sort it for you.' You may question why a party would want to do that since they are getting the list anyway of people who have applied for one perhaps.

I do, however, share honourable members' concern at the breadth of the existing clause—that if you were to ask a neighbour, because your printer was on the blink, whether they would go to the website and print one off or whatever, or you called your local MP, and for those people to be committing an offence by assisting would seem to be a little bit much. In particular, I would have a concern with new section 74A(2), which provides that distribution includes making the form available in electronic form. So, putting the postal vote form on a website would be an offence, and I think that would be far too broad.

At the very least, you should be able to put information saying, 'Here's how you obtain a postal vote,' perhaps with a link to the Electoral Commission website if necessary. It would seem to me to be overly restrictive to say that political parties or candidates cannot even provide any postal vote information on their website without committing an offence. I do have a concern about the breadth of the clause, and I think that does need to be addressed, but I certainly would not support the wording that is being put forward by the Hon. Mr Wade.

**The Hon. S.G. WADE:** I would respectfully put it to honourable members who see the flaws in the government's bill to support my amendment, even if they do not think it is a perfect one. Let us be clear about this: if this clause gets through unamended, the government is not going to bring it back; the government is going to cash the money and run. In that respect, we do not get another bite of the cherry. If they do not suggest an alternative in the other place, we cannot reopen the matter when it comes here.

So, with all due respect to Mr Parnell and Mr Finnigan, if you are of that view that what you have seen in this bill in relation to the breadth are flaws, you should support the amendment. As the Hon. Kelly Vincent said earlier, a lot of members have supported amendments in relation to this bill to make sure that the principle that it espouses is kept before this parliament.

I dispute the interpretation of the Hon. Mark Parnell. The Hon. Mark Parnell suggests that we have somehow come up with a dog's breakfast through these amendments. That might have been the case if we meddled with different sets of amendments. The fact of the matter is that the

committee has consistently committed itself today to make postal votes more available and to make postal vote applications more available, and to be consistent with that, we have to be realistic to know that, under the amendments we have made to this bill, there will be a lot more postal vote applications around.

If it is being delivered to every household, the imaginary next-door neighbour you are talking about is likely to have a postal vote application, they are likely to be in a position to provide a copy to next door. That is why it is doubly dangerous to let the government bill stand. So, if we want to be consistent, we need to be consistent in recognising that an increase in the distribution of postal vote applications will increase the risk that ordinary South Australians trying to do a mate a favour by giving them a form will be subject to an offence under this government's bill, at a cost, potentially, of $5,000. You actually do not get that much for some criminal offences, under the current regime. I would urge honourable members, even if they think that there could be a better way of expressing this—if they think the current bill is too broad—to vote for this amendment.

**The Hon. G.E. GAGO:** I think that is a very irresponsible position the honourable member is putting. He stands up and says, 'Vote for this amendment even though it's not going to work. It's imperfect. We've created all of these odd bibs and bobs that have come out of a series of amendments. This isn't perfect, it's not really going to work, but vote for it anyway because, heck, we're being consistent.' It is irresponsible.

I think the Hon. Mark Parnell summed it up very succinctly, so I do not need to do it again. Considerable further work needs to be done on this bill. Given that we know that this section is going to be extremely problematic, I urge members to oppose it at this point in time; as I said, further work will need to be done at a later stage.

**The Hon. S.G. WADE:** There may well be opportunities to improve my amendment, but let's be clear: the bill as it stands is more problematic.

**The Hon. G.E. Gago:** It would be more problematic with your amendments.

**The Hon. S.G. WADE:** No, you just do not understand. Just listen to your adviser.

**The CHAIR:** Order! The Hon. Mr Parnell.

**The Hon. M. PARNELL:** I see this as an unfortunate choice: we have to choose the lesser of two evils. It seems to me that under the government's amendment as it stands there is that potential liability on innocent people who are not really doing anything wrong. I accept that. I think there is a problem with the government amendment. The Liberal amendment opens the door to parties getting back in holus-bolus. The mechanism the minister outlined is exactly what would be used.

Here we are, we have one section—the government, if we leave it unamended there is the potential to catch people who do not deserve to be caught; if we support the Liberal amendment, it opens the door for parties to come back in. I will put it to the minister like this: if this committee were to reject the Hon. Stephen Wade's amendment now, what assurance would we have that the government would reconsider the potential problems with the new section 74A as drafted?

**The Hon. G.E. GAGO:** I think we have identified a number of problems within this current bill. Further work will need to be done, and I think what we need to do is progress the bill, complete it, and then come back and work on those sections that need further consideration. The government is willing to give further consideration to parts of this bill that we have identified as being problematic.

**The Hon. B.V. FINNIGAN:** I cannot accept as a principle that you should support a bad amendment as a bargaining chip, 'We will just sort of put a post-it note on it and that way we can discuss it further.' That is not really the way we should go about passing legislation. I think honourable members have indicated that they have a problem with the breadth of it. There are quite a number of issues that are going to have to be discussed between the houses before this bill can come to the point of getting through both houses. I cannot see that it is necessary to pass a bad amendment for the sake of creating a bargaining chip.

**The Hon. K.L. VINCENT:** I will be very brief. At the beginning of the debate I did have the intention of supporting this particular amendment. As I have said several times throughout this debate, there are many occasions when I have at least understood the principle about which Mr Wade has spoken—and this is, indeed, one of them. However, I am concerned that there may be some unintended ramifications of this amendment that I do not feel I can support.

I recognise that earlier this evening I supported an amendment in principle, in terms of making it better down the track, but I want to make it clear that that is not an approach I would take holus-bolus. The ramifications of this particular amendment I see as being too severe to allow at this point. Again, I certainly appreciate the principle, the idea of what Mr Wade is trying to achieve here, particularly with the idea of a family carer perhaps getting an application for someone who is unable to do it themselves, but we need to make sure that access does not come at too heavy a cost in terms of ramifications down the track.

As I said earlier, we are still very much consulting and debating this issue. If there is a better way to do this idea, let's do it down the track, but at this point I do not think I can support this amendment. Let's move on and come back to this issue when we are all clearer, and perhaps a little less tired, and make a better amendment.

**The Hon. S.G. WADE:** On the point made by the Hon. Bernard Finnigan, I appreciate that as a member of the government he, shall we say, is not as involved in the amendment process, but it is actually very common practice in this chamber to make sure that an issue stays alive by supporting an amendment knowing that more work needs to be done. After all, that is exactly what we did in relation to the earlier amendment which dealt with whether or not the unaddressed mail went to every address on the electoral roll or all Australia Post positions.

I understand that the government has given an undertaking and if I have misunderstood the minister then I would appreciate clarification. I understand the government has given an undertaking that this clause will be recommitted, or whatever mechanism it might be, that there will be work done—

**The Hon. G.E. Gago:** Further consideration.

**The Hon. S.G. WADE:** Further consideration, and the government will facilitate the council considering this amendment again in whatever form that takes—recommittal, or whatever. If that undertaking has been given, then that makes it slightly different from the normal, shall we say, post-it note situation that the Hon. Bernard Finnigan characterised it as. I certainly do not believe it is bad practice: it is the standard practice of this chamber. It is actually the only way that this chamber has kept so many issues alive to give South Australians better laws.

Amendments negatived; clause passed.

Progress reported; committee to sit again.

## NATURAL RESOURCES MANAGEMENT (REVIEW) AMENDMENT BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

## HEAVY VEHICLE NATIONAL LAW (SOUTH AUSTRALIA) BILL

Received from the House of Assembly and read a first time.

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (22:09):** I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

I am pleased to introduce the Heavy Vehicle National Law (South Australia) Bill 2013 (the Application Bill).

This Bill and its companion, the Statutes Amendment (Heavy Vehicle National Law) Bill 2013 (the Consequential Amendments Bill), will enable South Australia to fulfil its commitments under the Council of Australian Governments' *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform* (IGA). The heavy vehicle reform is one of the competition reform priorities under the National Partnership Agreement to Deliver a Seamless National Economy. This is the last of 3 transport regulatory reforms to be considered by this Parliament, following the passage of the *Rail Safety National Law (South Australia) Act 2012* and the introduction of the Marine Safety (Domestic Commercial Vessel) National Law (Application) Bill 2013.

The purpose of the Application Bill is to establish a national system of heavy vehicle regulation governed by one national law (the National Law), that brings together model legislation developed through national heavy vehicle regulatory reforms over the last 20 years. This includes registration; fatigue management; accreditation schemes; mass, dimension and loading limits; compliance requirements and enforcement powers for all heavy vehicles over 4.5 tonnes.

The National Law also includes matters not the subject of the model legislation but which are necessary for it to be self-contained and fully operational. Examples of such matters include, provisions establishing a National Regulator as a corporate entity to administer the scheme, associated financial controls and governance structures; a review and appeals system; and requirements regulating the use and release of information. There are also savings and transitional provisions to enable the smooth transfer of business to the new national system, for example, recognition of things done under corresponding provisions of former jurisdictional laws.

This reform recognises the importance of national consistency in heavy vehicle law and regulations, and the huge contribution made by the transport industry to the national economy. It aims to create a more productive and safer heavy vehicle industry.

COAG agreed that the National Regulator would be based in Queensland. It also agreed the National Law would be introduced in Queensland and, then, jurisdictions would apply the law as a law of their own jurisdiction. The National Law was passed by the Queensland Parliament on 23 August 2012 and the National Heavy Vehicle Regulator (National Regulator) Board and Chief Executive were appointed at the end of 2012. A National Law Amendment Bill passed the Queensland Parliament on 14 February 2013.

The National Regulator commenced limited business on 21 January 2013 administering the National Heavy Vehicle Accreditation Scheme and Performance Based Standards Scheme (under delegations or administrative arrangements using existing state and territory laws), in conjunction with establishing a dedicated national website and call centre. Full operation of the National Law cannot commence until jurisdictions have passed and commenced their application laws. Jurisdictions are working to a commencement date of 1 July 2013, although Western Australia has indicated that it will not be able to enact legislation until 2014.

The regulation of heavy vehicles is currently carried out by 9 governments. The multiplicity of legislation and administration has economic and efficiency impacts. Nationally, differences in the adoption, application, interpretation and enforcement of model laws and the use of jurisdiction-specific exemptions, permits, notices, business practices and guidelines have lessened their efficacy. The benefits of the reform include:

- efficiencies in administration and business operations;
- reductions in compliance burdens and costs;
- improved policy and decision making;
- increased certainty of outcome that leads to reduced stress for drivers and better safety outcomes;
- improvements in responsiveness of regulation;
- regulation promoting outcomes rather than setting minimum standards.

In the National Regulator Project Office's preliminary analysis for South Australia regarding the establishment of the National Regulator scheme, the economic benefits for operators in South Australia were estimated to be $236.1 million over a 22 year period. Approximately 46 per cent of these benefits are the result of assumed productivity improvements.

Some of these benefits will be delivered by the activities of the National Regulator in administering, monitoring and reviewing performance against the corporate reporting and other requirements of the National Law. As an independent body, the National Regulator will assist with identifying issues and trends. It will be a catalyst for economic productivity, ascertaining measures that will improve safety, promote partnerships between government and industry, and make customer service more efficient and effective.

Currently, heavy vehicle operators and drivers must comply with multiple regulations in each jurisdiction that they enter. For example, an interstate operator operating a restricted access vehicle through several states is compelled to contact and ensure they obtain appropriate access approvals from each State's regulatory authority, and then comply with the specific access conditions for each. The National Regulator will ensure that the current level of regulatory inconsistency, costs, and red tape is reduced by acting as a central link or one stop shop issuing a single permit with a simplified set of operating conditions for all the jurisdictions through which the vehicle will pass.

The National Law includes a penalties framework, including maximum court imposed penalties, with a 5 times corporate multiplier. The Ministerial Council has approved a schedule setting out which offences will be expiable and which will be subject to demerit points.

National model laws provided indicative penalties with the exact level being left to jurisdictions to set according to their own frameworks. South Australia generally followed the model law penalty amounts. The National Law penalty framework was achieved by negotiation and compromise, and all jurisdictions have accepted changes to their existing positions.

The National Law includes a national heavy vehicle registration scheme. It is intended that this part of the Law will be deferred from commencement until 2015 or 2016, when a national system for the real time exchange of registration and number plate data has been fully developed and implemented. In the meantime, a heavy vehicle registered under a jurisdictional registration law will be taken to be registered for the purposes of the National Law.

SA Police does not support any diminution of its existing enforcement powers and has requested that existing police powers be retained. South Australia will therefore depart from the agreed national law in a small number of instances to preserve some enforcement powers that were implemented as part of the national model compliance and enforcement law but omitted from the National Law because of specific conflicts with other jurisdictions' laws.

Retaining these powers will assist SA Police in the effective enforcement of heavy vehicle laws. For example, neither the exclusion in the National Law of the ability to issue improvement notices where a breach of the National Law is likely to occur (as well as where an offence has occurred or is occurring) nor the inclusion in the National Law of the reasonable steps defence for the offence of tampering with a speed limiter will be implemented.

In addition, 4 offences that are currently expiable in South Australia but will not be under the National Law, will continue to be expiable in South Australia.

South Australia will also maintain several existing powers and offences in relation to heavy vehicles. These will supplement, rather than vary, the National Law. For example, the Application Bill provides the power to enter premises where vehicles are offered for sale or hire to inspect and defect vehicles at such premises; and includes the current offences of possession of a device designed, or adapted, to enable tampering with a speed limiter and of selling or disposing of a defected vehicle.

These few departures and additions will have little impact on compliant drivers, operators and others in the chain of responsibility. For many years, South Australia has worked closely with the heavy vehicle transport industry to find practical solutions to difficult operational issues. As a result, a number of local productivity initiatives have been implemented to suit South Australia's specific conditions, for example, a dimension exemption for commercial motor vehicles and trailers carrying a load consisting solely of sheaved hay up to 3.4m wide. The Intergovernmental Agreement for this reform agreed that operators would retain the benefits of these initiatives.

Existing local productivity initiatives will be preserved under the National Law and, where appropriate, following assessment by the National Regulator, may be extended in similar circumstances across the nation. Other jurisdictions' local productivity initiatives will also be assessed. Assessing local initiatives on a national basis will provide opportunities for greater consistency and general harmonisation, leading to efficiency gains and a further reduction in the overall cost of regulation.

The National Regulator will undertake central administration and systems operations and the States and Territories will deliver regulatory services through service agreements as delegates of the National Regulator. Service standards will be agreed and key performance indicators will be set and reported on. This will drive efficiencies in service provision.

Under the Intergovernmental Agreement, the ongoing costs of the National Regulator are to be fully cost-recovered from industry. This will occur through direct fee for service arrangements that will ensure the costs are borne by those gaining the actual benefits; and through the heavy vehicle charges determination that sets the heavy vehicle registration charge, of which regulatory services will be one component.

Full cost recovery may result in a marginal increase in costs for operators. It is anticipated that this will be offset by the significant benefits that will accrue to them following the implementation of the reform.

The cost to industry is expected to decrease in real terms over time; firstly, due to a reduction in administrative overheads, with one regulator replacing many agencies which will provide economies of scale; and secondly, as the Regulator shifts towards more activity-based costing models. The Regulator's costs and charging arrangements will be regularly reviewed and approved by the Ministerial Council.

The Intergovernmental Agreement also provides that the Commonwealth will fund the establishment costs of the National Regulator; and that jurisdictions will pay for the costs of transitioning from existing state and territory legislation to the new regime.

The Consequential Amendments Bill principally amends the *Road Traffic Act 1961*. Amendments to that Act remove the heavy vehicle matters now covered in the National Law and its Application Bill. The Road Traffic Act will only cover vehicle standards and defective vehicle requirements for light vehicles. However, drink and drug driving, careless and dangerous driving, excessive speed and the Australian Road Rules requirements will continue to apply to heavy vehicles as well as light vehicles.

The National Law is something industry has, for many years, been calling for. It is an ambitious undertaking that aims to deliver clear productivity and safety benefits to the broad heavy vehicle freight industry and to reduce duplication and red tape. Industry has been directly engaged in all stages of its development and will continue to be actively involved in the future. I look forward to the support of all members for this national initiative.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause provides for definitions for the purposes of this measure. The measure is comprised of the *local application provisions* and the *South Australian Heavy Vehicle National Law text* (being the *Heavy Vehicle National Law* set out in the schedule, as in force for the time being, of this measure). Unless the context or subject matter otherwise indicates or requires, terms used in the local application provisions and also in the South Australian Heavy Vehicle National Law text have the same meanings in those provisions as in that Law.

Part 2—Application of Heavy Vehicle National Law and Heavy Vehicle National Regulations

Division 1—General

4—Application of Heavy Vehicle National Law

This clause provides that the South Australian Heavy Vehicle National Law text—

- applies as a law of South Australia; and
- as so applying may be referred to as the *Heavy Vehicle National Law (South Australia) (HVNL (SA)*).

5—Amendments to Schedule to maintain national consistency

This clause makes provision for the Governor to make regulations to amend the South Australian Heavy Vehicle National Law text to maintain consistency with the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland, and as amended and in force from time to time.

6—Application of Heavy Vehicle National Regulations

This clause provides that the *Heavy Vehicle National Regulations*, as in force from time to time—

- apply as National Regulations in force for the purposes of the *Heavy Vehicle National Law (South Australia)*, subject to modifications by the local regulations; and
- as so applying may be referred to as the *Heavy Vehicle National Regulations (South Australia)*.

7—Exclusion of legislation of this jurisdiction

This clause excludes or limits the application of certain Acts of South Australia in respect of the operation of the HVNL (SA).

Division 2—Definitions, declarations and other references for purposes of Heavy Vehicle National Law (South Australia)

8—Definition of generic terms and terms having meaning provided by this Act

This clause sets out the definition of certain terms used in the HVNL (SA) for the purposes of their application in this jurisdiction. For example, a reference to a *police officer* in the HVNL (SA) is a reference to a member of SA Police under the *Police Act 1998*; a reference to an *infringement notice* in section 591 of the HVNL (SA) is a reference to an expiation notice issued under the *Expiation of Offences Act 1996*; and so on.

9—Declarations about industrial relations status of Regulator

This clause makes the following declarations:

- the National Heavy Vehicle Regulator (the *Regulator*) is not a public sector employer for the purposes of the *Fair Work (Commonwealth Powers) Act 2009*;
- it is the intention of the Parliament that the Regulator be a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth;
- no Act of South Australia can have effect to stop the Regulator from being a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth.

10—Other declarations for purposes of *Heavy Vehicle National Law* in this jurisdiction

This clause contains the following declarations for the purposes of the HVNL (SA):

- each magistrate is declared to be an *authorised warrant official*;
- each police officer is declared to be an *authorised officer*;
- the *Expiation of Offences Act 1996* is declared to be the *Infringement Notice Offences Law*;
- each council under the *Local Government Act 1999* is declared to be a *local government authority*;
- the *Work Health and Safety Act 2012* is declared to be the *primary WHS Law*;
- the Magistrates Court is declared to be the relevant tribunal or court for the purposes of section 556 of the HVNL (SA);
- the Administrative and Disciplinary Division of the District Court is declared to be the *relevant tribunal or court* for all other purposes;
- an area that is a *road* or *road-related area* within the meaning of the *Road Traffic Act 1961* is declared to be a *road* or *road-related area*;
- the Minister to whom the administration of the *Road Traffic Act 1961* is committed is declared to be the *road authority*;

- an authority, person or body responsible for the care, control or management of a road is declared to be a *road manager*;
- the *Australian Road Rules* are declared to be the *Road Rules*.

11—References to mistake of fact defence

This clause provides that the effect of a provision of the HVNL (SA) that states that a person charged with an offence does not have the benefit of the mistake of fact defence for the offence is that the person does not have the benefit of the mistake of fact defence for that offence (see section 14 of the HVNL (SA)).

Division 3—Authorisations for purposes of this jurisdiction

12—Authority to use force

This clause authorises authorised officers who are police officers to use force against a person in the exercise or purported exercise of a function under the HVNL (SA) (see section 491 of the HVNL (SA)), and all authorised officers to use force against property in the exercise or purported exercise of a function under the HVNL (SA) in relation to this jurisdiction (see section 492 of the HVNL (SA)).

13—Authority to amend or withdraw vehicle defect notices

This clause authorises authorised officers who are police officers of another jurisdiction to amend or withdraw a vehicle defect notice issued in this jurisdiction by an authorised officer who is a police officer (see section 531 of the HVNL (SA)).

14—Authority to seize heavy vehicles or things

This clause provides that section 552(1) of the HVNL (SA) does not apply to an authorised officer who is a police officer impounding or seizing a heavy vehicle or thing under an Act or law of this jurisdiction (see section 552(2) of the HVNL (SA)).

15—Authorised use of protected information

This clause declares that the *Motor Vehicles Act 1959* is specified as a *relevant law* for the purposes of Chapter 13 Part 4 of the HVNL (SA).

Division 4—Modification of Heavy Vehicle National Law (South Australia) for purposes of this jurisdiction

16—Modification of Law for certain purposes

17—Modification of Law for other purposes

These clauses provide for modifications of the HVNL (SA) for the purposes of its application as a law of South Australia. The modifications do not directly amend the South Australian Heavy Vehicle National Law text but provide for the text to be read as if the modifications set out in the clauses were made to the text.

Division 5—Supplementary powers relating to enforcement in this jurisdiction

18—Application of this Division

The provisions set out in this Division are additional to the provisions of the HVNL (SA) and the powers that may be exercised by authorised officers in this jurisdiction under this Division are additional to the powers that may be exercised by an authorised officer under the HVNL (SA).

19—Power to enter certain places

This clause authorises authorised officers to enter premises where heavy vehicles are exhibited or kept for sale or hire during business hours in order to determine whether any vehicle for sale or hire at the place is a defective heavy vehicle.

20—Person must not possess certain devices

This clause prohibits the possession, without reasonable excuse, of a device designed or adapted to enable tampering with a speed limiter. The maximum penalty for an offence under this clause is a fine of $10,000 for a natural person and $50,000 for a body corporate.

21—Offence to sell or dispose of heavy vehicle in respect of which vehicle defect notice is in force

This clause prohibits the sale or disposal of a heavy vehicle in respect of which a vehicle defect notice has been issued if the notice has not been cleared under the Heavy Vehicle National Law of a participating jurisdiction. The maximum penalty for an offence under this clause is a fine of $3,000.

22—Moving unattended etc heavy vehicle if danger or obstruction

This clause authorises an authorised officer (or his or her assistant) to move heavy vehicle (or any component vehicle of a combination heavy vehicle) if the vehicle is unattended or broken down on a bridge, culvert or freeway or, in particular circumstances, on a road. For the purposes of this clause, an authorised officer includes, in relation to a vehicle unattended or broken down on a freeway, a person authorised by the responsible Minister and, in relation to a vehicle unattended or broken down on a road within the area of a council under the *Local Government Act 1999*, an officer of the council.

Division 6—Miscellaneous

23—Approved vehicle examiners

This clause provides that a person who is, immediately before the commencement of this clause, approved under the Recognised Engineering Signatory Scheme to inspect vehicle modifications for the purposes of the *Road Traffic Act 1961* will be taken to be an approved vehicle examiner for that purpose under the HVNL (SA).

24—Proof of lawful authority or lawful or reasonable excuse

This clause provides that in proceedings for an offence against this measure in which it is material to establish whether an act was done with or without lawful authority, lawful excuse or reasonable excuse, the onus of proving the authority or excuse lies on the defendant and, in the absence of such proof, it will be presumed that no such authority or excuse exists.

25—Provision of information and assistance by Registrar of Motor Vehicles

This clause authorises the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* to provide the Regulator with information, including confidential information, and any other reasonable assistance, for the purposes of this measure or the Heavy Vehicle National Law.

26—Various powers may be exercised on same occasion

This clause provides for an authorised officer to exercise various powers under the *Road Traffic Act 1961*, the *Motor Vehicles Act 1959* and this measure on the same occasion, whether the exercise of the powers is for the same purpose or different purposes and whether the opportunity to exercise 1 power arises only as a result of the exercise of another power.

Part 3—Regulations

27—National regulations

This clause disapplies the *Subordinate Legislation Act 1978* to the national regulations made under the Heavy Vehicle National Law. However, the national regulations are still subject to parliamentary scrutiny, including the ability for a regulation to be disallowed by a House of Parliament.

28—Local regulations

This clause authorises the Governor to make regulations (*local regulations*) for the purposes of this measure.

Part 4—Savings and transitional provisions

Division 1—Special transitional arrangements relating to Chapter 2 of Heavy Vehicles National Law

29—Definitions for this Division

This clause defines terms used in this Division, including the definition of *relevant day*, being the day on which Chapter 2 of the HVNL (SA) comes into operation.

30—Modification of Law in this jurisdiction until national registration scheme comes into operation

This clause is necessary because heavy vehicles will continue to be registered by the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* in this jurisdiction, or by an authority under a corresponding registration law of a participating jurisdiction, until the relevant day. This clause deems certain references in the HVNL (SA) to be references to terms used in the *Motor Vehicles Act 1959* or a corresponding registration law so that the HVNL (SA) can be read meaningfully in the interim period until Chapter 2 of the HVNL (SA) comes into operation.

31—Declaratory regulation making power for general savings and transitional provision for purposes of this Division

This clause provides that a regulation may make provision of a declaratory nature (a *declaratory regulation*) in relation to the operation of section 748 of the HVNL (SA) (the *general savings and transitional provision*).

A declaratory regulation may in relation to a particular thing done under the *Motor Vehicles Act 1959* as in force immediately before the relevant day—

- declare that the general savings and transitional provision applies to it; or
- declare how the general savings and transitional provision applies to it; or
- declare that the general savings and transitional provision does not apply to it, and provide how the thing must otherwise be deal with.

A declaratory regulation must declare that it is a declaratory regulation and has effect according to its terms. It may not have retrospective effect.

Division 2—Provisions relating to section 748 of Heavy Vehicles National Law

32—Definitions for this Division

This clause contains definitions for the purposes of this Division.

33—Operation of general savings and transitional provision

This Division does not affect the operation of section 748 of the HVNL (SA) (the *general savings and transitional provision*) except to the extent expressly provided for.

34—Offences

To remove any doubt, this clause declares that the general savings and transitional provision does not affect the operation of section 16 of the *Acts Interpretation Act 1915* in relation to any offence committed or suspected to have been committed under the *Road Traffic Act 1961* before the commencement of this Division.

35—Approvals and exemptions

This clause declares that, for the purposes of the general savings and transitional provision, specified provisions of the HVNL (SA) correspond to specified provisions of the *Road Traffic Act 1961*.

36—Seizing of evidence

This clause provides that the general savings and transitional provision does not apply to the seizing of anything under the *Road Traffic Act 1961* before the commencement of this Division (and that Act continues to apply in relation to anything so seized).

37—Declaratory regulation making power for general savings and transitional provision

This clause provides that a regulation may make provision of a declaratory nature (a *declaratory regulation*) in relation to the operation of section 748 of the HVNL (SA) (the *general savings and transitional provision*).

A declaratory regulation may in relation to a particular thing done under the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* as in force immediately before the relevant day—

- declare that the general savings and transitional provision applies to it; or
- declare how the general savings and transitional provision applies to it; or
- declare that the general savings and transitional provision does not apply to it, and provide how the thing must otherwise be deal with.

A declaratory regulation must declare that it is a declaratory regulation and has effect according to its terms. It may not have retrospective effect.

Division 3—Interpretative provision

38—References in documents to repealed or amended provisions

This clause is interpretative and provides that if there is a reference in a document (other than an Act) to a provision of the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* and that provision has been affected by the operation of the HVNL (SA), the reference may, if the context permits, be taken to be a reference to a provision of the HVNL (SA) corresponding to the affected provision.

Division 4—Savings and transitional provisions—general

39—Saving and transitional provisions—general

This clause authorises the Governor to make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this measure.

Schedule 1—Heavy Vehicle National Law

Note—

The Heavy Vehicle National Law was originally enacted in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland. Subsequently Queensland enacted the *Heavy Vehicle National Law Amendment Act 2013*, which substituted the Schedule with a revised version of the *Heavy Vehicle National*. These explanatory notes are based on a compilation of the parts of the explanatory notes relating to the Heavy Vehicle National Law that accompanied the Bills for each of the above Queensland Acts.

Chapter 1—Preliminary

Part 1—Introductory matters

1—Short title

Section 1 provides for the Law to be cited as the Heavy Vehicle National Law.

2—Commencement

Section 2 reflects the intention that each State and Territory will enact the Law and will individually determine in its applied law the commencement date of the Law in its jurisdiction.

3—Object of Law

Section 3 identifies the object of the Law, in establishing a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:

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

4—Regulatory framework to achieve object

Section 4 sets out the regulatory framework to achieve the object of the Law as one that:

- establishes an entity called the National Heavy Vehicle Regulator (the Regulator);
- provides for the national registration of heavy vehicles;
- prescribes specified requirements for the driving and use of heavy vehicles;
- imposes duties and obligations on persons whose activities may influence compliance with such requirements;
- includes measures to allow improved access to the road network in certain circumstances.

Part 2—Interpretation

5—Definitions

Section 5 defines numerous technical and other terms used throughout the Law.

6—Meaning of heavy vehicle

Section 6 defines the key term 'heavy vehicle' to mean a vehicle that has a gross vehicle mass (as defined in section 5) or aggregate trailer mass (as defined in section 5) of more than 4.5 tonnes. It also includes light vehicles (vehicles with a gross vehicle mass of 4.5 tonnes or less) when used in a combination with a heavy vehicle, but does not include light vehicles for the purposes of the registration requirements. However, it does not include 'rolling stock' (for example, trains, trams, wagons and monorail vehicles) as defined in section 6(4).

7—Meaning of fatigue-regulated heavy vehicle

Section 7 defines the term 'fatigue-regulated heavy vehicle' to mean a motor vehicle with a gross vehicle mass (as defined in section 5) of more than 12 tonnes; a combination with a gross vehicle mass of more than 12 tonnes; or a fatigue-regulated bus (defined in section 5 as a motor vehicle built or fitted to carry more than 12 adults, including the driver). The section clarifies that, in the case of a truck or a truck in a combination, the gross vehicle mass includes any machine or implement attached to the truck. However, the term does not include a motorhome or (except in the case of truck or a combination with a truck that has a machine or implement attached to it) a motor vehicle built or modified to operate primarily as an off-road machine or implement or on a road-related area or on a road under construction and which is not capable of carrying goods or passengers by road.

The term is of particular importance to 'Chapter 6—-Vehicle operations-driver fatigue', as the driver fatigue provisions of the Law only apply in respect of drivers of these fatigue-regulated heavy vehicles.

8—Meaning of road and road-related area

Section 8 defines two other key terms in the Law, being 'road' and 'road-related area'. The terms are important as the Law regulates the use of heavy vehicles on roads and road-related areas. Also note that section 13 (see below) states that a reference in the Law to a road includes a reference to a road-related area, unless a contrary intention appears in the Law.

9—Meaning of convicts and convicted of an offence

Section 9 defines the terms 'convicts' and 'convicted'.

10—Interpretation generally

Section 10 provides that Schedule 1 applies to the Law. This schedule contains miscellaneous interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory. The schedule is necessary to provide consistency in interpretation across jurisdictions.

11—References to laws includes references to instruments made under laws

Section 11 provides that a reference in this Law, either generally or specifically to a law or a provision of a law of the Commonwealth or a State or Territory (including this Law) includes a reference to each instrument (including a regulation) made or in force under the law or provision as well as each instrument made or in force under any such instrument.

12—References to this Law as applied in a participating jurisdiction

Section 12 states that a reference to 'this Law as applied in a participating jurisdiction' in the Law means the law of a participating jurisdiction that substantially corresponds to the Law, or a law prescribed by the national regulations for the purposes of paragraph (a)(iii) of the definition of 'participating jurisdiction' (as defined in section 5), enacted in a participating jurisdiction. This section is necessary to acknowledge that the Law is intended to apply across Australia even if a jurisdiction mirrors the Law or makes minor amendments to its application of the Law.

13—References to road

Section 13 states that a reference in the Law to a road includes a reference to a road-related area (as defined in section 8), unless a contrary intention appears.

14—References to mistake of fact defence

Section 14 states that where the provision of the Law expressly states that a person is not to have the benefit of the mistake of fact defence for the offence, then the effect of that provision in a participating jurisdiction will be the effect that is declared by a law of that jurisdiction. This section allows for each jurisdiction to ensure that the mistake of fact defence as used in that jurisdiction does not apply for the purpose of this Law in respect of a number of offences under the Law that are to be absolute liability offences. These are offences where the mistake of fact defence is not to apply, so that the person cannot rely on honest and reasonable mistakes of fact to excuse his or her behaviour. Note that most of the absolute liability offences in this Law are subject to the reasonable steps defence created by section 618 of this Law.

15—References to categories of heavy vehicles

Section 15 clarifies the basis on which vehicles may be categorised.

Part 3—Application and operation of Law

16—Extraterritorial operation of Law

Section 16 provides for the extraterritorial operation of the Law so far as it is possible so that the national regulation scheme for heavy vehicles is effective.

17—Law binds the State

Section 17 provides that the Law binds the State (as defined in section 5). However, section 17(2) states that no criminal liability attaches to the State itself (as distinct from its agents, instrumentalities, officers and employees) under the Law.

18—Relationship with primary work health and safety laws

Section 18 sets out the relationship of the Law with the primary work health and safety (WHS) law in a participating jurisdiction. In essence, the Law and WHS laws are to operate independently of each other. Thus, subsection (3) clarifies that compliance with the Law is not by itself evidence that a person has complied with the primary WHS law, regulations made under the WHS law or with a common law duty of care. However, subsection (2) provides that evidence of a contravention of this Law is admissible in any proceedings under the primary WHS law.

Part 4—Performance based standards

19—Main purpose of this Part

Section 19 explains the purpose of this Part and other associated provisions to enable Performance Based Standards (PBS) vehicles that meet a particular performance level to operate (unless otherwise specified by the responsible Minister) on roads that are authorised to be used by PBS vehicles that meet or exceed that performance level.

20—Notification to road authority of PBS design approval

Section 20 requires the Regulator to notify the road authority for this jurisdiction of a PBS design approval together with a description of the significant features of the design to which the approval relates. The purpose of this section is to ensure the responsible Minister is apprised of the application in contemplation of the exercise of the power granted to the Minister under section 21.

21—Notification by responsible Minister of non-application or restricted application of PBS design approval

Section 21 empowers the Minister to issue a notice to the Regulator requiring the Regulator to impose conditions prohibiting any heavy vehicle built to a design that is the subject of a PBS design approval from operating in this jurisdiction, or making such operation subject to the condition set out in the notice.

22—Application for PBS design approval

Section 22 empowers the Regulator to consider an application for a PBS design approval, and reject or approve the application subject to any condition the Regulator sees fit. The breadth of the power to impose these conditions is necessary given the safe operation of the vehicle may contemplate such matters as driver licensing, a matter not otherwise dealt with under the Law at this point. In making this decision the Regulator is required to have regard to any approved guidelines, performance based standards and assessment rules prescribed in the national regulations, and the advice of the PBS Review Panel.

23—Application for PBS vehicle approval

Section 23 empowers the Regulator to consider an application for a PBS vehicle approval. The approval functions as evidence that a vehicle is constructed in accordance with an approved PBS design and must contain the condition relevant to that approval, whether imposed by the Regulator under section 22, or section 21. In making this decision the Regulator is required to have regard to any approved guidelines, performance based standards and assessment rules prescribed in the national regulations, and the advice of the PBS Review Panel.

24—Exemption from stated vehicle standards

Section 24 creates a head of power to make regulations stipulating which vehicle standards a PBS vehicle may be exempted from.

25—Authorisation of different mass or dimension requirement

Section 25 makes it clear a mass or dimension limit authorised in a PBS approval is to have precedence over the general mass or dimension limits.

26—National regulations

Section 26 creates a head of power to make regulations dealing with procedures for applications for PBS design and vehicle approvals, procedures for cancelling or modifying a PBS design or vehicle approval, assessment criteria and procedures and the appointment of persons to assess designs and certify vehicles purportedly built to them.

Chapter 2—Registration

Note—

A note clarifies that Chapter 2 is not to commence at the same time as other provisions of the National Law but at a later time, and that transitional provisions for this jurisdiction relating to and consequential on the delayed commencement are intended to be dealt with by national regulations or by legislation of this jurisdiction.

Part 1—Preliminary

27—Main purpose of Chapter 2

Section 27 states that the main purpose of Chapter 2 is to establish a scheme for the national registration of heavy vehicles that meets safety objectives, allows for identification of heavy vehicles and those responsible for them, and ensures compliance with compensation legislation. The section also recognises that unregistered heavy vehicles may be used in particular circumstances without posing significant safety risks.

Part 2—Registration scheme

Division 1—Preliminary

28—Scheme for registration of heavy vehicles

Section 28 provides a head of power for national regulations to prescribe procedures for the registration of heavy vehicles. The types of matters that may be prescribed cover a broad spectrum including eligibility for registration requirements, conditional registration, registration charges, unregistered heavy vehicle permits, registration transfers, surrenders and renewals, amendment, suspension or cancellation of registration or unregistered heavy vehicle permits, and arrangements for the collection of third party insurance and vehicle registration duty.

29—Registration not evidence of title

Section 29 states that the registration of a heavy vehicle under the Law is not evidence of title to the heavy vehicle. This section intends to maintain the distinction between registration of a heavy vehicle and ownership of a heavy vehicle at law as the registered operator of a heavy vehicle may not be the owner or sole owner of the heavy vehicle.

Division 2—Requirement for heavy vehicle to be registered

30—Registration requirement

Section 30 creates an offence for a person to use, or permit to be used, on a road an unregistered heavy vehicle or one whose registration has been suspended. The maximum penalty for noncompliance is $10,000. Note that the inclusion of 'permit to be used' in section 30 extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a vehicle to prevent the use of that vehicle while it is unregistered or the registration has been suspended.

An exception to the above is set out in subsection (2): no offence is committed if the vehicle is being used under an unregistered heavy vehicle permit, or if the use of the unregistered heavy vehicle is authorised under Division 3. That Division specifies various circumstances in which an unregistered heavy vehicle is authorised to be used on a road without an unregistered heavy vehicle permit issued under the national regulations.

Division 3—Authorised use of unregistered heavy vehicle

31—Purpose of Division 3

Section 31 specifies that the purpose of Division 3 is to state the circumstances in which an unregistered heavy vehicle is authorised to be used on a road without an unregistered heavy vehicle permit issued under the national regulations.

32—Unregistered heavy vehicle on journey for obtaining registration

Section 32 authorises the use of an unregistered heavy vehicle on a road when that vehicle is travelling, by the most direct or convenient route, to the nearest 'registration place', as defined in subsection (2). A registration place is a place where a heavy vehicle is taken for the purpose of obtaining registration and includes a place where

the vehicle may be first weighed or inspected for checking its compliance with the heavy vehicle standards. It includes a journey by way of the nearest inspection place (as defined in subsection (2)). However, the requirements of any third party insurance legislation required by the local jurisdiction in which the heavy vehicle is being used must be complied with and the vehicle must not be carrying goods.

33—Unregistered heavy vehicle temporarily in Australia

Section 33 authorises the use of an unregistered heavy vehicle on a road if it is registered in a foreign country and temporarily in Australia, and the registration requirements of that country are satisfied, so far as is reasonably practicable. The driver must carry proof of the temporary admission carnet as defined in subsection (2). The requirements of third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with. The intention is to allow the use of foreign registered heavy vehicles in Australia for a limited time period without the requirement for registration in Australia. This section does not intend to authorise the use of foreign registered heavy vehicles on a road in Australia for an indefinite time period.

34—Unregistered heavy vehicle used for short term only

Section 34 authorises the use of an unregistered heavy vehicle on a road if a road authority has authorised the use of the vehicle on the road for short-term purposes (usually known as 'trade plates' or 'dealer plates'), if any relevant conditions imposed by the authority are complied with, and any third party insurance requirements of the local jurisdiction in which the heavy vehicle is being used are complied with.

35—Unregistered heavy vehicle used locally only

Section 35 authorises the use of an unregistered heavy vehicle on a road if the vehicle is on a journey between two parcels of land used solely or mainly for primary production, is travelling by the most direct or convenient route between the places, and for a distance of no more than 500 metres. The requirements of any third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with.

36—Unregistered heavy vehicle that is an agricultural vehicle

Section 36 authorises the use of an unregistered heavy vehicle on a road if it falls within either of the following categories:

- the vehicle is an 'agricultural implement' (defined in section 5) being towed by a registered 'agricultural machine' (defined in section 5) that is suitably matched to the implement or another registered heavy vehicle of a suitable size for towing the implement;
- the vehicle is an agricultural trailer being towed by a registered agricultural machine that is being used to perform 'agricultural tasks' (defined in section 5) for which it was built or a conditionally registered heavy vehicle.

The requirements of any third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with.

37—Unregistered heavy vehicle being towed

Section 37 authorises the use of an unregistered heavy vehicle on a road when it is under tow by a tow truck.

38—Unregistered heavy vehicle to which exemption under Div 4 applies

Section 38 authorises the use of an unregistered heavy vehicle on a road if it is of a category of heavy vehicles exempted from the requirement to be registered under Chapter 2 Part 2 Division 4. The requirements of any third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with. This section recognises the Regulator's power to issue registration exemptions for categories of vehicles.

39—Driver to carry proof of compliance with third party insurance legislation

Section 39 creates an offence where a person uses, or permits to be used, an unregistered heavy vehicle on a road in any of the circumstances mentioned in sections 32 to 38 if the driver does not have in the driver's possession proof that the requirements of third party insurance legislation applying to the vehicle are complied with.

Division 4—Exemption from requirement to be registered

Subdivision 1—Exemption by Regulator

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

Section 40 empowers the Regulator to exempt a category of heavy vehicles from the requirement to be registered, for a period of not more than one year. An exemption made under this section is referred to as a '*registration exemption*'. Such exemptions must be issued by the Regulator by way of a Commonwealth Gazette notice that complies with section 44. This power has been included in the Law to allow for the preservation of current local productivity initiatives in jurisdictions and for the implementation of future productivity initiatives which authorise the use of unregistered vehicles.

41—Restriction on grant of registration exemption

Section 41 limits the Regulator's power to grant a registration exemption by specifying that it may only grant an exemption if it is satisfied that:

- it is not reasonable to require heavy vehicles of the category to be registered; and
- the use of heavy vehicles of that category on a road without being registered will not pose a significant safety risk.

In deciding whether to grant a registration exemption, the Regulator must have regard to the 'approved guidelines' (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting registration exemptions.

42—Conditions of registration exemption

Section 42 authorises the Regulator to make registration exemptions subject to any conditions that it considers appropriate. For example, conditions could relate to route and time restrictions for the use of the vehicle, the documentation the driver of a heavy vehicle must carry and the signs or other things that must be displayed on a heavy vehicle. The examples provided in this section are not intended to operate as prescriptive requirements for conditions nor limit the scope of conditions that may be imposed by the Regulator.

43—Period for which registration exemption applies

Section 43 states that a registration exemption takes effect when the Commonwealth Gazette notice for the exemption is published or, if a later time is stated in the notice, at the later time. The registration exemption applies for the period stated in the Commonwealth Gazette notice. However, this is limited by the requirement in section 40 that a registration exemption must be a period of not more than one year.

44—Requirements about Commonwealth Gazette notice

Section 44 specifies the matters to be set out in a Commonwealth Gazette notice for a registration exemption and that a copy of the notice must be published on the Regulator's website.

45—Amendment or cancellation of registration exemption

Section 45 gives the Regulator discretion to amend or cancel a registration exemption on either or both of two grounds:

- the use of heavy vehicles on a road under the exemption has caused, or is likely to cause, a significant safety risk;
- since the exemption was granted, there has been a change in the circumstances and had these changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption in the first instance or would have granted the exemption subject to conditions or different conditions.

It also sets out procedural requirements, including notification of the proposal to amend or cancel the registration exemption, giving affected persons at least 14 days to make written representations as to why the Regulator should not amend or cancel the registration exemption, considering all written representations made and giving notice of the decision to amend or cancel the registration exemption. It also specifies when the amendment or cancellation takes effect.

The intent of these requirements is to ensure transparency and fairness in the decision-making process. This is achieved by requiring adequate notice to be given to those affected by a proposed amendment or cancellation and by ensuring that possible adverse consequences of such action can be presented to the Regulator for consideration. An additional benefit of this section is in allowing time for those who may be adversely affected by a decision to amend or cancel a registration exemption time in which to adjust their business practices.

46—Immediate suspension

Section 46 allows the Regulator to suspend a registration exemption immediately if there is a need to minimise serious harm to public safety or significant damage to road infrastructure. The exercise of the power is subject to publication requirements to minimise the possibility of inadvertent noncompliance.

Subdivision 2—Exemption by national regulations

47—National regulations exempting heavy vehicles from requirement to be registered

Section 47 creates a head of power for the making of regulations in relation to the exempting (whether conditional or otherwise) of a specific category of heavy vehicle from the requirement to be registered.

Part 3—Vehicle register

48—Vehicle register

Section 48 requires the Regulator to keep a register of heavy vehicles (the vehicle register) that enables the identification of a heavy vehicle used on a road and of the person who is responsible for it. Subsection (2) stipulates that the heavy vehicle register must be kept in the way, and contain the particulars, prescribed by the national regulations. Subsection (3) enables the Regulator to also include any other information in the register that it considers reasonable and relevant for the purposes of the Law.

Part 4—Other provisions relating to registration

49—Ownership of registration items

Section 49 clarifies that a 'registration item' (defined in section 5 to mean documents, number plates and labels relating to registration or purported registration of a heavy vehicle or an unregistered heavy vehicle permit) issued by the Regulator remains the property of the Regulator.

50—Obtaining registration or registration items by false statements etc

Section 50 creates various registration offences. Subsection (1) makes it an offence to attempt to obtain, renew or transfer registration, or to be issued with an unregistered heavy vehicle permit, by making a false or misleading statement or representation or in another dishonest way and imposes a maximum penalty of $10,000 for noncompliance. Subsection (2) makes it an offence to, without a reasonable excuse, possess a registration item obtained in a way specified in subsection (1) and imposes a maximum penalty of $10,000 for noncompliance. Any registration item that is obtained by a person in this way is declared void under subsection (4).

51—Replacement and recovery of certain registration items

Section 51 empowers the Regulator to cancel an incorrect, duplicate or poor quality registration item. It further enables the Regulator, if it considers it is appropriate to do so, to issue a replacement registration item or to give the registered operator a notice requiring it to return the item to the Regulator. Subsection (3) creates an offence to fail to comply with a notice and imposes a maximum penalty of $4,000 for noncompliance.

Whilst section 51 is an enabling provision, it is not intended to place a duty on the Regulator to replace or recover every incorrect, duplicate or poor quality registration item issued.

52—Verification of particular records

Section 52 authorises the Regulator, by notice, to require the registered operator of a heavy vehicle registered under the Law or the holder of an unregistered heavy vehicle permit to produce documents, or to present the vehicle for inspection, so that the Regulator can verify the records about that vehicle.

Subsection (4) creates an offence for a person to fail to comply with such a notice without a reasonable excuse and imposes a maximum penalty of $3,000 for noncompliance.

Part 5—Written-off and wrecked heavy vehicles

53—Purpose of Chapter 2 Part 5

Section 53 states that the purpose of Chapter 2 Part 5 is to provide for the collection and recording of information about written-off or wrecked heavy vehicles to ensure that such vehicles are registered only in circumstances where the identity of the vehicle and its operator is certain and the vehicle is safe.

Certainty in the identity of the vehicle and its operator and the safety of the vehicle are important because of the incidence of theft, fraud, and dangerous disassembly and reassembly practices which attempt to disguise the true identity or origin of written-off or wrecked vehicles or parts of vehicles.

54—Definitions for Chapter 2 Part 5

Section 54 defines 'insurer', 'wrecked' and 'written-off' for the purposes of Chapter 2 Part 5.

55—Written-off and wrecked heavy vehicles register

Section 55 requires the Regulator to keep a register of written-off and wrecked heavy vehicles. It stipulates that the register must be kept in the way, and contain the particulars, prescribed by the national regulations. The section also requires the types of matters that the national regulations may provide for in relation to entries in the register, access to the register, the giving of information contained in the register, driving written-off and wrecked heavy vehicles and notification of the regulator about written-off and wrecked heavy vehicles. Subsection (3) enables the Regulator to also include any other information it considers reasonable and relevant to the purpose of Chapter 2 Part 5.

Part 6—Other provisions

56—Regulator may specify GCM in particular circumstances

Section 56 empowers the Regulator to specify the gross combination mass (see the definition of GCM in section 5) for a motor vehicle, being the total maximum loaded mass of the vehicle and any vehicles it may lawfully tow at any given time for the purposes of the Law in the circumstances specified in the provision.

57—Regulator may specify GVM in particular circumstances

Section 57 empowers the Regulator to specify the gross vehicle mass (see the definition of GVM in section 5) for a vehicle for the purposes of this Law in the circumstances specified in the provision.

Chapter 3—Vehicle operations—standards and safety

Part 1—Preliminary

58—Main purpose of Chapter 3

Section 58 states that the main purpose of Chapter 3 is to ensure heavy vehicles used on roads are of a standard and in a condition that prevents or minimises safety risks.

Part 2—Compliance with heavy vehicle standards

Division 1—Requirements

59—Heavy vehicle standards

Section 59 provides a head of power for regulations to prescribe vehicle standards (heavy vehicle standards), with which heavy vehicles must comply to use roads. These may include requirements applying to heavy vehicles, components of heavy vehicles or equipment of heavy vehicles. The section also provides a head of power for the making of regulations to prescribe exemptions for different requirements for component vehicles that are not heavy vehicles. This allows for light vehicles to be exempted from all or part of one or more heavy vehicle standards when the light vehicle is part of a heavy vehicle combination.

60—Compliance with heavy vehicle standards

Section 60 creates an offence for a person to use, or permit to be used, on a road a heavy vehicle that contravenes a heavy vehicle standard applying to the vehicle. The maximum penalty for noncompliance is $3,000 or $6,000 depending on the circumstances.

The inclusion of the phrase 'permit to be used' in subsection (1) extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle complies with heavy vehicle standards applying to it.

Subsection (2) clarifies that the offence does not apply in either of the following circumstances:

- the heavy vehicle is travelling to a place for the repair of the vehicle or any of its components or equipment by the most direct or convenient route, is not carrying goods and is used in a way that does not pose a safety risk; or
- the heavy vehicle is on a road for testing or analysis of the vehicle or any of its components or equipment by an approved vehicle examiner to check its compliance with the heavy vehicle standards, is not carrying any passengers, has only the quantity of goods that is necessary or appropriate for the conduct of the testing or analysis, and those goods do not pose a safety risk, and is used in a way that does not pose a safety risk.

A note clarifies that the exception allowing the movement of the vehicle to a place of repair does not supersede the requirements of any defect notice issued for the vehicle.

Subsection (3) specifies that a person does not commit an offence if and to the extent that the noncompliance with a heavy vehicle standard was known to the Regulator when the vehicle was registered. However, a person only has the benefit of this provision if the heavy vehicle and its use on the road complies with the conditions of registration, as per subsection (5).

Subsection (4) specifies the circumstances in which the Regulator is taken to have known of the noncompliance at the time of registration.

Subsection (6) provides that a PBS vehicle is exempt from vehicle standards stated in its PBS vehicle approval and where it complies with the other applicable vehicle standards, the vehicle is regarded for the purposes of the National Law as complying with the vehicle standards applying to the vehicle.

Division 2—Exemptions by Commonwealth Gazette notice

61—Regulator's power to exempt category of heavy vehicles from compliance with heavy vehicle standard

Section 61 empowers the Regulator to exempt a category of heavy vehicles from the requirement to comply with a heavy vehicle standard for a period of not more than 5 years. This must be done by Commonwealth Gazette notice complying with section 65. An exemption made under this section is referred to as a *vehicle standards exemption (notice)*. This power has been included in the Law to allow for the preservation of current local productivity initiatives in jurisdictions and for the implementation of future productivity initiatives which exempt categories of vehicles from compliance with heavy vehicle standards.

62—Restriction on grant of vehicle standards exemption (notice)

Section 62 limits the Regulator's power to grant a vehicle standards exemption (notice). Under subsection (1) a vehicle standards exemption (notice) may only be granted if:

- the Regulator is satisfied that the use of heavy vehicles of that category under the exemption will not pose a significant safety risk; and
- one of the following applies:
- the Regulator is satisfied complying with the relevant standard would prevent heavy vehicles of that category from operating as they were built or modified;
- the Regulator is satisfied heavy vehicles of that category are experimental vehicles, prototypes or similar vehicles that could not reasonably be expected to comply with the relevant standard;
- the exemption has been requested by a road authority for a participating jurisdiction for the use of heavy vehicles of that category in that jurisdiction; or

- the category of heavy vehicles consists of heavy vehicles that were, immediately before the commencement of this section in a participating jurisdiction, registered under an Australian road law of that jurisdiction and not required to comply with a similar standard at that time.

In deciding whether to grant a vehicle standards exemption (notice), the Regulator must have regard to the approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting vehicle standards exemptions.

Section 62 ensures that the Regulator always has regard to the safety risks of granting an exemption and limits the granting of a vehicle standards exemption (notice) to highly specific circumstances. If those requirements are not met, the Regulator is not empowered to grant the vehicle standards exemption (notice).

63—Conditions of vehicle standards exemption (notice)

Section 63 authorises the Regulator to make a vehicle standards exemption (notice) subject to any conditions it considers appropriate. Such conditions could include, but are not limited to, conditions about protecting road infrastructure from damage and a condition requiring the driver of a heavy vehicle to keep documentation regarding the exemption in his or her possession.

64—Period for which vehicle standards exemption (notice) applies

Section 64 states that a vehicle standard exemption (notice) takes effect when the Commonwealth Gazette notice for the exemption is published or, if a later time is stated on the Commonwealth Gazette notice, at the later time. The exemption applies for the period stated in the Commonwealth Gazette notice. However, this is limited by the requirement in section 61 that a vehicle standard exemption (notice) must be for a period of not more than 5 years.

65—Requirements about Commonwealth Gazette notice

Section 65 specifies the matters to be set out in a Commonwealth Gazette notice for a vehicle standard exemption (notice) and that a copy of the notice must be published on the Regulator's website.

66—Amendment or cancellation of vehicle standards exemption (notice)

Section 66 gives the Regulator discretion to amend or cancel a vehicle standards exemption (notice) on either or both of 2 grounds:

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

- since the exemption was granted, there has been a change in the circumstances and had these changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption in the first instance or would have granted the exemption subject to conditions or different conditions.

It also sets out procedural requirements, including notification of the proposal to amend or cancel the vehicle standards exemption (notice), giving affected persons at least 14 days to make written representations as to why the Regulator should not amend or cancel the vehicle standards exemption (notice), considering all written representations made and giving notice of the decision to amend or cancel the vehicle standards exemption (notice). It also specifies when the amendment or cancellation takes effect.

The intent of these requirements is to ensure transparency and fairness in the decision-making process. This is achieved by requiring adequate notice to be given to those affected by a proposed amendment or cancellation and by ensuring that possible adverse consequences of such action can be presented to the Regulator for consideration. An additional benefit of this section is in allowing those who may be adversely affected by a decision to amend or cancel a vehicle standards exemption (notice) time in which to adjust their business practices.

67—Suspension missing

Section 67 empowers the Regulator to suspend a vehicle standards exemption notice immediately to prevent or minimise serious harm to public safety or significant damage to road infrastructure. The power is exercisable through the meeting of the ordinary publication requirements (in or on each of the Commonwealth Gazette, a relevant newspaper, and on the Regulator's website). The maximum length of the suspension is calculated with reference to the matters set out in subsection (2).

Division 3—Exemptions by permit

68—Regulator's power to exempt particular heavy vehicle from compliance with heavy vehicle standard

Section 68 empowers the Regulator to exempt a heavy vehicle from the requirement to comply with a heavy vehicle standard for a period not more than 3 years. This must be done by giving a permit to a person in accordance with section 73. An exemption under this section is referred to as a *vehicle standards exemption (permit)* and may apply to 1 or more heavy vehicles. This power has been included in the Law to allow for the preservation of current local productivity initiatives in jurisdictions and for the implementation of future productivity initiatives which exempt categories of vehicles from compliance with heavy vehicle standards.

69—Application for vehicle standards exemption (permit)

Section 69 sets out requirements for an application for a vehicle standards exemption (permit). It includes the requirement that an application must be in the approved form and be accompanied by the relevant prescribed fee (defined in section 5 as a fee prescribed by the national regulations under section 740(1)).

70—Restriction on grant of vehicle standards exemption (permit)

Section 70 limits the Regulator's power to grant a vehicle standards exemption (permit). Under subsection (1) a vehicle standards exemption (permit) may only be granted if:

- the Regulator is satisfied that the use of the heavy vehicle under the exemption will not pose a significant safety risk; and
- one of the following applies:
    - the Regulator is satisfied complying with the relevant standard would prevent the heavy vehicle from operating as built or modified;
    - the Regulator is satisfied the heavy vehicle is an experimental vehicle, prototype or similar vehicle that could not reasonably be expected to comply with the relevant standard; or
    - the heavy vehicle was, immediately before the commencement of this section in a participating jurisdiction, registered under an Australian road law of that jurisdiction and not required to comply with a similar standard at that time.

In deciding whether to grant a vehicle standards exemption (permit), the Regulator must have regard to the approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting vehicle standards exemptions.

This section ensures that the Regulator always has regard to the safety risks of granting an exemption and limits the granting of a vehicle standards exemption (permit) to highly specific circumstances. If those requirements are not met, the Regulator must not grant the vehicle standards exemption (permit).

71—Conditions of vehicle standards exemption (permit)

Section 71 authorises the Regulator to make a vehicle standards exemption (permit) subject to any conditions it considers appropriate. Such conditions could include, but are not limited to, a condition about protecting road infrastructure from damage.

72—Period for which vehicle standards exemption (permit) applies

Section 72 sets out that a vehicle standards exemption (permit) applies for the period stated in the permit for the exemption. However, this is limited by the requirement in section 68 that the exemption must be for a period of not more than 3 years. Subsection (1) clarifies that the time period may be less than the period sought by the applicant for the permit.

73—Period for which vehicle standards exemption (permit) applies

Section 73 sets out what the Regulator must provide to an applicant to whom a permit is granted, including the information which must be stated in the permit.

74—Permit for vehicle standards exemption (permit) etc

Section 74 requires the Regulator to give the applicant an information notice for the decision if the Regulator refuses an application for a vehicle standards exemption (permit). An information notice is defined in section 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in section 5) for the decision.

75—Refusal of application for vehicle standards exemption (permit)

Section 75 empowers the holder of a vehicle standards exemption (permit) to apply to the Regulator for an amendment or cancellation of the exemption. This application must be in the approved form, be accompanied by the permit and the prescribed fee and, if for an amendment, state clearly the amendment sought and the reasons for it. The Regulator must decide this application as soon as practicable after receiving it.

The Regulator is empowered by subsection (3) to require any additional information from the applicant that is reasonably required to decide the application.

The Regulator must give notice to the applicant if it decides to grant the application. The amendment or cancellation takes effect when notice of the decision is given to the applicant or, if a later time is stated in the notice, at that time. If the exemption has been amended, the Regulator must give the applicant a replacement permit for the exemption as amended.

If the Regulator decides not to amend or cancel the exemption in the way sought by the applicant, subsection (6) requires the Regulator to give the applicant an information notice for the decision and return the permit for the exemption to the applicant. An information notice is defined in section 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in section 5) for the decision.

76—Amendment or cancellation of vehicle standards exemption (permit) on application by permit holder

Section 76 allows the Regulator to amend or cancel a vehicle standards exemption (permit) on the following grounds:

- the exemption was granted because of a false or misleading documentation or representation or one that was obtained or made in an improper way;
- the holder of the permit has contravened a condition of the exemption;
- the use of a heavy vehicle on a road under the exemption has caused, or is likely to cause, a significant safety risk;
- since the exemption was granted, there has been a change in the circumstances and had these changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption in the first instance or would have granted the exemption subject to conditions or different conditions.

It also sets out procedural requirements, including notification of the proposal to amend or cancel the vehicle standards exemption (permit), giving the permit holder at least 14 days to make written representations as to why the Regulator should not amend or cancel the vehicle standards exemption (permit), considering all written representations made and giving notice of the decision to amend or cancel the vehicle standards exemption (permit). It also specifies when the amendment or cancellation takes effect.

The intent of these requirements is to ensure transparency and fairness in the decision-making process. This is achieved by requiring adequate notice to be given to the permit holder and by ensuring that possible adverse consequences of such action can be presented to the Regulator for consideration.

77—Amendment or cancellation of vehicle standards exemption (permit) on Regulator's initiative

Section 77 empowers the Regulator to immediately suspend a vehicle standards exemption permit where there is an immediate need to prevent or minimise serious harm to public safety or significant damage to road infrastructure. Subsection (2) sets out the procedures the Regulator must follow in exercising this power.

78—Immediate suspension on Regulator's initiative

Section 78 empowers the Regulator, by notice given to the holder of a permit for a vehicle standards exemption (permit), to make minor amendments to a vehicle standards exemption (permit). Under this section, an amendment is considered minor if it is for a formal or clerical reason or does not adversely affect the holder's interest.

As such amendments would not adversely affect the permit holder's interest, there is no need to follow the procedural requirements that apply when an amendment or cancellation occurs under section 76.

79—Minor amendment of vehicle standards exemption (permit)

Section 79 provides that the Regulator may require, by notice, a person to return a permit for a vehicle standards exemption (permit) to the Regulator if it has been amended or cancelled. It is an offence for a person to fail to comply with that notice within 7 days or within any longer period stated in the notice. The maximum penalty for noncompliance is $4,000.

In the case of an exemption that has been amended, the Regulator must give the person a replacement permit in accordance with subsection 64(3).

80—Return of permit

Section 80 requires a person to apply for a replacement permit as soon as practicable after becoming aware that their permit is defaced, destroyed lost or stolen. The maximum penalty for a person not doing so is $4,000.

Subsection (2) states that if the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen the Regulator must give the person a replacement permit as soon as practicable. The only valid reason why the Regulator could refuse the application for a replacement permit is if the Regulator is not satisfied that the permit has been defaced, destroyed, lost or stolen.

Subsection (3) states that if the Regulator decides not to give a replacement permit the Regulator must give the person an information notice for the decision. An information notice is defined in section 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in section 5) for the decision.

Subsection (4) clarifies that the offence of failing to apply for a replacement permit cannot be committed where the person has already applied for cancellation of the permit.

Division 4—Operating under vehicle standards exemption

81—Contravening condition of vehicle standards exemption

Section 81 creates a number of offences, each with a maximum penalty of $3,000, where there has been a contravention of a vehicle standards exemption.

Under subsection (1) it is an offence for a person to contravene a condition of an exemption. This does not apply to a condition referred to in subsection (7), relating to the requirement for the driver of a heavy vehicle who is driving under a vehicle standards exemption (notice) to keep a copy of the Commonwealth Gazette notice or an information sheet about the exemption. This is because contravention of such a condition is an offence under section 82.

Under subsection (2) it is an offence for a person to use or permit the use of a vehicle on a road where that vehicle contravenes a condition of a vehicle standards exemption.

Under subsection (3) it is an offence for a person to use or permit a heavy vehicle to be used on a road in a way that contravenes a condition of a vehicle standards exemption.

Subsection (4) clarifies that, if a heavy vehicle is exempt from compliance with a heavy vehicle standard, no offence is committed against this Law in relation to noncompliance with the standard from which it is exempt, so long as the heavy vehicle and its use on the road complies with the conditions of that exemption.

Subsection (5) specifies that, if a person commits an offence against subsection (1), (2) or (3), the person does not have the benefit of the exemption. The exemption does not operate in the person's favour while the contravention continues and the relevant exemption must be disregarded in deciding whether the person has committed an offence in relation to a contravention of a heavy vehicle standard.

Subsection (6) operates to prevent any double jeopardy arising because a person has been denied the benefit of an exemption under subsection (5). A person can be charged with either the offence against this section or the offence against the contravention of the vehicle standard but must not be charged with both offences.

82—Keeping relevant document while driving under vehicle standards exemption (notice)

Section 82 applies if a vehicle standards exemption (notice) is subject to the condition that the driver of a heavy vehicle who is driving the vehicle under the exemption must keep a relevant document in the driver's possession. A relevant document is either a copy of the Commonwealth Gazette notice for the exemption or a copy of an information sheet about the exemption.

If the driver does not comply with the condition both the driver and each relevant party for the driver commit an offence. A maximum penalty of $3,000 applies for both offences.

A relevant party for the driver means:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

Extending liability for the driver's noncompliance to the employer, prime contractor or operator is to encourage all parties responsible for the use of the heavy vehicle to ensure that the exemption documentation is with the vehicle at all times. This will assist compliance, by ensuring drivers are aware of the exemption conditions and enabling authorised officers to readily ascertain whether a vehicle is exempted from vehicle standards and the conditions applying to the exemption.

When the relevant party is charged with an offence under this section that person does not have the benefit of the mistake of fact defence for the offence. However, that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsection (6) specifies certain matters that are irrelevant in a proceeding and matters that constitute evidence in a proceeding against a relevant party. It provides that:

- it is irrelevant whether or not the driver has been or will be proceeded against or convicted. Thus it is not necessary to take action against a driver or to obtain a conviction against a driver in order to proceed against a relevant party;
- evidence a court has convicted a driver is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction or evidence that the driver has paid an infringement penalty, is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice. These are intended to facilitate proof of the relevant facts.

83—Keeping copy of permit while driving under vehicle standards exemption (permit)

Section 83 requires a driver of a heavy vehicle driving under a vehicle standards exemption (permit) to keep a copy of the permit in the driver's possession.

If the driver does not do so, both the driver and each relevant party for the driver commit an offence. A maximum penalty of $3,000 applies for both offences. A relevant party for the driver means:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

Extending liability for the driver's noncompliance to the employer, prime contractor or operator is to encourage all parties responsible for the use of the heavy vehicle to ensure that the permit is with the vehicle at all times. This will assist compliance, by ensuring drivers are aware of the exemption conditions and enabling authorised officers to readily ascertain whether a vehicle is exempted from vehicle standards and the conditions applying to the exemption.

When the relevant party is charged with an offence under this section that person does not have the benefit of the mistake of fact defence for the offence. However, that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that a person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsection (6) specifies certain matters that are irrelevant in a proceeding and matters that constitute evidence in a proceeding against a relevant party. It provides that:

- it is irrelevant whether or not the driver has been or will be proceeded against or convicted. Thus it is not necessary to take action against a driver or to obtain a conviction against a driver in order to proceed against a relevant party;
- evidence a court has convicted a driver is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction;
- evidence of details stated in an infringement notice is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

These are intended to facilitate proof of the relevant facts.

It is anticipated that to comply with the requirements of section 83, the relevant party will give a driver of a heavy vehicle driving under a vehicle standards exemption (permit) a copy of the permit granted to the relevant party. Subsection (2) makes it an offence for a driver who is driving the vehicle under a heavy vehicle standards (permit) granted to a relevant party who stops working for that relevant party to fail to return the copy of the permit to the relevant party as soon as reasonably practicable after the driver stops working for that party.

The maximum penalty for the offence is $3,000.

Part 3—Modifying heavy vehicles

84—Definition for Part 3

Section 84 defines *modification* to limit the expression to alterations or changes resulting in noncompliance with an applicable vehicle standard, or a departure from an applicable vehicle standards exemption already in place (other than a departure bringing the vehicle into full compliance with all applicable vehicle standards).

85—Modifying heavy vehicle requires approval

Section 85 creates offences in relation to unauthorised vehicle modifications.

Under subsection (1) it is an offence for a person to modify a heavy vehicle unless the modification has been approved by an approved vehicle examiner under section 86 or by the Regulator under section 87. The maximum penalty for this offence $3,000.

Under subsection (2) it is an offence for a person to use or permit to be used on a road a heavy vehicle that has been modified unless the modification has been approved by an approved vehicle examiner under section 86 or by the Regulator under section 87. The maximum penalty for this offence is $3,000.

It is intended that under section 85, responsibility for any unauthorised modifications to heavy vehicles be extended to all persons involved in the modification process and in the use of the modified vehicle.

86—Approval of modifications by approved vehicle examiners

Section 86 empowers an approved vehicle examiner, if authorised to do so by the national regulations, to approve a modification of a heavy vehicle if the modification complies with a code of practice prescribed by the national regulations for this section.

87—Approval of modification by Regulator

Section 87 authorises the Regulator to approve a modification of a heavy vehicle if the Regulator is satisfied that the use on a road of the heavy vehicle as modified will not pose a significant safety risk or the modified vehicle will comply with applicable noise and emission standards prescribed by national regulations, or the Regulator is satisfied that the modified vehicle complies with the requirements of any exemption from a noise or emission standard.

Unlike an examiner under section 86, the Regulator may approve a modification even if the modification does not comply with a prescribed code of practice.

This is intended to enable the Regulator to approve a modification where a code of practice approving such a modification is not yet published or published code does not apply. However, the Regulator is bound by the duty to be satisfied that the modification will not pose a significant safety risk.

88—National regulations for heavy vehicle modification

Section 88 establishes a general head of power for the making of regulations with respect to the modification of heavy vehicles.

Part 4—Other offences

89—Safety requirement

Section 89 creates an offence for a person to use, or permit to be used, on a road a heavy vehicle that is unsafe. The maximum penalty for noncompliance is $6,000.

The inclusion of the phrase 'permit to be used' in subsection (1) extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle is safe.

Subsection (3) authorises the movement of these vehicles through the use of vehicle defect notices where the vehicle complies with any conditions imposed through the notice.

90—Requirement about properly operating emission control system

Section 90 sets out requirements about properly operating emission control systems for a relevant emission. A relevant emission refers to a gas, particles or noise emission.

An emission control system refers to a device or system fitted to a vehicle that reduces the emission of a relevant emission from the vehicle. The Law does not require all heavy vehicles to be fitted with a gaseous emission control system if they were built before the relevant emissions control ADR (Australian Design Rule) came into force.

Subsection (1) creates an offence for a person to use, or permit to be used on a road a heavy vehicle that is not fitted with an emission control system for a relevant emission if one is required to be fitted by an applicable heavy vehicle standard, the maximum penalty for noncompliance being $3,000.

Subsection (2) creates an offence for a person to use, or permit to be used on a road a heavy vehicle fitted with such a system if the system is not operating in accordance with the manufacturer's design. The maximum penalty for noncompliance is $3,000.

The inclusion of the phrase 'permit to be used' in subsection (1) and (2) extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle is compliant. Requiring that the emission control system must be operating substantially in accordance with the system's intended purpose is to ensure that persons cannot escape liability for having an ineffective or damaged emission control system.

Subsection (3) makes it an offence to use, or permit to be used, on a road a heavy vehicle fitted with an emission control system if the operation of the system results in a failure to comply with an applicable heavy vehicle standard. This is necessary to address a concern that an aftermarket component such as an exhaust pipe may be operating in the way it is intended but still leaves the vehicle in an unsatisfactory state.

Subsection (4) clarifies that offence in subsection (2) or (3) does not apply if the vehicle is travelling on the most direct or convenient route to a place of repair for the emission control system, or any of the vehicle's components or equipment that affect the operation of the system.

Subsection (5) allows national regulations to be made that prescribe testing standards for emissions from heavy vehicles.

91—Person must not tamper with emission control system fitted to heavy vehicle

Section 91 makes it an offence to tamper with an emissions control system or permitting a heavy vehicle to be used in circumstances where it is known or ought to be known that the emissions control system has been tampered with. The section excludes the mistake of fact defence and in its place provides for the reasonable steps defence to be raised.

92—Display of warning signs required by heavy vehicle standards on vehicles to which the requirement does not apply

Section 92 states that if, under the heavy vehicle standards, a warning sign is required to be displayed on a heavy vehicle of a particular type, size or configuration (such as a sign showing the words 'LONG VEHICLE' or 'ROAD TRAIN') a person must not use, or permit to be used, on a road a heavy vehicle that has the warning sign displayed on it unless the vehicle is of the particular type, size or configuration. The maximum penalty for noncompliance is $3,000.

This section is intended to ensure that warning signs are only used for vehicles that, under the heavy vehicle standards, are required to use them.

93—Person must not tamper with speed limiter fitted to heavy vehicle

Section 93 creates an offence for a person to tamper with a speed limiter that is required under an Australian road law to be, and is, fitted to a heavy vehicle.

A speed limiter is defined as a device or system used to limit the maximum road speed of a heavy vehicle to which it is fitted. To tamper with a speed limiter means to alter, damage, remove or otherwise interfere with the speed limiter to the effect of enabling the vehicle to be driven at a higher speed than the speed limiter would permit.

Subsection (2) prohibits a person from fitting or directing another person to fit a speed limiter to a heavy vehicle in circumstances where the person knows or ought reasonably to know that the speed limiter has been tampered with.

Subsection (3) prohibits an operator of a heavy vehicle from permitting the vehicle to be driven on a road if the operator knows, or ought reasonably to know, that a speed limiter fitted to the vehicle, as required under an Australian road law or by order of an Australian court, has been tampered with. An exception to this requirement is created by subsection (5), which provides that subsection (3) does not apply where the vehicle is on a journey to a place for the repair of the speed limiter.

Subsection (4) clarifies that, if the relevant conduct is associated with the repair of a malfunctioning speed limiter, no offence is committed.

The maximum penalty for tampering with a speed limiter is $10,000, which is significantly higher than other offences in this Chapter. This indicates the gravity of, and safety risks associated with, the offence.

A person charged with an offence for tampering with a speed limiter does not have the benefit of the mistake of fact defence for the offence. However the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Section 93 is different to other offence provisions in this Chapter as it does not extend responsibility to a person who uses, or permits to be used, a heavy vehicle with a tampered speed limiter. The offence is intended to be limited to the person who physically performs or authorises the tampering.

Chapter 4—Vehicle operations—mass, dimension and loading

Part 1—Preliminary

94—Main purposes of Chapter 4

Section 94 states that the main purposes of Chapter 4 are:

- To improve public safety by decreasing risks to public safety caused by excessively loaded or excessively large heavy vehicles; and
- To minimise any adverse impact of excessively loaded or excessively large heavy vehicles on road infrastructure or public amenity.

Subsection (2) states that these purposes are achieved by:

- imposing mass limits for heavy vehicles, particular components of heavy vehicles, and loads on heavy vehicles;
- imposing restrictions about the size of heavy vehicles and the projections of loads on heavy vehicles;
- imposing requirements about securing loads on heavy vehicles;
- restricting access to roads by heavy vehicles of a particular mass, size or configuration even if the vehicles comply with the mass limits, restrictions and requirements mentioned above (Class 2 vehicles).

However, subsection (3) states that particular heavy vehicles that do not comply with mass limits, restrictions and requirements (Class 1 and Class 3 vehicles) may be permitted to be used on roads subject to conditions when such use would be allowed for the efficient road transport of goods or passengers by heavy vehicles provided that its use does not compromise the safety or infrastructure protection purposes of Chapter 4.

Part 2—Mass requirements

Division 1—Requirements

95—Prescribed mass requirements

Section 95 authorises regulations to prescribe requirements about the mass of heavy vehicles and their components. The requirements apply not only to the heavy vehicle as a whole but also to combinations and to parts of the vehicle or combination. These requirements are referred to as *prescribed mass requirements*. In addition, subsection (4) authorises regulations to prescribe requirements that are not mass requirements but are about the use, on roads, of heavy vehicles under particular mass limits such as Higher Mass Limits. Examples are provided of requirements that the regulations are authorised to make including route restrictions and requirements to display signs on heavy vehicles.

96—Compliance with mass requirements

Section 96 states that a person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not, comply with the mass requirements applying to the vehicle. The maximum penalty for contravening this requirement depends on the extent of the breach and whether it is classified as a: minor (maximum penalty $4,000); substantial (maximum penalty $6,000) or severe risk breach (maximum penalty $10,000 plus $500 for every additional 1% above 120% to a maximum incremental penalty of $20,000, (the total penalty will not exceed $30,000 for an individual)).

These categories of breach are defined in Division 2 of Chapter 4 Part 2 of this Bill (sections 97 to 100).

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsection (4) allows the mass limit for a PBS vehicle to be established in the PBS vehicle approval. Under this subsection the limit stipulated in the approval is taken to be the applicable limit, and the vehicle is regarded for the purposes of this Law as complying with the prescribed mass requirements.

Division 2—Categories of breaches of mass requirements

97—Definitions for Division 2

Section 97 defines the terms *severe risk breach lower limit* and *substantial risk breach lower limit*. These terms are important for determining the maximum penalty applying to a breach of a mass requirement.

The substantial risk breach lower limit, in relation to a particular mass requirement applying to a heavy vehicle, is a mass equalling 105% of the maximum mass (rounded up to nearest 0.1t) permitted for the vehicle under the mass requirements or 0.5t over the maximum mass permitted for the vehicle. The effect of this definition is that the substantial risk breach lower limit will never be reached if the heavy vehicle's mass is less than 0.5t over the mass permitted for the vehicle.

The severe risk breach lower limit is a mass equalling 120% of the maximum mass (rounded up to nearest 0.1t) permitted for the vehicle under the mass requirements.

98—Minor risk breach

99—Substantial risk breach

100—Severe risk breach

Sections 98, 99 and 100 combine to apply the definitions of *substantial risk breach lower limit* and *severe risk breach lower limit* to effect that a contravention of a mass requirement applying to a heavy vehicle will be classified as:

- A minor risk breach if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement. Note: A heavy vehicle with a total mass less than 0.5t over the maximum mass permitted for the vehicle will always be a minor risk breach under this Division.
- A substantial risk breach if the subject matter of the contravention is equal to or greater than the substantial risk breach lower limit for the requirement and less than the severe risk breach lower limit for the requirement.
- A severe risk breach if the subject matter of the contravention is equal to or greater than the severe risk breach lower limit.

Part 3—Dimension requirements

Division 1—Requirements

101—Prescribed dimension requirements

Section 101 authorises regulations to prescribe requirements about the dimensions of a heavy vehicle, a component of a heavy vehicle and the dimensions of a heavy vehicle's load. These requirements are referred to as *dimension requirements*. In addition, subsection (3) authorises the national regulations to prescribe requirements that are not dimension requirements but are about the use of a vehicle to which a dimension requirement applies. This regulation making power is used to impose such requirements as using warning signs and having a heavy vehicle accompanied by an escort or pilot vehicle.

102—Compliance with dimension requirements

Section 102 states that a person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not, or whose load does not, comply with the dimension requirements applying to the vehicle.

If the heavy vehicle does not have goods or passengers in it the maximum penalty for an offence under this section is $3,000. If the heavy vehicle does have goods or passengers in it, the extent of the penalty will depend on whether the breach is categorised as a minor risk breach (maximum penalty $3,000), a substantial risk breach (maximum penalty $5,000) or a severe risk breach (maximum penalty $10,000). These categories of breach are defined in Division 2 of Chapter 4 Part 3, (sections 105 to107).

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsection (4) allows the dimension limit for a PBS vehicle to be established in the PBS vehicle approval. Under this subsection the limit stipulated in the approval is taken to be the applicable limit, and the vehicle is regarded for the purposes of this Law as complying with the prescribed dimension requirements.

Division 2—Categories of breaches of dimension requirements

103—Application of Division 2

Section 103 restricts the application of Division 2 to a heavy vehicle only while it is carrying goods or passengers. This restriction is required to ensure that risk categorisations created for dimensional breaches apply only to laden vehicles. Beaches of internal dimension limits are not intended to be penalised on this basis but rather will be subject to the obligations set out in the regulations made under Chapter 3 dealing with vehicle standards.

104—Definitions for Division 2

Section 104 provides definitions for the terms *severe risk breach lower limit* and *substantial risk breach lower limit* in relation to dimension requirements. These terms are used to classify a breach of a dimension requirement as a minor, substantial or severe risk breach under this Division. These definitions provide for the operation of both terms in relation to length, width, height and load projection dimensions of the heavy vehicle.

A 'substantial risk breach lower limit' means:

- In relation to a dimension requirement concerning length: the maximum length permitted for the vehicle under the dimension requirements plus 350mm.
- In relation to a dimension requirement concerning width: the maximum width permitted for the vehicle under the dimension requirements plus 40mm.
- In relation to a dimension requirement concerning height: the maximum height permitted for the vehicle under the dimension requirements plus 150mm.
- In relation to a dimension requirement concerning the projection of a load, the maximum load projection permitted for the vehicle under the dimension requirements plus 40mm.

A 'severe risk breach lower limit' means:

- In relation to a dimension requirement concerning length: the maximum length permitted for the vehicle under the dimension requirements plus 600mm.
- In relation to a dimension requirement concerning width: the maximum width permitted for the vehicle under the dimension requirements plus 80mm.
- In relation to a dimension requirement concerning height: the maximum height permitted for the vehicle under the dimension requirements plus 300mm.
- In relation to a dimension requirement concerning the projection of a load: the maximum load projection permitted for the vehicle under the dimension requirements plus 80mm.

105—Minor risk breach

Section 105 states when a contravention of a dimension requirement is a *minor risk breach*. Under section 105, a contravention of a dimension requirement is a minor risk breach if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement.

106—Substantial risk breach

Section 106 states when a contravention of a dimension requirement is a substantial risk breach. A contravention of a dimension requirement is a substantial risk breach if the subject matter of the contravention is equal to or greater than a substantial risk breach lower limit for the requirement and less than the severe risk breach lower limit for the requirement.

However, a breach that would ordinarily be classified as a minor risk breach of the dimension requirement under section 104 is to be treated as a substantial risk breach if any escalating factors mentioned in subsection (2) or (3) are present.

The escalating factors are:

- where the contravention relates to length:
    - a warning sign or device is not carried on the rear of the vehicle's load as required by the national regulations; or
    - the vehicle's load projects in a way that is dangerous to persons or property;
- where the contravention relates to width:
    - the contravention happens at night; or
    - the contravention happens in hazardous weather conditions causing reduced visibility.

Providing for the risk category to be escalated from minor to substantial in certain circumstances recognises that in these circumstances the risk of adverse consequences arising from the breach is increased. Providing for risk

categories to be escalated on this basis allows situations of contravention of requirement occasioning a greater risk to attract a greater maximum penalty.

107—Severe risk breach

Section 107 states when a contravention of a dimension requirement is a severe risk breach. A contravention of a dimension requirement is a severe risk breach when the subject matter of the contravention is equal to or greater than a severe risk breach lower limit for the requirement.

However, a breach that would ordinarily be classified as a substantial risk breach under section 106(1)(a) is to be regarded as a severe risk breach if any escalating factors mentioned in section 107(2) or (3) are present.

The escalating factors are:

- For a contravention relating to length:
    - a warning sign or device is not carried on the rear of the vehicle's load as required by the national regulations; or
    - the vehicle's load projects in a way that is dangerous to persons or property.
- For a contravention relating to width:
    - the contravention happens at night; or
    - the contravention happens in hazardous weather conditions causing reduced visibility.

Providing for the risk category to be escalated from substantial to severe in certain circumstances recognises that in these circumstances the risk of adverse consequences arising from the breach is increased. Providing for risk categories to be escalated on this basis allows situations of contravention of requirement occasioning a greater risk to attract a greater maximum penalty.

The following flowchart summarises the operation of the basic penalty regime for contravention of a dimension requirement by a heavy vehicle.

Division 3—Other provisions relating to load projections

108—Dangerous projections taken to be contravention of dimension requirement

Section 108 states that when a load projects in a way dangerous to persons or property a minor risk breach of a dimension requirement occurs even if all dimension requirements, warning and other requirements are met. If such a load projection contravention happens at night or in hazardous weather conditions causing reduced visibility, the contravention is escalated to a substantial risk breach of a dimension requirement. Complying with dimension and related requirements is not sufficient to avoid a penalty when the load projects in a way dangerous to persons or property.

109—Warning signals required for rear projection of loads

Section 109 provides for warning signals for rear projections loads when the load projects more than 1.2 metres behind a heavy vehicle or the load projects from a pole-type trailer or the load projects in a way that would not be readily visible to a person following immediately behind the vehicle. These warning signals provide an indication to following road users that the project of the load is greater than they may otherwise expect.

Under this section, a person commits an offence if a load projects behind a heavy vehicle as described above and a warning flag (required when the vehicle is operated during the day time) or a warning light (required when the vehicle is operated during the night time) is not fixed to the extreme back of the load. The maximum penalty for not complying with the requirements of this section is $3,000.

Part 4—Loading requirements

Division 1—Requirements

110—National regulations may prescribe loading requirements

Section 110 authorises regulations to prescribe requirements about securing a load on a heavy vehicle or a component of heavy vehicle. These regulations are referred to as *loading requirements*. The regulations may include, but are not limited to, including requirements about the restraint or positioning of a load or any part of it on a motor vehicle or trailer.

111—Compliance with loading requirements

Section 111 states that persons must not drive on a road a heavy vehicle that does not, or whose load does not, comply with the loading requirements applying to the vehicle. The penalty for not complying with loading requirements will depend on the extent of the breach and whether it is classified as a minor risk breach (maximum penalty $3,000); substantial risk breach (maximum penalty $5,000); or severe risk breach (maximum penalty $10,000).

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 2—Categories of breaches of loading requirements

112—Minor risk breach

113—Substantial risk breach

114—Severe risk breach

Sections 112, 113 and 114 provide when a contravention of a leading requirement will be categorised as a *minor*, *substantial* or *severe risk* breach to determine the extent of penalty applying to an offence of breaching a loading requirement.

In sections 112 to 114, determining whether a risk breach is minor, substantial or severe depends on:

- Whether the contravention involved an actual loss or shifting of the load; and
- The actual or potential effect of a contravention on safety, road infrastructure or public amenity.

If the subject matter of the contravention involved no actual loss or shifting of the load:

- the contravention can never be classified as a severe risk breach of a loading requirement under this division and;
- the contravention is a substantial risk breach if, had the loss or shifting of the load occurred, it would likely have involved an appreciable safety risk, an appreciable risk of damage to road infrastructure or an appreciable risk of causing an adverse affect on public amenity. If the consequences of the contravention would not likely have given rise to these effects, the contravention is classified as a minor risk breach.

If the subject matter of the contravention does involve an actual loss or shifting of the load:

- the contravention can never be classified as a minor risk breach of a loading requirement under this division and;
- the contravention is a severe risk breach if the loss or shifting of the load involves an appreciable safety risk or an appreciable risk of damage to road infrastructure or an appreciable risk of causing an adverse affect on public amenity. If the consequences of the contravention would not likely have given rise to these effects, the contravention is classified as a substantial risk breach.

Division 3—Evidentiary provision

115—Proof of contravention of loading requirement

Section 115 concerns certain evidence in proceedings for an offence in regard to a contravention of a loading requirement. Under this section:

- evidence that a load on a heavy vehicle was not placed, secured or restrained in a way that met a performance standard in the Load Restraint Guide as in force at the time, is evidence that the load was not placed, secured or restrained in compliance with a loading requirement applying to the vehicle.
- evidence that a load, or part of the load, has fallen off a heavy vehicle is evidence that the load was not properly secured.
- a court must presume a document purporting to be the Load Restrain Guide, as in force at the time of the offence is the Load Restraint Guide as in force at the time of offence, until the contrary is proved.

Subsection (2) defines *Load Restraint Guide* as a document of that name prepared by the National Transport Commission and published in the Commonwealth Gazette, from time to time. A legislative note indicates that this is able to be accessed from the National Transport Commission's website. Section 115 gives the content of the Load Restraint Guide, produced by the National Transport Commission, a critical role in determining and proving what a contravention of a loading requirement is. The Load Restraint Guide is developed by the National Transport Commission after consultation with stakeholders.

Part 5—Exemptions for particular overmass or oversize vehicles

Division 1—Preliminary

116—Class 1 heavy vehicles and class 3 heavy vehicles

Section 116 defines when a heavy vehicle is a *class 1 heavy vehicle* or a *class 3 heavy vehicle*. These definitions are important for determining exemptions under this chapter as there are differences in the types of conditions that are imposed on class 1 heavy vehicles as compared to class 3 heavy vehicles.

Subsection (1) defines a vehicle as a *class 1 heavy vehicle* if the vehicle, together with its load, does not comply with a mass requirement or dimension requirement applying to it and it is either:

- a special purpose vehicle. A *special purpose vehicle* is defined in subsection (4) and includes concrete pumps, fire engines and motor vehicles built for a purpose other than carrying goods (such as a mobile crane); or

- an agricultural vehicle other than an agricultural trailer. An *agricultural vehicle* is defined in section 5; or
- a heavy vehicle carrying or designed for the purpose of carrying, a large indivisible item, including, for example, a combination including a low loader; but is not a road train or B-double, or carrying a freight container designed for multi-modal transport. Subsection (4) defines the term *large indivisible item* for this section. A large invisible item is an item that cannot be divided into smaller items without extreme effort, expense or risk of damage and it cannot be carried without contravening a mass or dimension requirement.

Subsection (1) stipulates that agricultural trailers (whether or not they exceed mass and dimension requirements) are to be treated as Class 1, and not Class 3, heavy vehicles. This allows for these trailers to be subject to Class 1 rather than Class 3 notices or permits and for the standard conditions that are to apply to Class 1 vehicles as a result of the regulations made under this Chapter to be used for these notices or permits.

Class 3 notice or permit.

Subsection (4) defines a *class 3 heavy vehicle* as any other heavy vehicle not classified as a class 1 heavy vehicle that, together with its load, does not comply with a mass requirement or dimension requirement applying to it.

Division 2—Exemptions by Commonwealth Gazette notice

117—Regulator's power to exempt category of class 1 or 3 heavy vehicles from compliance with mass or dimension requirement

Section 117 empowers the Regulator, by Commonwealth gazette notice complying with section 121, to exempt a category of class 1 or 3 heavy vehicles from a mass or dimension requirement for a period not more than 5 years. These exemptions are referred to as *mass or dimension exemption (notice)*.

Limitations to the power of the Regulator to issue a mass or dimension exemption (notice) in this section are:

- a mass or dimension exemption (notice) must not be issued by the Regulator for a period more than 5 years; and
- a mass or dimension exemption (notice) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a heavy vehicle's GVM (Gross Vehicle Mass) or GCM (Gross Combination Mass); and
- a mass or dimension exemption (notice) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a maximum mass limit for a heavy vehicle, or a component of a heavy vehicle, set by the manufacturer of the vehicle or component.

A legislative note to section 117 indicates that Division 3 of Chapter 4 Part 7 should be read when considering the amendment, suspension or cancellation of a mass or dimension exemption (notice).

118—Restriction on grant of mass or dimension exemption (notice)

Section 118 further limits the power of the Regulator to grant a mass or dimension exemption (notice) by stating that a mass or dimension exemption (notice) must not be granted for a category of heavy vehicles unless the matters mentioned in subsection (1) and (2) are present.

The matters mentioned in subsections (1) and (2) that are all required to be present prior to a mass or dimension exemption (notice) being issued are:

- the Regulator is satisfied the use of heavy vehicles of that category on a road under the exemption will not pose a significant risk to public safety;
- each relevant road manager for the exemption has consented to the grant of the mass or dimension exemption (notice);
- the Regulator is satisfied that all other consents required for the exemption under the law of the relevant jurisdiction have been obtained by the applicant or have been otherwise given;
- the Regulator has had regard to the approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting mass or dimension exemptions in making the decision whether to grant the mass or dimension exemption (notice). The requirement in subsection (1)(b) that each road manager consent to the grant of the issue of a grant or mass dimension exemption (notice) ensures that all road managers affected by the granting of the exemption have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an exemption on its road assets.

119—Conditions of mass or dimension exemption (notice)

Section 119 specifies the conditions that must be included on a mass or dimension exemption (notice), authorises regulations to make conditions for the exemption and empowers the Regulator to subject the exemption to any other conditions it considers appropriate. Under section 119 a mass or dimension exemption (notice) is also subject to the road conditions or travel conditions required by a relevant road manager for the exemption under section 160 or 161.

A significant provision in section 119 is subsection (1)(a), which requires a compulsory condition regarding the areas or routes to which the exemption applies for all mass or dimension exemptions (notice). The requirement

to include a condition about specifying areas ensures that the geographical extent of the exemption is always clearly stated. Subsection (2) provides that the route restrictions may be stated on map by the Regulator. Subsection (3) prescribes requirements for such a map that the Regulator must follow, including a requirement to make the map publicly available.

Subsection (1)(b) authorises the regulations to prescribe conditions for the exemption. These regulations may prescribe conditions that are to apply only to particular areas or roads and may authorise the Regulator to decide the areas or roads to which the conditions are to apply.

Subsection (1)(d) empowers the Regulator to subject a mass or dimension exemption (notice) to any conditions it considers appropriate including, but not limited to:

- conditions about 1 or more matters mentioned in Schedule 2. Schedule 2 concerns subject matter for conditions of mass or dimension authorities. A mass or dimension exemption (notice) is included in the definition of a mass or dimension authority in section 5;
- intelligent access conditions; or
- a condition that the driver of a class 1 heavy vehicle or class 3 heavy vehicle who is driving the vehicle under the exemption must keep in the driver's possession a copy of the Commonwealth Gazette notice for the exemption; or an information sheet about the exemption published by the Regulator on the Regulator's website.

Subsection (4) clarifying that the Regulator may only extend, or add to the condition stating the areas or routes, if the relevant road manager has consented to a grant that includes the relevant areas or routes.

120—Period for which mass or dimension exemption (notice) applies

Section 120 states when a mass or dimension exemption (notice) takes effect when the Commonwealth Gazette notice for the exemption is published or if a later time is stated in the notice, at the later time.

Paragraph (b) states that the mass or dimension exemption (notice) applies for the period stated on the Commonwealth Gazette notice. However, this is limited by the requirement in section 117 that a mass or dimension exemption (notice) cannot be granted for a period of more than 5 years.

121—Requirements about Commonwealth Gazette notice

Section 121 states the requirements for the Commonwealth Gazette notice required for a mass or dimension exemption (notice). These include stating the category of heavy vehicle to which the exemption applies, the mass and dimension requirements to which the exemption applies, the areas or routes to which the exemption applies, the conditions imposed by regulations for the exemption, the road conditions required by a relevant road manager, and the period for which the exemption applies. The Regulator is also required to publish a copy of the Commonwealth Gazette notice on its website.

Division 3—Exemptions by permit

122—Regulator's power to exempt particular class 1 or class 3 heavy vehicle from compliance with mass or dimension requirement

Section 122 empowers the Regulator to exempt, by permit as mentioned in section 127, a class 1 or 3 heavy vehicle from compliance with a mass or vehicle requirement for a period not more than 3 years. Such an exemption is referred to as a *mass or dimension exemption (permit)*.

Limitations to the Regulator's power under section 122 are:

- a mass or dimension exemption (permit) must not be granted for a period more than 3 years;
- a mass or dimension exemption (permit) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a heavy vehicle's GVM (gross vehicle mass) or GCM (gross combination mass). (An exception to the GCM limitation is provided in subsection (2) where there are multiple hauling units as GCMs are specified for operation of a heavy vehicle when used alone to tow other vehicles);
- a mass or dimension exemption (permit) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a maximum mass limit for a heavy vehicle, or a component of a heavy vehicle, set by the manufacturer of the vehicle or component.

A legislative note to section 122 indicates that Division 4 of Chapter 4 Part 7 should be read when considering the amendment, suspension or cancellation of a mass or dimension exemption (notice).

123—Application for mass or dimension exemption (permit)

Section 123 states how a person may apply to the Regulator for mass or exemption (permit). This application must be in the approved form and be accompanied by the relevant prescribed fee. The Regulator is empowered by subsection (3) to require the applicant to give the Regulator any additional information reasonably required to decide the application.

124—Restriction on grant of mass or dimension exemption (permit)

Section 124 further limits the power of the Regulator to grant a mass or dimension exemption (permit) by stating that a mass or dimension exemption (permit) must not be granted for a category of class of heavy vehicles unless all of the factors mentioned in subsections (1) and (2) are present.

The factors in section 124(1) and (2) are:

- the Regulator is satisfied the use of heavy vehicles of that category on a road under the exemption will not pose a significant risk to public safety (section 124(1)(a));
- each relevant road manager for the exemption has consented to the grant of the mass or dimension exemption (permit) (section 124(1) (b));
- the Regulator is satisfied that all consents required for the exemption under the law of the relevant jurisdiction have been obtained by the applicant or have been otherwise given (section 124(1)(c));
- the Regulator has had regard to the approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting mass or dimension exemptions in making the decision whether to grant the mass or dimension exemption (permit) (section 124(2)).

The requirement in section 124(1)(b) that each road manager consent to the grant of the issue of a grant or mass dimension exemption (notice) is intended to ensure that all road managers affected by the granting of the exemption have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an exemption on its road assets.

125—Conditions of mass or dimension exemption (permit)

Section 125 specifies the conditions that must be included on a mass or dimension exemption (permit), authorises the national regulations to make conditions for the exemption and empowers the Regulator to subject the exemption to other conditions it considers appropriate.

A significant provision in section 125 is subsection (1)(a) which requires a compulsory condition regarding the areas or routes to which the exemption applies for all mass or dimension exemptions (permit). This section ensures that the geographical extent of an exemption is always clearly stated.

It is to be noted that there is no provision for the indicating of the areas and roads the exemption applies to by virtue of a map in section 125. This is a point of difference between the condition requirements for a mass or dimension exemption (permit) and the condition requirements for a mass or dimension exemption (notice). The reason for this difference is that notices apply to any operator whose heavy vehicle meets the specified requirements of the notice and it is necessary for the Regulator to make available to these operators information about the areas and roads on which the relevant vehicle may be used.

126—Period for which mass or dimension exemption (permit) applies

Section 126 states when a mass or dimension exemption (permit) commences and the time period it applies for. A mass or dimension exemption (permit) may apply for a period less than the period sought by the applicant.

Under section 126 a mass or dimension exemption (permit) applies for the period stated in the permit for the exemption. This period may be less than the period sought by the applicant.

The scope for the permit to state its applicable time period is limited by the requirement in section 122 that a mass or dimension exemption (permit) cannot be granted for a period of more than 3 years.

127—Permit for mass or dimension exemption (permit) etc

Section 127 requires the Regulator to give the applicant a permit stating certain information if the Regulator grants a mass or dimension exemption (permit). Subsection (1)(b) specifies that if the Regulator has imposed conditions on the permit (including the compulsory conditions in section 125) or granted the exemption for a period less than 3 years) an information notice for these decisions must also be provided to the applicant. The section also specifies other information to be included such as the name of the permit holder, the heavy vehicles to which the exemption applies, the mass or dimension requirements to which the exemption applies, the areas and routes to which the exemption applies, the conditions to which the exemption applies, and the period for which the exemption applies.

128—Refusal of application for mass or dimension exemption (permit)

Section 128 states that if the Regulator refuses an application for a mass or dimension exemption (permit), it must give an information notice for the decision to the applicant.

A legislative note indicates that section 166 sets out the requirements for an information notice when a relevant road manager decides not to give consent to the grant of a mass or dimension exemption (permit).

Division 4—Operating under mass or dimension exemption

129—Contravening condition of mass or dimension exemption generally

Section 129 makes it an offence to drive a heavy vehicle under a mass or dimension exemption that does not comply with a condition of exemption and prescribes a maximum penalty of $6,000 where either:

- a person contravenes a condition of an exemption, whether it has been given by notice or permit, (apart from one referred to in subsection (7), relating to an obligation to carry a copy of a notice, or information about it, that has been published in the Commonwealth Gazette); or
- a vehicle contravenes a condition (in which case the person using or permitting the use of the vehicle on a road is liable); or

- the way in which the vehicle is used contravenes a condition (in which case the person who used or permitted it to be used in that way is liable).

Subsection(4) states that if a heavy vehicle is exempt from a mass or dimension requirement and is being used in compliance with the conditions of that exemption a person does not commit an offence against this Bill in relation to the standard from which it is exempt from.

Subsection (5) states that if a condition offence (defined in subsection (8) as an offence against subsection (1), (2) or (3)) is committed in relation to an exemption, that exemption does not operate in the person's favour while the contravention constituting the condition offence continues. This means that risk category for the offence of breaching a mass or dimension requirement will be based on the mass or dimension requirement that would have applied to the heavy vehicle but for the exemption.

Further, the relevant exemption must be disregarded in deciding whether the person has committed an offence in relation to a contravention of a heavy vehicle standard applying to a heavy vehicle. Subsection (7) excludes from subsection (1) a condition that the driver keep a relevant document (such as the notice) in their possession while driving. This is done to ensure that an offence for not carrying a document is subject to a lower penalty, being $3,000.

Subsection (6) ensures that a person denied the benefit of an exemption because of the operation of subsection (5), cannot be charged with both the offence of contravening the exemption and the offence which may have been committed in contravening the mass or dimension requirement from which the exemption has ceased to be available.

130—Contravening condition of mass or dimension exemption relating to pilot or escort vehicle

Section 130 requires a driver of a pilot or escort vehicle to comply with the conditions of the mass or dimension exemption applying to the heavy vehicle it is accompanying about the use of the pilot or escort vehicle when there is a condition of a mass or dimension exemptions requiring a heavy vehicle to be accompanied by a pilot vehicle or escort vehicle while the heavy vehicle is being used on a road. The terms *pilot vehicle* and *escort vehicle* are defined in section 5.

If the driver of the pilot vehicle or escort vehicle does not comply with these conditions both that driver and the operator of the heavy vehicle are taken to have committed an offence with a maximum penalty of $6,000. The inclusion of the operator of the heavy vehicle as a responsible party for this offence reflects the fact that the relevant condition applies to the heavy vehicle, for which the operator of the heavy vehicle is responsible for.

Subsection (4) deals with a prosecution of the operator of a heavy vehicle when the driver of the pilot vehicle or escort vehicle does not comply with conditions regarding its use. It provides:

- Whether or not the driver of the pilot or escort vehicle has been or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to proceed against or record a conviction against a driver under this section does not preclude the operator of a heavy vehicle from being charged or convicted under this section;
- Evidence a court has convicted the driver of the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts;
- Details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

131—Using pilot vehicle with a heavy vehicle that contravenes mass or dimension exemption

Section 131 requires the driver of a pilot vehicle to ensure that the pilot vehicle does not accompany a heavy vehicle which contravenes a mass or dimension exemption condition. If a pilot vehicle does accompany a heavy vehicle that contravenes a condition of its mass or dimension exemption the driver of the pilot vehicle commits an offence with a maximum penalty of $6,000.

When the driver of the pilot vehicle, able to be prosecuted under this section, and the operator of the heavy vehicle contravening the condition of the mass or dimension exemption are the same person, subsection (2) provides that the person may be prosecuted for either the general contravention of a condition of a mass or dimension exemption as the operator of the heavy vehicle or as the driver of the accompanying pilot vehicle but not both.

Section 131 places an obligation upon the drivers of pilot vehicles to be aware of the conditions of mass or dimension exemptions applying to the heavy vehicles they are accompanying and ensure that the heavy vehicles continue to comply with these conditions.

However, to restrict the circumstances in which the driver of a pilot vehicle may be found liable for accompanying a heavy vehicle contravening a condition of a mass or dimension exemption, those conditions are restricted to matters reasonably within the knowledge of the pilot (such as route and time restrictions) and exclude matters it may be unreasonable for them to be imputed knowledge of (such as the breach of a particular mass requirement applying to the vehicle).

132—Keeping relevant document while driving under mass or dimension exemption (notice)

Section 132 requires a driver who is driving under a mass or dimension exemption (notice) must comply with any condition requiring him or her to keep a relevant document (the Commonwealth Gazette notice for the

exemption or an information sheet about the exemption published by the Regulator on the Regulator's website) in their possession. If this is not done, an offence with a maximum penalty of $3,000 is committed by the driver of the vehicle and the *relevant party* for the driver. For this section, the relevant party for the driver is:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

When a relevant party is charged with an offence under this section, that person does not have the benefit of the mistake of fact defence for the offence, but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsection (6) deals with a prosecution of a *relevant party*. It provides that:

- Whether or not the driver has or will be proceeded against or convicted is irrelevant. A decision not to prosecute or convict a driver under this section does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.
- Details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

133—Keeping copy of permit while driving under mass or dimension exemption (permit)

Section 133 creates a requirement for drivers of a class 1 or class 3 heavy vehicle under a mass or dimension requirement (permit) to keep a copy of the permit for the exemption in the driver's possession. If this is not done, an offence with a maximum penalty of $3,000, is committed by the driver of the vehicle and the *relevant party* for the driver. For this section, the relevant party for the driver is:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

It is anticipated that to comply with the requirements of this section the relevant party will give a driver of a heavy vehicle driving under a mass or dimension exemption (permit) a copy of the permit that has been issued by the Regulator for a particular vehicle. In such a situation, when the driver stops working for the relevant party they must return a copy of the permit to the relevant party as soon as reasonably practicable (section 133(2)). The maximum penalty for not complying with this requirement is $4,000.

Subsections (4) to (5) state that when the relevant party is charged with an offence under this section that person does not have the benefit of the mistake of fact defence for the offence but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsection (6) deals with a prosecution of a *relevant party*. It provides that:

- Whether or not the driver has or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to prosecute or convict a driver under this section does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.
- Details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

Division 5—Other provision

134—Displaying warning signs on vehicles if not required by dimension exemption

Section 134 states that a heavy vehicle warning sign must not be displayed on a heavy vehicle unless the heavy vehicle is being used under a dimension exemption (an exemption under this Part from compliance with a dimension requirement).

Subsection (2) states that a pilot vehicle warning sign must not be displayed on a vehicle unless a vehicle is being used as a pilot vehicle for a heavy vehicle being used under a dimension exemption.

The maximum penalty for noncompliance in both circumstances is $3,000. Section 134 has the effect of ensuring that warning signs are only used for heavy vehicles or pilot vehicles that, under national regulations, are required to use them.

The terms *heavy vehicle warning sign* and *pilot vehicle* warning sign are defined in subsection (3) for the purposes of this section.

Part 6—Restricting access to roads by large vehicles that are not overmass or oversize vehicles

Division 1—Preliminary

135—Main purpose of Part 6

Section 135 states that the main purpose of Chapter 4 Part 6 is to restrict access to roads by heavy vehicles that, while complying with mass requirements and dimension requirements applying to them, may, because of their size endanger public safety, damage road infrastructure or adversely affect public amenity. This draws attention of the main purpose of this Part being to restrict access to roads, despite the number of provisions that deal with authorising use.

136—Class 2 heavy vehicles

Section 136 defines the term *class 2 heavy vehicles*. The common characteristic of class 2 heavy vehicles is that even though they comply with mass and dimension requirements they are particularly large vehicles that, by virtue of their size, warrant restriction from a general right of access to roads under this Part.

Class 2 heavy vehicles are defined as vehicles that comply with the mass requirements and dimension requirements applying to it and are either:

- a B-double;
- a road train (which includes B-triples);
- a bus other than an articulated bus that is longer than 12.5m (often known as a controlled access bus);
- a combination carrying vehicles on more than 1 deck that, together with its load is longer than 19m or higher than 4.3m;
- a single motor vehicle, or a combination, that is higher than 4.3m and is built to carry cattle, sheep, pigs or horses.

Section 136 also deems a PBS vehicle to be a class 2 vehicle for the purpose of Chapter 4. This allows the access management system created under this Chapter (modified as necessary) to be applied to these vehicles so that they may be regulated using notices and permits.

Division 2—Restriction

137—Using class 2 heavy vehicle

Section 137 states that a person must not use a class 2 heavy vehicle, or permit a class 2 heavy vehicle to be used, on a road other than in accordance with a class 2 heavy vehicle authorisation. The maximum penalty for noncompliance with this is $6,000.

This is the key restriction of Chapter 4 Part 6. If a class 2 heavy vehicle does not have a class 2 heavy vehicle authorisation to use a particular road, it is not permitted to use that road. As stated in section 135, this is intended to protect public safety, road infrastructure and public amenity from adverse interference by particularly large heavy vehicles.

Division 3—Authorisation by Commonwealth Gazette notice

138—Regulator's power to authorise use of all or stated categories of class 2 heavy vehicles

Section 138 empowers the Regulator, by Commonwealth Gazette notice complying with section 142, to authorise the use of all or stated categories of class 2 heavy vehicles in stated areas or on stated routes and during stated hours of stated days. These authorisations are referred to as *class 2 heavy vehicle authorisation (notice)*. A class 2 heavy vehicle authorisation (notice) cannot be issued for a period of more than 5 years.

139—Restriction on grant of class 2 heavy vehicle authorisation (notice)

Section 139 limits the power of the Regulator to grant a class 2 heavy vehicle authorisation (notice) by stating that such an authorisation must not be granted for a category of class 2 heavy vehicles unless all of the requirements mentioned in section 139 are met.

The requirements in section 139 are:

- the Regulator is satisfied the use of class 2 heavy vehicles of that category of class 2 heavy vehicles on a road under the authorisation will not pose a significant risk to public safety; and
- each relevant road manager for the exemption has consented to the grant of the class 2 heavy vehicle authorisation (notice); and
- the Regulator is satisfied that all consents required for the authorisation under the law of the relevant jurisdiction have been obtained by the applicant or have been otherwise given; and
- the Regulator has had regard to the approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting class 2 heavy vehicle authorisations in making the decision whether to grant the class 2 heavy vehicle authorisation (notice).

The requirement in subsection (1)(b) that each road manager consent to the grant or the issue of a mass dimension exemption (notice) ensures that all road managers affected by the granting of the authorisation have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an authority on its road infrastructure and on public amenity.

140—Conditions of class 2 heavy vehicle authorisation (notice)

Section 140 specifies that a class 2 heavy vehicle authorisation (notice) may be subject to the condition that the driver of a class 2 heavy vehicle who is driving the vehicle under the authorisation must keep in their possession a copy of the Commonwealth Gazette notice for the authorisation or an information sheet about the authorisation published by the Regulator on the Regulator's website. There is no broad authorisation for the Regulator to prescribe conditions applying to a class 2 heavy vehicle authorisation (notice) in section 140.

141—Period for which class 2 heavy vehicle authorisation (notice) applies

Section 141 specifies when a class 2 heavy vehicle authorisation (notice) takes effect and for how long it applies for. It states that a class 2 heavy vehicle authorisation (notice) takes effect when the Commonwealth Gazette notice for the authorisation is published or, if a later time is stated in the notice, at the later time. Section 141(b) confirms that the class 2 heavy vehicle authorisation (notice) applies for the period stated on the Commonwealth Gazette notice. However, this is limited by the requirement in section 138 that a class 2 heavy vehicle authorisation (notice) cannot be granted for a period of more than 5 years.

142—Requirements about Commonwealth Gazette notice etc

Section 142 states the content requirements for the Commonwealth Gazette Notice required for a class 2 heavy vehicle authorisation (notice). A class 2 heavy vehicle authorisation (notice) is to be made by Commonwealth Gazette Notice as per section 142 in order to be a valid exemption. In addition, subsection (4) requires the regulator to publish a copy of the Commonwealth Gazette notice on the Regulator's website.

The requirements for a valid Commonwealth Gazette notice in relation to a mass or dimension exemption (notice)) are that the notice must state all of the following:

- the categories of class 2 heavy vehicles the authorisation applies to. If it is to apply to all class 2 heavy vehicles it must state this and if it is to apply to particular category of class 2 heavy vehicles it must state the categories it applies to; and
- the areas or routes to which the authorisation applies; and
- the days and hours to which the authorisation applies; and
- any conditions applying to class 2 heavy vehicles being used on a road under an authorisation; and
- the period for which the exemption applies.

Subsection (2) authorises the Commonwealth Gazette notice to state the areas or routes to which the authorisation applies by showing them on a stated map prepared by the Regulator. If the Regulator chooses to do this, the Regulator:

- must ensure a copy of the map as in force from time to time is made available for inspection, without charge, during normal business hours at each office of the Regulator;
- must ensure a copy of the map as in force from time to time is published on the Regulator's website;
- may amend this map provided that the amendment extends the areas or routes to which the authorisation applies.

The Regulator cannot amend the map by reducing the area to which the authorisation applies.

Division 4—Authorisation by permit

143—Regulator's power to authorise use of a particular class 2 heavy vehicle

Section 143 empowers the Regulator to authorise, by giving a permit as mentioned in section 148, a class 2 heavy vehicle for use in stated areas or on stated routes and during stated hours of stated days. Such an exemption is referred to as a *class 2 heavy vehicle authorisation (permit)* and this authorisation may apply to 1 or more heavy vehicles. A class 2 heavy vehicle authorisation (permit) must not be granted for a period of more than 3 years.

A legislative note to section 143 indicates that Division 4 of Chapter 4 Part 7 should be read when considering the amendment, suspension or cancellation of a mass or dimension exemption (notice).

144—Application for class 2 heavy vehicle authorisation (permit)

Section 144 states that a person may apply to the Regulator for a class 2 heavy vehicle authorisation (permit). This application must be in the approved form and be accompanied by the relevant prescribed fee.

The Regulator is empowered by section 144(3), by notice given to the applicant; to require the applicant to give the Regulator any additional information reasonably required to decide the application.

145—Restriction on grant of class 2 heavy vehicle authorisation (permit)

Section 145 further limits the power of the Regulator to grant a class 2 heavy vehicle authorisation (permit) by stating that a class 2 heavy vehicle authorisation (permit) must not be granted for a category of class of heavy vehicles unless all of the requirements mentioned in subsections (1) and (2) are met.

The requirements in subsections (1) and (2) are:

- the Regulator is satisfied the use of heavy vehicles of that category on a road under the authorisation will not pose a significant risk to public safety;
- each relevant road manager for the exemption has consented to the grant of the class 2 heavy vehicle authorisation (permit);
- the Regulator is satisfied that all consents required for the authorisation under the law of the relevant jurisdiction have been obtained by the applicant or have been otherwise given;
- the Regulator has had regard to the approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for class 2 heavy vehicle authorisations in making the decision whether to grant the class 2 heavy vehicle authorisation (permit) (section 145(2)).

The requirement in subsection (1)(b) that each road manager consent to the grant of the issue of a class 2 heavy vehicle authorisation (permit) ensures that all road managers affected by the granting of the authorisation have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an authorisation on its road infrastructure and the public amenity.

146—Conditions of a class 2 heavy vehicle authorisation (permit)

Section 146 requires that a class 2 heavy vehicle authorisation (permit) must be subject to the road conditions or travel conditions required by a relevant road manager for the authorisation under section 160 or 161; and empowers the Regulator to subject the authorisation to any other conditions the Regulator considers appropriate.

147—Period for which class 2 heavy vehicle authorisation (permit) applies

Section 147 states that a class 2 heavy vehicle authorisation (permit) applies for the period stated in the permit for the authorisation. This period may be less than the period sought by the applicant. However, section 143 continues to have the effect of ensuring that a class 2 heavy vehicle authorisation (permit) cannot be granted for a period of more than 3 years.

148—Permit for class 2 heavy vehicle authorisation (permit) etc

Section 148 requires the Regulator to give the applicant a permit stating particular information if the Regulator grants a class 2 heavy vehicle authorisation (permit). Subsection (1)(b) specifies that if the Regulator has imposed conditions on the permit or granted the authorisation for a period less than 3 years an information notice for these decisions must also be provided to the applicant.

The information required to be included in a class 2 heavy vehicle authorisation (permit) is set out in subsection (2). This includes information about the name and address of the person to whom the permit is given, each class 2 heavy vehicle to which the authorisation applies, the areas and routes and days and hours to which the authorisation applies, the conditions that apply to the authorisation, and the period for which the authorisation applies.

149—Refusal of application for class 2 heavy vehicle authorisation (permit)

Section 149 requires the Regulator to give an information notice for the decision if the Regulator refuses an application for a class 2 heavy vehicle authorisation (permit).

Division 5—Operating under class 2 heavy vehicle authorisation

150—Contravening condition of class 2 heavy vehicle authorisation

Section 150 creates an offence for a driver or operator of a heavy with a maximum penalty of $6,000 where a vehicle being used on a road under a class 2 heavy vehicle authorisation contravenes a condition of the authorisation (apart from one referred to in section 151(1), relating to an obligation to carry a copy of a notice, or information about it, that has been published in the *Commonwealth Gazette*).

151—Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice)

Section 151 creates an offence for when a driver contravenes a condition of a class 2 heavy vehicle authorisation (notice) to keep a *relevant document* (the Commonwealth Gazette notice for the authorisation or an information sheet about the authorisation published by the Regulator on the Regulator's website) whilst driving under the authorisation. Noncompliance has a maximum penalty of $3,000 and the offence is committed by the driver of the vehicle and the *relevant party* for the driver.

For section 151, the relevant party for the driver is:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

Subsection (6) deals with a prosecution of a *relevant party*. It provides that:

- Whether or not the driver has or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to prosecute or convict a driver under this section does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.
- Details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

Subsections (4) and (5) state that when the relevant party is charged with an offence under this section that person does not have the benefit of the mistake of fact defence for the offence but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

152—Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)

Section 152 creates a requirement for the driver of a class 2 heavy vehicle driving under a class 2 heavy vehicle authorisation (permit) to keep a copy of the permit for the authorisation in the driver's possession whilst driving under the authorisation. If this requirement is not complied with, an offence, with a maximum penalty of $3,000, is committed by the driver of the vehicle and the *relevant party* for the driver.

For section 152, the relevant party for the driver is:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

It is anticipated that to comply with the requirements of this section the relevant party will give a driver a copy of the permit that they have been issued by the Regulator. In such a situation, subsection (2) requires that when the driver stops working for the relevant party they must return a copy of the permit to the relevant party as soon as reasonably practicable. The maximum penalty for not complying with this requirement is $4,000.

Subsection (6) deals with a prosecution of a *relevant party*. It provides that:

- Whether or not the driver has or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to prosecute or record a conviction against a driver under this section does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.
- Details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

Subsections (4) to (5) state that when the relevant party is charged with an offence under this section that person does not have the benefit of the mistake of fact defence for the offence but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

153—Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation

Section 153 is a new provision that requires a driver of a class 2 heavy vehicle that is a PBS vehicle to which a class 2 heavy vehicle authorisation applies to keep a copy of the PBS vehicle approval in their possession.

The section extends liability for an offence by the driver under subsection (1) to an employer, or prime contractor or an operator of the vehicle.

A person charged under this proposed section does not have the benefit of the mistake of fact defence for the offence but does have the benefit of the reasonable steps defence.

Part 7—Particular provisions about mass or dimension authorities

Division 1—Preliminary

154—Definitions for Chapter 4 Part 7

Section 154 provides definitions, for Chapter 4 Part 7, of the terms *road condition*, *route assessment*, *travel condition* and *vehicle condition*.

In this Part, *road condition* means a condition directed at protecting road infrastructure; or preventing or minimising an adverse effect on public amenity, including, for example, preventing or minimising an adverse effect caused by noise, emissions and traffic congestion resulting from vehicle use of roads.

However, the definition of *road condition* does not include a condition requiring the installation of equipment or another thing in a vehicle unless the equipment or thing is required to be installed in the vehicle for an intelligent access condition imposed in connection with a condition directed at these matters mentioned.

A road condition is otherwise not intended to include conditions that require the installation of equipment or another thing to the heavy vehicle as it is the responsibility of the Regulator to impose conditions that relate to condition of the vehicle and its equipment. Road conditions are intended to allow road managers to specify conditions about the use of the heavy vehicles on their particular roads.

In this Part, *route assessment*, in relation to a mass or dimension authority, means an assessment of the road infrastructure in the areas or on the routes to which the authority is to apply to decide the impact the grant of the authority will have, or is likely to have, on the road infrastructure.

The term *travel condition* is required to expressly allow a mass or dimension authority to include conditions governing route and time of travel as requested by a relevant road manager. The term is intended to encompass conditions about which way a vehicle turns, as safe access to roads is in some cases subject to the heavy vehicle travelling in a specific direction or turning in a particular direction at an intersection.

In this Part, *vehicle condition* means a condition directed at ensuring a vehicle can operate safely on roads.

Division 2—Obtaining consent of relevant road managers

155—Application of Division 2

Section 155 states that this Division applies in relation to the Regulator obtaining the consent of the road manager for a road for the purpose of granting a mass or dimension authority. The relevant paragraphs in this Chapter that specifically require the Regulator to gain the consent of road managers prior to granting a mass or dimension authority are sections 118(1)(b), 124(1)(b), 139(1)(b) and 145(1)(b).

The terms *road manager* and *mass or dimension* authority are defined in section 5.

*Road manager* is defined in section 5 as meaning, for a road in a participating jurisdiction, an entity that is declared by a law of that jurisdiction to be the road manager for the road for the purposes of this Law.

*Mass or dimension authority* is defined in section 5 as meaning a mass or dimension exemption or a class 2 heavy vehicle authorisation.

156—Deciding request for consent generally

Section 156 states how long a road manager is permitted to make a decision to give consent to the grant of a mass or dimension authority; the circumstances in which the road manager may decide not to give consent and the obligation on a road manager to provide written reasons to the Regulator for a decision not to issue consent.

157—Obtaining third party's approval for giving consent for permit

Section 157 applies where an applicant for a mass or dimension exemption (permit) or class 2 heavy vehicle authorisation (permit) and consultation with another entity is required under a jurisdictional law. Subsection (2) requires the Regulator to notify the applicant of this requirement and advise the relevant road manager of the fact of this notification simultaneously.

158—Action pending consultation with third party

Section 158 applies where an applicant for a mass or dimension exemption (permit) or class 2 heavy vehicle authorisation (permit) and consultation with another entity is required under a jurisdictional law. It is intended to ensure that the actions required to be undertaken by the road manager to respond to the request for consent are completed as far as possible and not delayed on the basis of the requirement to undertake additional consultation with another entity. Subsection (3) provides that the consent provide by the road manager in this instance is conditional upon the completion of consultation with the other entity.

Subsection (4) outlines the obligations of the road manager where consultation is required but the road manager's consent would be inoperative as a result of the actions of the other entity.

Subsection (5) prevents the Regulator from granting a mass or dimension authority where the other entity has declined to provide its approval.

159—Deciding request for consent if route assessment required

Section 159 deals with the process undertaken when a road manager considers a route assessment is necessary for deciding whether to give or not to give the consent to a mass or dimension authority. Under this section the road manager is to notify the Regulator of certain matters listed in subsection (2) and requires the Regulator to notify the applicant of further matters listed in subsection (3). Subsection (4) prescribes the effect on the application for the period in which a fee required for a route assessment has not yet been paid by the applicant. Under subsection (5), the application lapses if the applicant does not pay a required fee for the route assessment within 28 days after the notification of requirement of the route assessment by the Regulator. This encourages prompt payment from applicants in such circumstances and allows the consent process to be conducted as efficiently as possible.

Subsection (2) empowers the road manager to notify the Regulator of the requirement for the route assessment and the fee payable for the route assessment.

Subsection (3) requires the Regulator to notify the applicant for the mass or dimension exemption (permit) or a class 2 heavy vehicle authorisation (permit) of the following:

- that a route assessment is required for the road manager deciding whether to give or not to give the consent;
- the fee payable (if any) for the route assessment under a law of the jurisdiction in which the road is situated;
- if a fee is payable for the route assessment under a law of the jurisdiction in which the road is situated, that the road manager may stop considering whether to give or not to give the consent until the fee is paid;
- if, under section 158(1)(b), the Regulator agrees to a longer period for the road manager deciding whether to give or not to give the consent, the longer period agreed by the Regulator.

Subsection (4) empowers the road manager to stop considering whether to give consent for a time period if a fee for a route assessment is required under a law of the jurisdiction where the road is situated and that fee has not been paid. The period between the day the applicant is given the notification of the requirement for route assessment by the Regulator and the day the fee is paid must not be counted in working out the period taken by the road manager to decide whether to give or not to give the consent. Subsection (5) states that an application for a mass or dimension exemption (permit) or a class 2 heavy vehicle authorisation (permit) will lapse if the fee is not paid within the 28 days or longer period agreed by the Regulator.

160—Imposition of road conditions

Section 160 empowers a relevant road manager for a mass or dimension authority to consent to the grant of the authority subject to the condition that a stated road condition is imposed on the authority. When granting consent subject to a road condition the road manager must give the Regulator written reasons for their decision to do so. Unless the condition is in regard to a class 2 heavy vehicle authorisation (notice) the Regulator must impose the stated road condition on the mass or dimension authority.

It should be noted that when the mass or dimension authority is granted by the Regulator subject to these conditions an information notice containing all of the information required under section 164 must be issued to the applicant.

The term *relevant road manager* is defined in section 5 as meaning for a mass or dimension authority, a road manager for a road in the area, or on the route, to which the authority applies.

161—Imposition of travel conditions

Section 161 authorises a road manager for a mass or dimension authority to consent to the grant of the authority subject to the condition that a stated travel condition is imposed on the authority.

162—Imposition of vehicle conditions

Section 162 empowers a relevant road manager for a mass or dimension authority who gives consent to the grant of the authority to ask the Regulator to impose a stated vehicle condition on the authority. The Regulator must consider this request and must decide either to impose the stated vehicle condition on the authority (with or without modification) or not to impose the stated vehicle condition on the authority. Once a decision has been made, the Regulator must notify the relevant road manager of the decision.

The term *relevant road manager* is defined in section 5 as meaning for a mass or dimension authority, a road manager for a road in the area, or on the route, to which the authority applies.

163—Obtaining consent of road authority if particular road manager refuses to give consent

Section 163 empowers the Regulator to ask a relevant road authority to consent to the grant of the mass or dimension authority when a road manager who is not the relevant road authority does not give consent to the grant of a mass or dimension authority or does give consent subject to what the Regulator believes are unnecessary conditions. The road authority must decide whether to give consent within 3 months of the request, or within a longer period of not more than 6 months if agreed by the Regulator.

If the road authority responds to this request by granting the authority, the decision of the road authority is effectively treated as the decision of the road manager throughout this Bill.

This makes it difficult for road managers who are not road authorities to frustrate the issuing of authorisation by means of unreasonably withholding appropriate consent.

For this section, *relevant road authority* is defined by subsection (5) as the road authority for the participating jurisdiction in which the road for which the relevant road manager is a road manager is situated. Section 5 defines the term *road authority* so as to make it clear that there is to be only 1 such authority for each participating jurisdiction.

164—Information notice for imposition of road conditions requested by road manager

Section 164 requires certain information (listed in subsection (2)) to be included in the information notice provided to the applicant regarding the decision to grant a mass or dimension authority when a road manager has granted consent with the imposition of a road condition.

The information required to be included in the information notice in subsection (2) is:

- all information required for the information notice by other sections of the Law; and
- that the road manager consented to the mass or dimension authority on the condition that the road condition is imposed on the authority; and
- a written statement that explains the road manager's decision that complies with the requirements set out in section 172; and
- the review and appeal information for the road manager's decision to give the consent on the condition that the road condition be imposed on the authority.

165—Information notice for imposition of travel conditions requested by road manager

Section 165 sets out the minimum contents of an information notice where the Regulator grants a mass or dimension authority by giving a person a permit and the authority is subject to a travel condition required by a relevant road manager. This is a consequence of the inclusion of the conditioning power provided in section 161.

166—Information notice for decision to refuse application because road manager did not give consent

Section 166 states that when an application for a mass or dimension authority is refused, wholly or partly, because a relevant road manager for the authority has refused to consent to the authority, the information notice for the decision to refuse the application given to the applicant by the Regulator must state the information in subsection (2) regarding the refusal of consent.

The required information that the information notice provided by the Regulator must state under section 166 is:

- all information required for the information notice by other sections of the Law; and
- that the road manager has refused to consent to the mass or dimension authority; and
- a written statement that explains the road manager's decision that complies with the requirements set out in section 172; and
- the review and appeal information for the road manager's decision to refuse to give the consent. The definition of *review and appeal information* for a road manager's decision is provided in section 5.

167—Expedited procedure for road manager's consent for renewal of mass or dimension authority

Section 167 establishes an expedited process for the renewal of certain mass and dimension authorities. The circumstances in which the process is available are set out in subsection (1).

The circumstances in which the process is inapplicable or ceases to apply are set out in subsection (2). These circumstances include material differences between the terms of the previous authority and the terms of the proposed replacement authority, an objection to the application by the road manager within the specified time limit, or the operation of a law of the jurisdiction that requires consultation with third parties before the grant of the proposed replacement authority.

This proposed section formalises best practice in a number if jurisdictions. The institution of this process is intended to provide productivity benefits by minimising the time required for the granting of consent as the road manager has previously consented to a grant of a mass or dimension authority in similar circumstances and the Regulator proposes to issue a replacement authority on the same conditions as the original authority.

Subsection (3) provides that the consent of the relevant road manager must be deemed to have been granted on the same terms as the consent for the previous authority unless the road manager refuses consent, or lodges a notice of objection within the time limits specified in subsection (2).

168—Operation of section 167

Section 168 suspends the operations of sections 156 to 166 while a proposed replacement authority is being dealt with under the expedited procedure under section 167.

169—Granting limited consent for trial purposes

Section 169 authorises a relevant road manager to consent to grant of a mass or dimension authority for a trial period of no more than 3 months. Subsection (3) provides that the trial can be undertaken only if all relevant road managers require that the access be trialled. The purpose of the time restriction is to encourage road managers to consent to future access once the impact of the access during the trial has been assessed.

170—Renewal of limited consent for trial purposes

Section 170 provides that the Regulator must, one month before the end of a trial initiated under section 169, notify the relevant road managers that the trial is due to end and will automatically be re-granted by the Regulator unless a road manager advises the trial must end. If there is no written objection from road managers, the Regulator must renew the trial access on the same terms and conditions. If there is a response to end the trial, the Regulator must not renew the trial access. Instead, the normal process for granting access for a vehicle and operation of the type contemplated must be followed.

171—Period for which mass or dimension authority applies where limited consent

Section 171 applies at the granting or renewal of a mass or dimension authority under sections 169 or 170 respectively. Subsection (2) provides that, in the case of a mass or dimension exemption (permit) or a class 2 heavy vehicle authorisation (permit), the period for which the permit applies must not exceed the length of the trial period.

Subsection (3) provides that, in the case of a mass or dimension exemption (notice) or a class 2 heavy vehicle authorisation (notice), then, despite sections 120 or 141, the period for which the notice applies is so much of the period stated in the Commonwealth Gazette notice referred to in that section as does not exceed the trial period. This allows for the management of trials through notices and the broader productivity benefits this more efficient process can provide.

172—Requirements for statement explaining adverse decision of road manager

Section 172 sets out the minimum requirements to be contained in a written statement required to be issued for various decisions by road managers in relation to applications for mass or dimension authorities under Chapter 4.

Subsection (2)(a) provides that the road manager must include in the notice its findings on material questions of fact, the evidence or other material on which those findings were based and giving the reasons for the road manager's decision.

Subsection (2)(b) requires the road manager to identify each document or part of a document that is relevant to the road manager's decision (without automatically requiring the production of the documents themselves).

Division 3—Amendment, cancellation or suspension of mass or dimension authority granted by Commonwealth Gazette notice

173—Amendment or cancellation on Regulator's initiative

Section 173 empowers the Regulator to amend or cancel a mass or dimension authority granted by Commonwealth Gazette notice at the Regulator's initiative when the Regulator is satisfied that the use of heavy vehicles on a road under the mass or dimension authority has caused, or is likely to cause, a significant risk to public safety; and the requirements outlined in subsections (3) to (5) are complied with.

The intent of the requirements of this section is to ensure transparency in the amending and cancelling of mass and dimension authorities. This is achieved by requiring adequate notice to be given to those affected by an amendment or cancellation and by ensuring possible adverse consequences of such action are able to be presented to the Regulator throughout the decision making process for consideration. An additional benefit of this section is in allowing to those who may be adversely affected by a decision time in which to adjust their business practices.

The requirements in subsections (3) to (5) are:

- The Regulator must publish a notice in the Commonwealth Gazette, a newspaper circulating generally throughout each participating jurisdiction and on the Regulator's website stating the intent, grounds and reasons for the action to be taken. This notice must also invite persons who will be affected by the proposed action to make, within a stated time of at least 14 days after the Commonwealth Gazette notice is published, written representations about why the proposed action should not be taken (subsection (3)).
- The Regulator must consider all representations made in response to the invitation issued in the Commonwealth Gazette Notice prior to making the final decision to amend or cancel the mass or dimension authority (subsection (3)).
- If the action proposed in the Commonwealth Gazette notice made under subsection (3) was to amend the authority, the Regulator may only amend the authority in a way that it is not substantially different from the proposed action, this may include amending areas, routes, days or hours to which the authority applies or by imposing additional conditions to the authority.
- If the action proposed in the Commonwealth Gazette notice made under subsection (3) was to cancel the authority the Regulator may cancel the authority or amend the authority.
- The Regulator must publish notice of the amendment or cancellation in the Commonwealth Gazette, a newspaper circulating generally throughout each relevant participating jurisdiction, on the Regulator's website and in any other newspaper the Regulator considers appropriate. Subsection (7) states that in this section *relevant participating jurisdiction*, for a mass or dimension authority, means a participating jurisdiction in which the whole or part of an area or route to which the authority applies is situated.

Under this section the amendment or cancellation to a mass or dimension authority takes effect either 28 days after the publishing of the Commonwealth Gazette notice notifying of the amendment or cancellation or the time stated in that Commonwealth Gazette notice; whichever is the later.

174—Amendment or cancellation on request by relevant road manager

Section 174 empowers a relevant road manager for a mass or dimension authority granted by Commonwealth gazette notice to ask the Regulator to amend the mass or dimension authority or cancel the authority if the road manager is satisfied the use of heavy vehicle on a road under the authority has caused, or is likely to cause, damage to road infrastructure; or has had, or is likely to have, an adverse effect on public amenity. If

a road manager makes a request under this section to amend or cancel the mass or dimension authority the Regulator must comply with the request unless consent to the grant of the mass or dimension authority was given by a road authority under section 163.

If the Regulator does amend or cancel a mass or dimension authority under section 174, notice of an amendment must be published in the Commonwealth Gazette, a newspaper circulating generally throughout each relevant participating jurisdiction, on the Regulator's website and in any other newspaper the Regulator considers appropriate.

The intent of this section is to provide for the revocation or amendment of consent given by the road manager after the mass or dimension authority has been granted. Subsection (4) outlines the responsibilities upon the Regulator if a road manager makes a request to amend or cancel the mass or dimension authority in the situation where consent was obtained from a road authority under section 163. In such a situation:

- the Regulator may refer the request to the road authority; and
- if the road authority gives the Regulator its written approval of the request, the Regulator must comply with the request; and
- if the road authority does not give written approval of the road manager's request within 28 days after the referral is made, the Regulator must not comply with the request; and must notify the road manager that the road authority has not given its written approval of the request and, as a result, the Regulator must not comply with it.

Subsection (7) states that in this section *relevant participating jurisdiction*, for a mass or dimension authority, means a participating jurisdiction in which the whole or part of an area or route to which the authority applies is situated.

175—Immediate suspension

Section 175 provides the Regulator power to immediately respond to any actual or potential serious harm to public safety or significant damage to road infrastructure that may arise by suspending any mass or dimension authority it believes necessary to prevent or minimise it. Section 175 empowers the Regulator to immediately suspend a mass or dimension authority granted by Commonwealth Gazette notice if the Regulator reasonably believes it necessary to prevent or minimise serious harm to public safety or significant damage to road infrastructure. Section 175 requires a notice for immediate suspension and specifies the time period for which the suspension is in force.

Immediate suspension must be done by way of an *immediate suspension* notice being published in the Commonwealth Gazette, a newspaper circulating generally throughout each relevant participating jurisdiction, on the Regulator's website and in any other newspaper the Regulator considers appropriate.

An immediate suspension issued by the Regulator is in force from when the immediate suspension notice is published in the Commonwealth Gazette and remains in force until a notice to alter or cancel the authority takes effect.

Subsection (5) states that this section applies despite sections 173 and 174. This ensures that the Regulator always maintains the power to affect the immediate suspension of a mass or dimension authority in situations where a risk of serious harm to public safety arises despite the usual procedural requirements concerning the amendment or the cancellation of the authority.

Division 4—Amendment, cancellation or suspension of mass or dimension authority granted by permit

176—Amendment or cancellation on application by permit holder

Section 176 empowers the holder of a permit for a mass or dimension authority to apply to the Regulator for an amendment or cancellation of the authority. This application must be in the approved form, be accompanied by the permit and, if for an amendment, state clearly the amendment sought and the reasons for it. The Regulator must decide this application as soon as practicable after receiving it.

The Regulator is empowered by subsection (3) to require, by notice, any additional information from the applicant that is reasonably required to decide the application.

Subsection (4) requires the Regulator to seek the consent of the relevant road manager unless the amendment of the mass or dimension authority seeks to omit an area or route or reducing an area or route in size.

The Regulator must give notice to the applicant of all decisions made in respect to this application. If granted, the amendment or cancellation takes effect when notice of the decision is given to the applicant or, if a later time is stated in the notice, at that time. If the authority has been amended, the Regulator must give the applicant a replacement permit for the authority as amended.

If the Regulator decides not to amend or cancel the authority sought by the applicant, subsection (6) requires the Regulator to give the applicant an information notice for the decision and return the permit for the authority to the applicant.

177—Amendment or cancellation on Regulator's initiative

Section 177 empowers the Regulator to amend or cancel a permit for a mass or dimension authority at the Regulator's initiative if the Regulator considers one or more of the grounds mentioned in subsection (1) exists and the requirements of subsections (2) to (4) are met.

The grounds for amending or cancelling a mass or dimension authority granted by permit are the authority was obtained by false or misleading documents or representations, the authority was obtained or made in an improper way, the holder of the permit has contravened a condition of the authority, or the use of the heavy vehicles on a road under the authority has caused, or is likely to cause, a significant risk to public safety.

The requirements in subsections (2) to (4) are:

- The Regulator must give to the holder of the permit a notice stating the intent, grounds and reasons for the action to be taken. This notice must also invite the holder of the permit to make, within a stated time of at least 14 days after notice is given, written representations about why the proposed action should not be taken.
- The Regulator must consider all representations made in response to the invitation prior to making the final decision to amend or cancel the permit.
- If the action proposed in the notice was to amend the authority, the Regulator may only amend the permit in a way that it is not substantially different from the proposed action, this may include amending areas, routes, days or hours to which the authority applies or by imposing additional vehicle conditions to the authority.
- If the action proposed in the notice was to cancel the permit the Regulator may cancel the authority or amend the authority.
- The Regulator provide an information notice to the holder of the permit for the decision.

Under this section the amendment or cancellation to permit takes effect when the information notice is provided to the holder or if a later time is stated in the information notice, at the later time.

The intent of the requirements of this section is to ensure transparency in the amending and cancelling of mass and dimension authorities. This is achieved by requiring adequate notice to be given to those affected by an amendment or cancellation and that possible adverse consequences of such action are able to be presented to the Regulator throughout the decision making process for consideration. An additional benefit of this section is in allowing to those who may be adversely affected by a decision time in which to adjust their business practices.

178—Amendment or cancellation on request by relevant road manager

Section 178 provides for the revocation or amendment of consent given by the road manager after the mass or dimension authority has been granted. Section 178 empowers a relevant road manager for a mass or dimension authority granted by permit to ask the Regulator to amend the mass or dimension authority or cancel the authority if the road manager is satisfied the use of heavy vehicle on a road under the authority: has caused, or is likely to cause, damage to road infrastructure; or has had, or is likely to have, an adverse effect on public amenity. If a road manager makes such a request to amend or cancel the authority the Regulator must comply with the request unless consent to the grant of the mass or dimension authority was given by a road authority under section 163.

If the Regulator does amend or cancel a mass or dimension authority under this section, the Regulator must give the holder of the permit for the authority notice of the amendment at least 28 days prior to the amendment or cancellation taking effect. This notice must state the day the amendment or cancellation is to take effect; the reasons given by the road manager for the amendment or cancellation; and the review and appeal information for the road manager's decision.

Subsection (4) outlines the responsibilities upon the Regulator if a road manager makes a request to amend or cancel the mass or dimension authority in the situation where consent was obtained from a road authority under section 140. In such a situation:

- the Regulator may refer the request to the road authority; and
- if the road authority gives the Regulator its written approval of the request, the Regulator must comply with the request; and
- if the road authority does not give written approval of the road manager's request within 28 days after the referral is made, the Regulator must not comply with the request; and must notify the road manager that the road authority has not given its written approval of the request and, as a result, the Regulator must not comply with it.

179—Immediate suspension

Section 179 empowers the Regulator to immediately suspend a mass or dimension authority granted by permit if the Regulator reasonably believes it necessary to prevent or minimise serious harm to public safety or significant damage to road infrastructure. The section intends to provide the Regulator power to immediately respond to any actual or potential serious harm to public safety or significant damage to road infrastructure that may arise by suspending any mass or dimension authority it believes necessary to prevent or minimise it. Section 179 requires a notice for immediate suspension and specifies the time period for which the suspension is in force.

Immediate suspension must be done by way of issuing a notice (termed an *immediate suspension notice*) to the person to whom the permit was given.

An immediate suspension issued by the Regulator is in force from when the immediate suspension notice is given to the person to whom the permit was given and remains in force until a notice to alter or cancel the authority takes effect.

The section applies despite sections 176, 177 and 178. This ensures that the Regulator always maintains the power to effect the immediate suspension of a mass or dimension authority in situations where a risk of serious harm to public safety arises despite any proceedings that may be ongoing concerning the amendment or the cancellation of the authority.

180—Minor amendment of permit for a mass or dimension authority

Section 180 empowers the Regulator to, by notice given to the holder of a permit for a mass or dimension authority, make minor amendments to the authority. Under this section, an amendment is considered minor if it is for a formal or clerical reason or in another way that does not adversely affect the holder's interest.

Division 5—Provisions about permits for mass or dimension authorities

181—Return of permit

Section 181 empowers the Regulator to require, by notice, a person to return a permit for a mass or dimension authority granted by giving a permit to the person if it has been amended or cancelled.

However, regardless of whether the Regulator requires the return of an amended or cancelled permit, subsection (4) states that the Regulator must give the person a replacement permit for the authority when amended. Section 181(3) requires a person issued with a notice under this section to return a permit to comply with that notice to within 7 days or with a longer period if that longer period is stated on the notice. The maximum penalty for noncompliance with this notice is $4,000.

182—Replacement of defaced etc permit

Section 182 requires a person to apply for a replacement mass or dimension authority permit as soon as practicable after becoming aware that their mass or dimension authority permit is defaced, destroyed lost or stolen. The maximum penalty for a person not doing so is $4,000. If the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen the Regulator must give the person a replacement permit as soon as practicable. The only valid reason why the Regulator could refuse the application for a replacement permit is if the Regulator is not satisfied that the permit has been defaced, destroyed, lost or stolen. If the Regulator does refuse the application for a replacement permit the Regulator must give the person an information notice for the decision.

Part 8—Extended liability

183—Liability of employer etc for contravention of mass, dimension or loading requirement

Section 183 extends chain of responsibility for certain offences against section 96 (contravention of a mass requirement applying to a heavy vehicle); section 102 (contravention of a dimension requirement applying to a heavy vehicle) and section 111 (contravention of a loading requirement applying to a heavy vehicle). For all of these offences if a driver commits an offence each of the following persons is also taken to have committed the offence:

- an employer of the driver if the driver is an employed driver;
- a prime contractor of the driver if the driver is a self-employed driver;
- an operator of the vehicle or, if it is a combination, an operator of a vehicle in the combination;
- a consignor of any goods for road transport using the vehicle that are in the vehicle;
- a packer of any goods in the vehicle;
- a loading manager of any goods in the vehicle;
- a loader of any goods in the vehicle.

The maximum penalty for anyone in the chain of responsibility identified in this section is the penalty for the contravention of the provision by the driver of the heavy vehicle. Subsection (4) states that in a proceeding for an offence under this section:

- Whether or not the driver has or will be proceeded against for or convicted of an offence against section 96, 102 or 111 is irrelevant. A decision not to prosecute or convict a driver under this section does not preclude the relevant party from being proceeded against or convicted.
- Evidence a court has convicted the driver of the relevant offence against section 96, 102 or 111 or the driver has paid an infringement penalty in respect of it is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Part 9—Other offences

Division 1—Towing restriction

184—Towing restriction

Section 184 creates an offence where a person drives a heavy motor vehicle towing more than 1 other vehicle. The maximum penalty for this offence is $3,000. This section does not apply to a person driving a heavy vehicle under a mass or dimension authority, which includes vehicles such as B-doubles and road trains or in circumstances prescribed by the national regulations.

Division 2—Coupling requirements

185—Requirements about coupling trailers

Section 185 creates offences, both with a maximum penalty of $6,000, where:

- A person uses, or permits to be used, on a road a heavy combination and a trailer in the combination is not securely coupled to the vehicle in front of it; and
- A person uses, or permits to be used, on a road a heavy combination and the components of a coupling used between vehicles in the heavy combination are not compatible with, or properly connected to, each other.

In this section, coupling means a device used to couple a vehicle in a combination to the vehicle in front of it.

Division 3—Transport documentation

186—False or misleading transport documentation for goods

Section 186 states that, if goods are consigned for road transport using a heavy vehicle, or for transport partly by road using a heavy vehicle and partly by some other means, an offence is committed if the transport documentation (defined in section 5) in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular. The maximum penalty for the offence committed is $10,000. The persons who commit an offence under this section are:

- Each consignor of the goods (*consign* and *consignor* are defined in section 5); and
- If the goods are packed in Australia in a freight container or other container, or in a package or on a pallet, for road transport, each packer of the goods (*pack* and *packer* are defined in section 5); and
- If the goods are loaded onto a heavy vehicle for road transport, each loading manager or loader of the goods (*load* and *loading manager* are defined in section 5); and
- If the goods are packed outside Australia in a freight container, or in a package or on a pallet, for road transport, each receiver of the goods in Australia (Section 186(9) defines *receiver* of goods in Australia for this section).

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

187—False or misleading information in container weight declaration

Section 187 states that, if a freight container is to be transported by road using a heavy vehicle, the *responsible entity for the freight container* commits an offence if the *container weight declaration* for the container contains information that is false or misleading in a material particular. The maximum penalty for an offence under this section is $10,000. Subsection (4) states that, for the purposes of this section, information in a container weight declaration is not false or misleading merely because it overstates the actual weight of the freight container and its contents. Section 5 defines *container weight declaration* and *freight container* and *responsible entity for a freight container*.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 4—Other offences about container weight declarations

188—Application of Division 4Australian Standard AS 3711.1 that is designed for repeated use for transporting goods; or a re-usable container of the same or a similar design and construction to such a container though of different dimensions.

189—Meaning of complying container weight declaration

Section 189 defines the term *complying container weight declaration*. This term is an important term throughout the provisions of this Division. This section recognises that not all container weight declarations will be complying container weight declarations. The requirements for a complying container weight declaration ensures

that container weight declarations contain important identification information for the container that is easily interpreted and readily accessible should it be required by an authorised officer.

This section states that a container weight declaration for a freight container is a complying container weight declaration if:

- it contains the following additional information—
  - the number and other particulars of the freight container necessary to identify the container; and
  - the name and residential address or business address in Australia of the responsible entity for the freight container; and
  - the date the container weight declaration is made; and
- it is written and easily legible; and
- the information in the container weight declaration is in a form readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container, including, for example, by—
  - (i) examining documents located in the heavy vehicle on which the freight container is loaded or to be loaded; or
  - (ii) obtaining the information by radio or mobile telephone or by other means.

190—Duty of responsible entity

Section 190 states that a responsible entity must not permit a driver or operator to transport a freight container without providing the driver or operator with a complying weight declaration. A maximum penalty of $6,000 applies. The term responsible entity is defined in section 5 to mean the consignor of the container (if consigned in Australia) or (if not so consigned) the manager for the consignor of the road transport of the container. Subsections (2) and (3) deal with defences to prosecutions, excluding the mistake of facts defence but providing the reasonable steps defence. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Section 5 defines a *responsible entity for a freight container* as a person who in Australia consigned the container for road transport using a heavy vehicle or if there is no such person, the person who in Australia arranged for the container's road transport using a heavy vehicle, or if there is still no such person, the person who in Australia physically offered the container for road transport using a heavy vehicle.

191—Duty of operator

Section 191 states that it is an offence for a heavy vehicle operator to permit the vehicle's driver to transport a freight container by road using the vehicle unless the driver has been provided with a complying container weight declaration for the freight container. Subsection (3) states that a heavy vehicle operator must not give a freight container to a carrier (who transports the container by a means other than by road) without a complying container weight declaration or the prescribed particulars contained in a complying container weight declaration for the freight container. Noncompliance for either offence in section 191 has a maximum penalty of $6,000.

Subsection (2) states that if the driver of the heavy vehicle does not have the complying container weight declaration when transporting the freight container by road using the vehicle, an operator of the vehicle is taken to have committed the offence against subsection (1) unless the operator proves that the driver was provided with the declaration before the driver started transporting the freight container.

A person charged with either offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

192—Duty of driver

Section 192 states that an offence is committed by a driver of a heavy vehicle loaded with a freight container on a road where the driver does not have a complying container weight declaration for the container. The maximum penalty is $6,000.

Subsection (2) states that an offence is committed by a driver of a heavy vehicle loaded with a freight container who does not keep the complying container weight declaration in or about the vehicle and in a way that enables the information in the declaration to be readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container. The maximum penalty is $3,000.

A person charged with either offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 5—Other offences

193—Weight of freight container exceeding weight stated on container or safety approval plate

Section 193 states that when the weight of a freight container, containing goods consigned for road transport, exceeds the maximum gross weight marked on the container or the container's safety approval plate, the consignor or packer of the goods commits an offence with a maximum penalty of $10,000.

Subsection (5) defines safety approval plate for a freight container as the *safety approval plate* required to be attached to the container under the International Convention for Safe Containers set out in Schedule 5 of the *Navigation Act 1912* of the Commonwealth.

A person charged with either offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

194—Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement

Section 194 allows a consignee whose act or omission results, or is likely to result, in inducing or rewarding a contravention of a mass, dimension or loading requirement and they intend or are reckless or negligent as to whether or not that result happens) commits an offence for which a maximum penalty of $10,000 applies.

Subsection (2) provides that the consignee is taken to have intended the result if the container weight declaration was not given or was false or misleading in a material particular in circumstances where the consignee knew or ought reasonably to have known that a container weight declaration for the container was not given as required by the Law or that the container weight declaration given for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Part 10—Other provisions

195—Conflicting mass requirements

Section 195 provides the basis for determining which mass requirement is to prevail in the case of conflicting requirements. In that case, the lower or lowest of the applicable limits applies. This section confirms that compliance with all mass and dimension requirements relevant to a heavy vehicle, including a combination, is required. For example, if the mass requirements for the individual axle groups making up a heavy vehicle exceed the mass requirement for the vehicle as a whole then the later mass requirement must be complied with.

196—Conflicting dimension requirements

Section 196 provides the basis for determining which dimension requirement is to prevail in the case of conflicting requirements. For example, a vehicle may be exempted from a prescribed dimension requirement through a dimension exemption. The same vehicle may be subject to a temporary restriction imposed through an official traffic sign. Subsection (2) requires the more or most (if there are two or more such requirements) restrictive of these to be applied in determining what are the relevant dimension requirements.

The section necessarily departs from the approach taken in respect to mass limits in section 195 in specifying that is the more or most 'restrictive' limit that applies, rather than the 'shortest' or 'lowest' requirement on the basis that in some (likely limited) circumstances the requirement imposed on the vehicle and intended to be applied may be longer than another requirement. For example a prescribed dimension requirement may establish that a heavy vehicle is compliant if the distance between two axle groups is more than 2.5 metres while a mass and dimension exemption may require the same distance to be more than 3 metres, in which case the 3 metre requirement is the most restrictive and the prescribed dimension requirement should be disregarded.

197—Exemption from compliance with particular requirements in emergency

Section 197 empowers the Regulator to exempt a heavy vehicle, or the driver or operator of a heavy vehicle, from a *prescribed requirement* (a mass or dimension requirement or any requirement under mass or dimension authorities granted under Parts 4.5 or 4.6) to allow the heavy vehicle to be used in a particular way to assist in an emergency. The Regulator must be satisfied of certain matters, including that there will not be an unreasonable danger to other road users and that heavy vehicle is being used, or is intended to be used, in an emergency to protect life or property or to restore communications or the supply of services such as energy, water or similar services.

Subsection (3) requires that if the exemption is granted orally that the Regulator must as soon as practicable make a written record of the exemption and any conditions to which it is subject and give a copy of that record to the operator of the heavy vehicle to which it relates.

Subsection (5) imposes an obligation on the Regulator to notify the relevant road authority of the grant of an exemption under subsection (1) as soon as practicable after it is granted.

198—Recovery of losses arising from non-provision of container weight declaration

Section 198 grants a right of recovery for a loss to a person occurring because a driver of a heavy vehicle transporting a freight container by road using the vehicle has not been provided with a container weight declaration for the freight container before starting to transport the freight container. A person who has incurred a loss as a result of the delay resulting from the failure to provide the container weight declaration and the need to obtain a container

weight declaration before transporting the container is entitled to compensation. The person who incurs a loss may recover the loss from the responsible entity for the freight container in a court of competent jurisdiction. Section 5 defines *responsible entity* for a freight container.

Losses that may be recovered under this section include:

- loss incurred from delays in the delivery of the freight container, any of its contents, or any other goods;
- loss incurred from the damage to or spoliation of anything contained in the freight container;
- loss incurred from providing another heavy vehicle, and loss incurred from delays arising from providing another heavy vehicle; or
- costs or expenses incurred for weighing the freight container or any of its contents.

Unlike section 199 there is no reference to losses incurred from fines or other penalties as the driver and operator of the vehicle should not be allowing the freight container to be transported by road until a complying container weight declaration is obtained.

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

Section 199 grants a right of recovery for loss to a person who has incurred a loss because:

- an operator or driver of a heavy vehicle transporting a freight container by road using the vehicle has been provided with a container weight declaration for the freight container; and
- the declaration contains information that is false or misleading in a material particular because it either understates the weight of the container; or otherwise indicates the weight of the container is lower than its actual weight; and
- a contravention of a mass requirement applying to the heavy vehicle occurs as a result of the operator or driver relying on the false or misleading information; and
- at the relevant time, the operator or driver either had a reasonable belief the vehicle was not in contravention of the mass requirement; or did not know, and ought not reasonably to have known, that the minimum weight stated in the declaration was lower than the actual weight of the container.

If a loss of the kind mentioned above is incurred, section 199 states that the person incurring this loss has a right to recover that loss from the responsible entity in a court of competent jurisdiction.

Losses that may be recovered under this section include:

- the amount of a fine or other penalty imposed on the plaintiff for an offence against this Bill;
- the amount of a fine or other penalty imposed on an employee or agent of the plaintiff for an offence against this Bill and reimbursed by the plaintiff;
- loss incurred from delays in the delivery of the freight container, any of its contents, or any other goods;
- loss incurred from the damage to or spoliation of anything contained in the freight container;
- loss incurred from providing another heavy vehicle, and loss incurred from delays arising from providing another heavy vehicle; and
- costs or expenses incurred for weighing the freight container or any of its contents.

There is no limit on the amount of loss that is able to be recovered from the responsible entity for the freight container in this section. However, section 201 states that the court may assess the monetary value of a loss recoverable in the way it considers appropriate. Section 201 also provides that the court may have regard to the matters it considers appropriate in making this assessment.

200—Recovery by responsible entity of amount paid under section 199

Section 200 grants a right of recovery to responsible entities that have proceedings initiated against them under section 199 in respect of the whole or part of the amount that they are required to pay against a person, called an information provider, who provided the responsible entity with all or part of the false or misleading information that led to the proceeding under section 199.

Subsection (3) provides that the responsible entity may enforce their right to recover under subsection (2) by either joining the information provider to a recovery proceeding that has not been decided or by bringing a proceeding in a court of competent jurisdiction.

201—Assessment of monetary value or attributable amount

Section 201 empowers the court to assess the monetary value recoverable under the recovery sections of this Part (sections 198, 199 and 200). In making this assessment section 201 empowers the court to have regard to matters it considers appropriate, including any evidence adduced in a proceeding for an offence against this Law.

Chapter 5—Vehicle operations—speeding

Part 1—Preliminary

202—Main purpose of Chapter 5

Section 202 states that the main purpose of Chapter 5 is to improve public safety and compliance with Australian road laws by imposing responsibility for speeding by heavy vehicles on persons whose business activities influence the conduct of the drivers of heavy vehicles.

203—Outline of the main features of Chapter 5

Section 203 states that Chapter 5 requires:

- persons who are most directly responsible for the use of a heavy vehicle to take reasonable steps to ensure their activities do not cause the vehicle's driver to exceed speed limits; and
- anyone who schedules the activities of a heavy vehicle, or its driver, to take reasonable steps to ensure the schedule for the vehicle's driver does not cause the driver to exceed speed limits; and
- loading managers to take reasonable steps to ensure the arrangements for loading goods onto and unloading goods from a heavy vehicle do not cause the vehicle's driver to exceed speed limits; and
- particular persons who consign goods for transport by a heavy vehicle, or who receive the goods, to take reasonable steps to ensure the terms of consignment of the goods do not cause the vehicle's driver to exceed speed limits; and
- prohibits anyone from asking the driver of a heavy vehicle to exceed speed limits and from entering into an agreement that causes the driver of a heavy vehicle to exceed speed limits.

Moreover, this Chapter imposes liability on persons who are most directly responsible for the use of a heavy vehicle for offences committed by the vehicle's driver exceeding speed limits.

Part 2—Particular duties and offences

Division 1—Employers, prime contractors and operators

204—Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit

Section 204 requires that a 'relevant party' for the driver of a heavy vehicle must take all reasonable steps to ensure that the relevant party's business practices will not cause the driver to exceed a speed limit applying to the driver. The maximum penalty for not complying with this requirement is $10,000.

It should be noted that, because of the operation of section 218 for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver. For this section, the relevant party for the driver includes:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

For this section, business practices of a relevant party means the practices of the relevant party in running the relevant party's business and includes the operating policies and procedures of the business; the human resource and contract management arrangements of the business; and arrangements for managing safety.

Notes to subsection (1) indicate that sections 622 and 623 should be considered in deciding whether a person has taken all reasonable steps.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for this offence.

205—Duty of employer not to cause driver to drive if particular requirements not complied with

Section 205 imposes an obligation on an employer not to cause an employed driver to drive a heavy vehicle unless the employer has complied with section 204 and is reasonably satisfied that each scheduler for the vehicle has complied with that scheduler's obligations. A maximum penalty of $4,000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for this offence.

This section encourages employers to be vigilant as to factors within their control that may encourage a driver to not comply with a speed limit.

206—Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with

Section 206 states where a driver is self-employed, this section imposes on prime contractors and operators of vehicles obligations similar to those imposed on employers by section 205. A maximum penalty of $4,000 is prescribed for a person contravening this provision.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for this offence.

This section encourages prime contractors and operators to be vigilant as to factors within their control that may encourage a driver to not comply with a speed limit.

Division 2—Schedulers

207—Duty to ensure driver's schedule will not cause driver to exceed speed limit

Section 207 states that a scheduler must take all reasonable steps to ensure that the schedule for the driver of a heavy vehicle will not cause the driver to exceed a speed limit applying to the driver. A maximum penalty of $10,000 applies to the offence of contravening this provision. Section 5 defines a schedule for the driver of a heavy vehicle and a scheduler for a heavy vehicle.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Examples of what may be regarded as reasonable steps are provided in a note under this section. These examples are:

- consulting drivers about their schedules and work requirements;
- taking account of the average speed that can be travelled lawfully on scheduled routes;
- allowing for traffic conditions or other delays in schedules;
- contingency planning concerning schedules.

Notes to subsection (1) indicate that sections 622 and 623 should be considered in deciding whether a person has taken all reasonable steps.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

208—Duty not to cause driver to drive if particular requirements not complied with

Section 208 imposes further obligations on schedulers to not cause a vehicle's driver to drive unless the driver's schedule allows for:

- the driver to take all required rest breaks in compliance with all laws regulating the driver's work times and rest times; and
- traffic conditions and other delays that could reasonably be expected; and
- compliance with all speed limits.

A maximum penalty of $4,000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Examples provided of considerations that may be taken into account in providing a schedule that allows for traffic conditions and other delays that could be reasonably expected are:

- the actual average speed able to be travelled lawfully and safely by the driver on the route to be travelled by the heavy vehicle;
- known traffic conditions, for example, road works or traffic congestion on the route;
- delays caused by loading, unloading or queuing.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

Division 3—Loading managers

209—Duty to ensure loading arrangements will not cause driver to exceed speed limit

Section 209 states that a loading manager must take all reasonable steps to ensure that loading and unloading arrangements will not cause the driver of a heavy vehicle to exceed a speed limit applying to the driver. A maximum penalty of $10,000 applies to the offence of contravening this provision.

For this section, a *loading manager* means a person who manages, or is responsible for the operation of, regular loading or unloading premises for heavy vehicles; or has been assigned by that person as responsible for

supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of goods at the premises.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Examples of what may be regarded as *reasonable steps* are provided in a note under this section. These examples are:

- reviewing loading and unloading times and delays at loading and unloading places;
- identifying potential loading and unloading congestion in consultation with drivers and other parties in the chain of responsibility;
- having a system of setting and allocating loading and unloading times the driver can reasonably rely on;
- allowing loading and unloading to happen at an agreed time.

Notes to subsection (1) indicate that sections 622 and 623 should be considered in deciding whether a person has taken all reasonable steps.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

Division 4—Particular consignors and consignees

210—Consignors to whom Division 4 applies

Section 210 states that this Division applies to a person who is a 'commercial consignor' who engages a particular operator of a heavy vehicle, either directly or through an agent or other intermediary, to transport goods for the person by road for commercial purposes.

Section 5 defines a 'consignee' of goods as a person who has consented to being, and is, named or otherwise identified, as the intended consignee of the goods in the transport documentation relating to the road transport of the goods; or actually receives the goods after completion of their road transport. This definition does not include a person who merely unloads the goods.

211—Consignees to whom Division 4 applies

Section 211 states that this Division applies only to a consignee of goods who:

- has consented to being, and is named or otherwise identified as, the intended consignee of goods in the transport documentation relating to the transport of the goods by road by a particular operator of a heavy vehicle; and
- knows, or ought reasonably to know, that the goods are to be transported by road.

A note to section 211 refers to section 632 for the matters a court must consider deciding whether a person ought reasonably to have known something.

212—Duty to ensure terms of consignment will not cause driver to exceed speed limit etc

Section 212 states that a commercial consignor or a consignee of goods must take all reasonable steps to ensure that the terms of consignment of goods for transport by a heavy vehicle will not either (a) cause the relevant driver or (b) cause a relevant party for the relevant driver to exceed a speed limit applying to the driver. A maximum penalty of $10,000 applies to both offences in this section.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

For this section, the *relevant driver* for consigned goods, means the driver of the heavy vehicle by which the goods are to be or are being transported. For this section, the *relevant party* for the driver includes:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver; and
- if the driver is to make, or is making, a journey for the operator of a vehicle, an operator of the vehicle.

Examples of what may be regarded as reasonable steps are provided in a note under this section. These examples are:

- ensuring contractual arrangements and documentation for the consignment and delivery of goods enable speed limit compliance;
- contingency planning concerning consignments and delivery times; and
- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues.

Notes to subsection (1) indicate that sections 622 and 623 should be considered in deciding whether a person has taken all reasonable steps.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

213—Duty not to make a demand that may result in driver exceeding the speed limit

Section 213 states that a commercial consignor or a consignee of goods must not make a demand that affects, or may affect, a time in a schedule for the transport of the consigned goods unless the consignor or consignee has complied with section 212 and the consignor or consignee is reasonably satisfied that the making of the demand will not cause a scheduler for the vehicle to not comply with that scheduler's obligations. A maximum penalty of $6,000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Division 5—Particular requests etc and contracts etc prohibited

214—Who is a party in the chain of responsibility

Section 214 sets out the person included in the meaning of the term 'party in the chain of responsibility' for a heavy vehicle in this Division. This definition is important as persons commit an offence under this Division when they make a request to, or enter a contract or agreement with, a party in the chain of responsibility.

The persons who are a party in the chain of responsibility for this Division are:

- an employer of the vehicle's driver if the driver is an employed driver;
- a prime contractor for the vehicle's driver if the driver is a self-employed driver;
- an operator of the vehicle;
- a scheduler for the vehicle;
- a loading manager of any goods in the vehicle;
- a commercial consignor of any goods for transport by the vehicle that are in the vehicle;
- a consignee of any goods in the vehicle, if Division 4 applies to the consignee.

A note to subsection (1) indicates that the exercise of any of these functions, whether exclusively or occasionally, decides whether a person falls within these definitions rather than a person's job title or contractual description.

Subsection (2) provides that a person may be a party in the chain or responsibility for the heavy vehicle in more than one capacity.

215—Particular requests etc prohibited

Section 215 prohibits a person from asking, directing or requiring, directly or indirectly, the driver of a heavy vehicle or a party in the chain of responsibility to do or not to do something which the person knows or ought reasonably to know would have the effect of causing the driver to exceed a speed limit applying to the driver. A maximum penalty of $10,000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

A note to subsection (1) indicates that section 632 states the matters a court must consider when deciding whether a person ought reasonably to have known something.

216—Particular contracts etc prohibited

Section 216 states a person must not enter into a contract or agreement with the driver or a party in the chain of responsibility of or for a heavy vehicle if the person knows or ought reasonably to know that the effect would be to cause the driver to exceed a speed limit applying to the driver.

Subsection (2) makes similar provision for contracts or agreements that encourage or provide incentives for a driver to exceed a speed limit applying to the driver.

In both cases a maximum penalty of $10,000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of section 218, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Note 1 to section 216 indicates that section 632 states the matters a court must consider when deciding whether a person ought reasonably to have known something. Note 2 indicates that section 742 provides that particular contracts or other agreements are void.

Division 6—Provisions about offences against this Part

217—Objective reasonableness test to be used in deciding causation

Section 217 deals with circumstances included within the concept of failing to take all reasonable steps in relation to this Division. Under section 217, a person failing to take reasonable steps to ensure someone else does not drive a heavy vehicle in excess of a speed limit applying to the vehicle's driver (referred to in this section as the *prohibited act*) includes:

- the person failing to take reasonable steps to ensure the other person does not do the prohibited act; and
- the person failing to take reasonable steps to ensure the person's activities or anything arising out of them do not cause, result in or provide an incentive for the other person to do the prohibited act.

Subsection (4) states that a court may find that a person caused another person to do something prohibited if the court is satisfied that a reasonable person would have foreseen that the person's conduct would be reasonably likely to cause the other person to do the prohibited act.

218—Commission of speeding offence is irrelevant to Chapter 5 Part 2 prosecution

Section 218 states that in a prosecution for an offence against Chapter 5 Part 2, it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Part 3—Extended liability

219—Liability of employer etc for driver's contravention of speeding offence

Section 219 creates offences for employers, prime contractors and operators of heavy vehicles if a speeding offence is committed in relation to the vehicle. However, a driver need not be proceeded against or convicted of a speeding offence for this section to operate.

In this section a 'speeding offence' means an offence committed by the driver of a heavy vehicle because the driver exceeded a speed limit applying to the driver.

Subsection (1) states that when a speeding offence is committed, each of the following persons are also taken to have committed the offence:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for an operator of a vehicle, the operator of the vehicle.

The maximum penalty for a person committing an offence under this provision is dependent on both the speed limit exceeded by the driver and how much the driver exceeded the limit by and ranges from $3,000 to $10,000.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this section the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsection (4) clarifies that legal proceedings or any conviction against the driver for the speeding offence is irrelevant. Evidence of a conviction against the driver is evidence of certain matters, and details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement.

Chapter 6—Vehicle operations—driver fatigue

Part 1—Preliminary

220—Main purpose of Chapter 6

Section 220 states the main purpose of Chapter 6 is to provide for the safe management of the fatigue of drivers of fatigue-regulated heavy vehicles while they are driving on the road.

The term 'fatigue-regulated heavy vehicles' is defined in section 7. Normally, a vehicle designed to carry more than 12 adults (including the driver) or having a gross vehicle or combination mass of 12 tonnes or more will be a fatigue-regulated heavy vehicle, although section 7 provides exceptions, including some machinery and motor homes.

Subsection (2) indicates that this purpose is achieved by imposing duties, providing maximum work requirements and minimum rest requirements and, amongst other things, providing for recording the work times and rest times of drivers.

221—Definitions for Chapter 6

Section 221 provides definitions of terms used in Chapter 6 or refers the reader to other provisions where those terms are defined. Examples are given in some cases.

222—Categories of breaches

Section 222 states that breaches of maximum work requirements or minimum rest requirements are categorised as minor, substantial, severe or critical in accordance with provisions of regulations.

Part 2—Duties relating to fatigue

Division 1—Preliminary

223—What is fatigue

Section 223 states that 'fatigue' includes, but is not limited to, feeling sleepy, feeling physically or mentally tired, weary or drowsy, feeling exhausted or lacking energy or behaving in a way that's consistent with the examples referred to in paragraphs (a), (b), or (c).

Subsection (2) gives a head of power for the making of national regulations supplementing, clarifying or providing examples for any of the provisions of sections 223 to 226 (encompassing, the meaning of 'fatigue', the matters a court may consider in deciding whether a person was fatigued, the meaning of 'impaired by fatigue', and the matters a court may consider in deciding whether a person was impaired by fatigue).

224—Matters court may consider in deciding whether person was fatigued

Section 224 sets out some matters which a court may consider in determining whether a driver is fatigued but subsection (2) states that the court is not limited by those matters.

225—What is *impaired by fatigue*

Section 225 states that a driver is *impaired by fatigue* if the driver's ability to drive a fatigue-regulated heavy vehicle safely is affected by fatigue. This is consistent with Regulation 44 of the *Road Transport (General) Regulation 2005* (NSW).

226—Matters court may consider in deciding whether person was impaired by fatigue

Section 226 sets out matters that a court may consider in determining whether a person is impaired by fatigue. Subsection (2) provides that the court is not limited to a consideration of those things and subsection (3) provides that a court may consider a driver to be impaired by fatigue even though he or she has complied with legal requirements.

227—Who is a party in the chain of responsibility

Section 227 refers to a number of parties in the chain of responsibility who are deemed to have committed the same offences as the driver under this Law. These persons include:

- an employer of the vehicle's driver;
- a prime contractor for the vehicle's driver;
- an operator of the vehicle;
- a scheduler for the vehicle;
- a consignor of any goods for transport by the vehicle that are in the vehicle;
- a consignee of any goods in the vehicle;
- a loading manager of any goods in the vehicle;
- a loader of any goods in the vehicle;
- an unloader of any goods in the vehicle.

Subsection (2) provides that it is possible for a person to be a party in the chain of responsibility for a fatigue-regulated heavy vehicle in more than 1 capacity.

Division 2—Duty to avoid and prevent fatigue

228—Duty of driver to avoid driving while fatigued

Section 228 provides that a person must not drive a fatigue-regulated heavy vehicle on a road while the person is impaired by fatigue. A maximum penalty of $6,000 applies to the offence of contravening this provision.

Section 228 also makes provision for participating jurisdictions to classify offences under other state or territory laws as a 'prescribed driver offence under another law'. When an offence under another law of the jurisdiction (for instance, an occupational health and safety law) is so prescribed, then a driver cannot be convicted of both a heavy vehicle driver fatigue offence and the 'prescribed driver offence under another law'. This will provide drivers of fatigue-regulated heavy vehicle with protection from double jeopardy without having to rely on the, often uncertain, operation of general statutory or common law rules to the same effect.

229—Duty of party in the chain of responsibility to prevent driver driving while fatigued

Section 229 provides that a party in the chain of responsibility for a fatigue-regulated heavy vehicle must take all reasonable steps to ensure that a person does not drive the vehicle on a road while that person is impaired by fatigue. A maximum penalty of $10,000 applies to the offence of contravening this provision. Section 229(2) deals with evidence that a party took all reasonable steps and subsection (3) provides that it is not necessary for the prosecution to prove that a person drove or would or may have driven on a road while impaired by fatigue.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

Division 3—Additional duties of employers, prime contractors and operators

230—Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued etc

Section 230 imposes on certain employers, contractors and operators (as specified by subsection (3)) to take all reasonable steps to ensure that their business practices will not cause the driver to drive while impaired by fatigue or to drive in breach of work and rest hours options. A maximum penalty of $6,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

231—Duty of employer not to cause driver to drive if particular requirements not complied with

Section 231 imposes an obligation on an employer not to cause an employed driver to drive a fatigue-regulated heavy vehicle unless the employer has complied with section 230 and is satisfied that each scheduler for the vehicle has complied with that scheduler's obligations. A maximum penalty of $4,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

232—Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with

Section 232 provides that where a driver is self-employed, section 232 imposes on prime contractors and operators of vehicles obligations similar to those imposed on employers by section 231. A maximum penalty of $4,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

Division 4—Additional duties of schedulers

233—Duty to ensure driver's schedule will not cause driver to drive while fatigued etc

Section 233 provides that a scheduler must take all reasonable steps to ensure that the schedule for the driver of a fatigue-regulated heavy vehicle will not cause the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $6,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

234—Duty not to cause driver to drive if particular requirements not complied with

Section 234 imposes further obligations on schedulers, including a consideration of traffic conditions and other delays that could reasonably be expected; such matters must be allowed for in the driver's schedule. A maximum penalty of $6,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

Division 5—Additional duties of consignors and consignees

235—Duty to ensure terms of consignment will not cause driver to drive while fatigued etc

Section 235 states that consignors and consignees must take all reasonable steps to ensure that the terms of consignment of goods for transport by a fatigue-regulated heavy vehicle will not result in, encourage or provide an incentive to the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $10,000 applies to the offence of contravening this provision.

Subsection (2) imposes on consignors and consignees similar obligations in relation to employers, prime contractors and operators who may, in turn, cause a driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

236—Duty not to cause driver to drive if particular requirements not complied with

Section 236 states that consignors and consignees must not cause the driver to drive or enter into a contract or other agreement to that effect unless the consignor or consignee has complied with section 235 and is satisfied that others upon whom obligations are imposed by Divisions 3 and 4 have complied with those Divisions. A maximum penalty of $4,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

237—Duty not to make a demand that may result in driver driving while fatigued etc

Section 237 states that a consignor of goods for transport by road in a fatigue-regulated heavy vehicle must not make a demand that affects or may affect a time in a schedule that may cause the vehicle's driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $10,000 applies to the offence of contravening this provision but Subsection (2) protects the consignor if certain precautions are taken before the demand is made.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

Division 6—Additional duties of loading managers

238—Duty to ensure loading arrangements will not cause driver to drive while fatigued etc

Section 238 states that a loading manager must take all reasonable steps to ensure that loading and unloading arrangements will not cause the driver of a fatigue-regulated heavy vehicle to drive while impaired by fatigue or in breach of the driver's work and rest hour options. A maximum penalty of $100,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

239—Duty to ensure drivers can rest in particular circumstances

Section 239 imposes an obligation to ensure drivers can rest in particular circumstances. In circumstances specified by subsection (1), a loading manager must take all reasonable steps to ensure that the driver is able to rest while waiting for the goods to be loaded or unloaded onto or from the vehicle. The circumstances include delays in the starting or finishing times advised to the driver for the loading or unloading. A maximum penalty of $6,000 applies to the offence of contravening this provision.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence for the offence.

Division 7—Particular requests etc and contracts etc prohibited

240—Particular requests etc prohibited

Section 240 prohibits a person from asking, directing or requiring, directly or indirectly, the driver of a fatigue-regulated heavy vehicle or a party in the chain of responsibility to do or not to do something which the person knows or ought reasonably to know would have the effect of causing the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $10,000 applies to the offence of contravening this provision.

241—Particular contracts etc prohibited

Section 241 provides that a person must not enter into a contract or agreement with the driver or a party in the chain of responsibility of or for a fatigue-regulated heavy vehicle if the person knows or ought reasonably to know that the effect would be to cause the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options.

Subsection (2) makes similar provision for contracts or agreements which encourage or provide incentives for driving while impaired by fatigue or in breach of the driver's work and rest hours options. In both cases, a maximum penalty of $10,000 applies to the offence of contravening this provision.

Division 8—Provisions about offences against this Part

242—Objective reasonableness test to be used in deciding causation

Section 242 deals with circumstances included within the concept of failing to take all reasonable steps. Subsection (4) makes further provision as to when a court may find that a person caused another person to do something prohibited; this will be possible if the court is satisfied that a reasonable person would have foreseen that the person's conduct would be reasonably likely to cause the other person to do the prohibited act.

Part 3—Requirements relating to work time and rest time

Division 1—Preliminary

243—What is a driver's *work and rest hours option*

Section 243 defines the terms 'work and rest hours option'. The term is important in relation to various offences created by Chapter 6 Part 3 involving conduct causing a driver to drive in breach of the option.

244—Counting time spent in participating jurisdictions

Section 244 deals with counting time. As the driving task may extend across State or Territory borders, section 244 states how time (for work and rest) is to be counted where more than one participating jurisdiction is involved.

245—Counting time spent outside participating jurisdictions

Section 245 provides for the possibility that the driving task may extend across State or Territory borders, section 245 indicates how time (for work and rest) is to be counted where both participating and non-participating jurisdictions are involved.

246—Counting periods of less than 15 minutes

Section 246 provides for the computation of short periods of less than 15 minutes of both work and rest times.

247—Time to be counted after rest time ends

Section 247 deals with the point from which a period of time is to be counted where a rest break or period is involved and provides an example of how the computation is to be made.

248—Time to be counted by reference to time zone of driver's base

Section 248 deals with the situation where the driving extends across 2 or more time zones.

Division 2—Standard work and rest arrangements

249—Standard hours

Section 249 authorises the making of regulations to prescribe maximum work times and minimum rest times applying to drivers of a fatigue-regulated heavy vehicle working under what are called standard hours. Later sections deal with hours that are not standard, called *BFM* and *AFM*.

250—Operating under standard hours—solo drivers

Section 250 states that a solo driver working under standard hours commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the standard hours. Subsection (1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical. Subsections (2) and (3) deal with defences to a prosecution for contravening subsection (1).

251—Operating under standard hours—two-up drivers

Section 251 makes provision, similar to section 250, where drivers under standard hours are party to a two-up driving arrangement.

252—Defence relating to short rest breaks for drivers operating under standard hours

Section 252 provides a defence where a rest break of less than 1 hour is required and has not been taken because there was no suitable place available in which to take it but it was taken, no later than 45 minutes late, at the first available suitable location.

Division 3—BFM work and rest arrangements

253—BFM hours

Section 253 authorises the making of regulations to prescribe maximum work times and minimum rest times applying to drivers of a fatigue-regulated heavy vehicle working under *BFM hours*. Such a driver drives under BFM accreditation, for which section 458 provides.

254—Operating under BFM hours—solo drivers

Section 254 states that a solo driver working under BFM hours commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the BFM hours. Subsection (1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical.

Subsections (2) and (3) deal with defences to a prosecution for contravening subsection (1).

255—Defence for solo drivers operating under BFM hours relating to split rest breaks

Section 255 provides a defence for a solo driver in a prosecution for not taking 7 hours of stationary rest when required by BFM hours in circumstances where the driver has had a split rest break.

256—Operating under BFM hours—two-up drivers

Section 256 provides a provision, similar to section 254, where drivers under BFM hours are party to a two-up driving arrangement.

Division 4—AFM work and rest arrangements

257—AFM hours

Section 257 provides a definition of the term AFM hours, being the maximum work times and minimum rest times for a driver of a fatigue-regulated heavy vehicle under an AFM accreditation for which section 458 provides.

258—Operating under AFM hours

Section 258 states that a driver working under AFM hours commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the AFM hours. Subsection (1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical.

Subsections (2) and (3) deal with defences to a prosecution for contravening subsection (1).

Division 5—Arrangements under work and rest hours exemption

259—Exemption hours

Section 259 defines the term exemption hours to be the maximum work time and minimum rest time for a driver of a fatigue-regulated heavy vehicle driving under an exemption. These times are to be specified in the notice or permit granting the exemption.

260—Operating under exemption hours

Section 260 states that a driver working under a work and rest hours exemption commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the exemption. Subsection (1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical. Subsections (2) and (3) deal with defences to a prosecution for contravening subsection (1).

Division 6—Extended liability

261—Liability of employer etc for driver's contravention of maximum work requirement or minimum rest requirement

Section 261 extends liability to employers, prime contractors, operators, schedulers, consignors, consignees, loading managers, loaders and unloaders if a driver of a fatigue-regulated heavy vehicle exceeds the maximum work hours or taking less than the minimum rest times required for the driver. It prescribes different penalties depending on whether the offence is characterised as minor, substantial, severe or critical with penalties ranging from $4,000 to $15,000. Subsections (3) and (4) deal with defences to a prosecution for contravening subsection (1).

Subsection (5) clarifies that legal proceedings or any conviction against the driver for a breach of work and rest requirements is irrelevant, evidence of a conviction against the driver is evidence of certain matters, and details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

Division 7—Changing work and rest hours option

262—Changing work and rest hours option

Section 262 states the limits of a driver to 1 work and rest hours option but allows him or her to change the option available.

263—Operating under new work and rest hours option after change

Section 263 deals with the circumstances in which a work and rest hours option can be changed and obligations arising from a change. Section 263 defines the options in terms of standard hours, BFM hours or AFM hours.

264—Duty of employer, prime contractor, operator and scheduler to ensure driver compliance

Section 264 imposes duties on employers, prime contractors, operators and schedulers where a driver changes a work and rest hours option. A maximum penalty of $6,000 applies where the duties are breached. Subsections (3) and (4) deal with defences available in a prosecution for such a breach.

Division 8—Exemptions relating to work times and rest times

Subdivision 1—Exemption for emergency services

265—Emergency services exemption

Section 265 provides an exemption from requirements as to work and rest times a person who is acting for an emergency service in circumstances specified in the section on the way to, during and returning from an emergency, as defined in subsection (4).

Subsection (3) provides that an emergency services exemption is only applicable when the emergency service personnel have complied with any guidelines issued by any emergency service or for that service by an agency responsible for oversight of the emergency service. An example of this would be the South Australian Fire and Emergency Services Commission as the agency responsible for oversight of the South Australian Country Fire Service, which is an emergency service.

Subdivision 2—Exemptions by Commonwealth Gazette notice

266—Regulator's power to exempt class of drivers from particular maximum work requirements and minimum rest requirements

Section 266 authorises the Regulator to grant an exemption to classes of drivers for 3 years to operate under maximum work times and minimum rest times prescribed in the notice that is to be published in the Commonwealth Gazette to exempt.

267—Restriction on grant of work and rest hours exemption (notice)

Section 267 states that the Regulator may grant a work and rest hours exemption only if the Regulator is satisfied that requiring the class of drivers to whom the exemption is to apply to comply with the standard hours would be an unreasonable restriction on the applicants. Subsection (2) requires the Regulator to have regard to guidelines approved by the responsible Ministers.

268—Conditions of work and rest hours exemption (notice)

Section 268 provides that a notice granting an exemption from work and rest hours may be subject to conditions including driver fatigue management practices that are to apply to the drivers under the exemption, record keeping requirements, as well as a condition that the driver must keep in his or her possession a copy of the notice.

269—Period for which work and rest hours exemption (notice) applies

Section 269 deals with the period during which a notice granting an exemption from work and rest hours is in force. It provides that an exemption takes effect when it is published on the Commonwealth Gazette website or a later time stated in the notice.

270—Requirements about Commonwealth Gazette notice

Section 270 provides that a notice granting an exemption from work and rest hours must refer to the classes of drivers to which the exemption applies, the maximum work times and minimum rest times, the period for which the exemption applies as well as any other conditions.

271—Amendment or cancellation of work and rest hours exemption (notice)

Section 271 sets out the grounds that warrant amendment or cancellation of a notice granting an exemption from work and rest hours. In particular, subsection (1) states that a notice may be amended or cancelled due to a change in circumstances that would have resulted in a decision not to grant the exemption or grant it subject to conditions or different conditions had the facts existed at the original grant, or where the use of a fatigue-regulated heavy vehicle has caused, or is likely to cause, a significant risk to public safety.

Subsections (4) to (6) provide that the Regulator's amendment or cancellation of a work and rest hours exemption (notice) takes effect in the same timeframe and circumstances as those for an amendment or cancellation of a work diary exemption (notice).

272—Immediate suspension

Section 272 empowers the Regulator to immediately suspend a work and rest hours exemption (notice). The power is based on similar provisions in the Act relating to exemptions from registration, vehicle standards requirements, and mass and dimension authorities. It is exercisable where it is necessary to suspend the exemption immediately to prevent or minimise serious harm to public safety, and requires a public notification process to be undertaken.

Subdivision 3—Exemptions by permit

273—Regulator's power to exempt drivers from particular maximum work requirements and minimum rest requirements

Section 273 states that the Regulator may grant, by a permit, an exemption from the work and rest hours that would otherwise apply to the driver of a fatigue-regulated heavy vehicle.

274—Application for work and rest hours exemption (permit)

Section 274 allows an employer, operator, prime contractor or a self-employed driver of a fatigue-regulated heavy vehicle to apply for an exemption permit. It specifies the requirements for an application which include the requirement that the applicant must be in the approved form and specify the period for which the exemption is sought, any conditions to which the exemption is sought to be subject as well as the name of the driver.

275—Restriction on grant of work and rest hours exemption (permit)

Section 275 states the restrictions on the Regulator in relation to the grant of a permit under section 271. The Regulator must be satisfied of certain matters specified in the section, including the unreasonableness of requiring compliance with the hours which would otherwise apply, and must have regard to guidelines approved by the responsible Ministers under section 653.

276—Conditions of work and rest hours exemption (permit)

Section 276 states that a permit granting an exemption from work and rest hours may be subject to conditions. Where the exemption is granted to an operator in connection with the operator's BFM or AFM accreditation, it is a condition that the operator complies with all of the conditions of that accreditation.

277—Period for which work and rest hours exemption (permit) applies

Section 277 deals with the period during which a permit granting an exemption from work and rest hours is in force.

278—Permit for work and rest hours exemption (permit) etc

Section 278 deals with the contents of and, in some cases, information which must accompany a work and rest hours exemption permit.

279—Refusal of application for work and rest hours exemption (permit)

Section 279 provides that if the Regulator refuses a permit, an information notice is to be provided to the applicant.

280—Amendment or cancellation of work and rest hours exemption (permit) on application

Section 280 deals with an application for the amendment or cancellation of a work and rest hours exemption (permit).

281—Amendment or cancellation of work and rest hours exemption (permit) on Regulator's initiative

Section 281 states the grounds for amending or cancelling a work and rest hours exemption (permit) on the Regulator's initiative and the procedures to be followed, including opportunity for and consideration of written representations.

282—Immediate suspension of work and rest hours exemption (permit)

Section 282 provides for the circumstances in which the Regulator may immediately suspend a work and rest hours exemption (permit).

283—Minor amendment of work and rest hours exemption (permit)

Section 283 provides the Regulator with the power to make amendments of a minor nature to a work and rest hours exemption (permit), so as to deal with formal or clerical matters or amendments which do not adversely affect the holder's interests.

284—Return of permit

Section 284 provides that where a work and rest hours exemption (permit) is amended or cancelled, the Regulator may require its return. It is an offence not to comply with such a requirement and a maximum penalty of $6,000 applies. The Regulator may issue a replacement permit where a permit has been amended.

285—Replacement of defaced etc permit

Section 285 provides that where a permit is defaced, destroyed, lost or stolen, the holder must apply to the Regulator for a replacement. A maximum penalty of $4,000 applies for a contravention of this requirement. The section also deals with the circumstances when the Regulator is to issue such a replacement and the procedure to be followed if a replacement is not issued.

Subdivision 4—Offences relating to operating under work and rest hours exemption etc

286—Contravening condition of work and rest hours exemption

Section 286 states that it is an offence not to comply with a condition of an exemption from work and rest hours. A maximum penalty of $6,000 applies.

287—Keeping relevant document while operating under work and rest hours exemption (notice)

Section 287 makes it an offence for a driver to not keep in his or her possession a copy of the notice granting the exemption and prescribes a penalty of $3,000. Subsection (3) extends the liability (with a similar penalty) to employers, prime contractors and operators where a driver contravenes subsection (1), thereby committing an offence against subsection (2).

288—Keeping copy of permit while driving under work and rest hours exemption (permit)

Section 288 makes it an offence for a driver to not keep in his or her possession a copy of the notice granting work and rest hours exemption, and prescribes a maximum penalty of $3,000. Subsection (3) extends liability to employers, prime contractors and operators if the driver is found to have contravened subsection (1).

Subsection (2) imposes obligations to return permits when they are no longer needed. A maximum penalty of $4,000 applies.

Subsections (4), (5) and (6) deal with defences and things relevant or irrelevant to the court's consideration in a prosecution for offences created by this section.

Part 4—Requirements about record keeping

Division 1—Preliminary

289—What is *100km work* and *100+km work*

Section 289 defines the terms '*100km work*' and '*100+km work*' by reference to the radius, measured from the driver's base, of the area in which the driver drives. Section 5 defines what the driver's base is.

290—What is a driver's *record location*

Section 290 defines a 'driver's *record location*'. It states that the record location of the driver of a fatigue-regulated heavy vehicle is the place advised to the driver by his or her record-keeper or, if there is no such advice, the driver's base.

Division 2—Work diary requirements

Subdivision 1—Requirement to carry work diary

291—Application of Subdivision 1

Section 291 provides that Subdivision 1 applies where a driver is or was in the last 28 days engaged in 100+km work under standard hours, or was working under BFM or AFM hours.

292—Meaning of work diary for Subdivision 1

Section 292 states that, for the purposes of Subdivision 1, a work diary is defined so as to include relevant written or electronic diaries, printouts of information in electronic diaries and supplementary records.

293—Driver of fatigue-regulated heavy vehicle must carry work diary

Section 293 states that the driver of a fatigue-regulated heavy vehicle must keep a work diary, ensure its accuracy and have it in his or her possession while driving a fatigue-regulated heavy vehicle. A maximum penalty of $6,000 applies.

Subsections (2) and (3) deal with situations relevant to the offence created by subsection (1) and with defences to a prosecution for its contravention.

Subdivision 2—Information required to be included in work diary

294—Purpose of and definition for Subdivision 2

Section 294 states that the purpose of Subdivision 2 is to state what must be recorded in the work diary for each day when a driver is engaged in 100+km work under standard hours or works under BFM hours, standard hours or exemption hours.

295—National regulations for information to be included in work diary

Section 295 creates a broad head of power to allow the making of regulations in respect of various matters related to work diaries including the information that is to be recorded, and the manner in which the information is to be recorded.

296—Recording information under the national regulations—general

Section 296 requires a driver to record information in the driver's work diary in the manner and at the time prescribed by the national regulations. However, it does not apply to information to which section 297 applies.

297—Information to be recorded immediately after starting work

Section 297 states that the driver must record certain information in the diary immediately after starting work. A maximum penalty of $3,000 applies. Subsection (2) makes it a defence to a charge if the driver was unaware that he or she would be engaged in 100+km work under standard hours and records the information as soon as practicable after becoming aware.

298—Failing to record information about odometer reading

Section 298 requires the driver of a fatigue-regulated heavy vehicle to record the odometer reading in the manner prescribed by the national regulations if and when required to do so by the national regulations. A defence is provided where at the time of the offence, the odometer was malfunctioning and the driver has complied with the requirements of section 397 in informing the relevant persons.

299—Two-up driver to provide details

Section 299 requires a driver who is a party to a two-up driving arrangement to provide the other two-up driver on request with the details relating to the arrangement that are prescribed by the national regulations.

Subdivision 3—How information must be recorded in work diary

300—Purpose of Subdivision 3

Section 300 states that the purpose of Subdivision 3 is to state how information required by Subdivision 2 is to be recorded.

301—Recording information in written work diary

Section 301 explains how information is to be recorded in the driver's written work diary. A maximum penalty of $1,500 applies.

302—Recording information in electronic work diary

Section 302 explains how information is to be recorded in the driver's electronic work diary. A maximum penalty of $1,500 applies.

303—Time zone of driver's base must be used

Section 303 states that the driver must record time according to the time zone of the driver's base. A penalty of $1,500 applies.

Subdivision 4—Requirements about work diaries that are filled up etc

304—Application of Subdivision 4

Section 304 states that subdivision 4 applies where a diary, if in written form, is full, destroyed, lost, stolen or, if electronic, cannot be used because it is full, destroyed, lost, stolen, out of order or malfunctioning.

305—Driver must make supplementary records in particular circumstances

Section 305 states that information must be recorded in a supplementary record during a period when the circumstances described in section 304 apply. A maximum penalty of $6,000 applies. The driver must record time in the supplementary record according to the time zone of the driver's base. A maximum penalty of $1,500 applies.

Subsection (4) details circumstances where these obligations do not apply.

306—Driver must notify Regulator if written work diary filled up etc

Section 306 states that a driver must notify the Regulator within 2 business days of his or her written diary being filled up, destroyed, lost or stolen. The maximum penalty prescribed for contravention of this section is $3,000.

307—Driver must notify Regulator if electronic work diary filled up etc

Section 307 contains an obligation similar to that imposed by section 306 upon a driver of fatigue-regulated heavy vehicle whose electronic diary is full, destroyed, lost, stolen or out of order or the driver has reason to suspect that it is or has been malfunctioning. Subsection (2) requires the driver to give the Regulator notice of the matter within 2 business days. The maximum penalty prescribed for contravention of this section is $3,000.

308—What driver must do if lost or stolen written work diary found or returned

Section 308 prescribes the steps a driver must take if a written diary that has been lost or stolen is found. A maximum penalty of $3,000 applies.

309—Driver must notify record keeper if electronic work diary filled up etc

Section 309 provides an obligation to notify the Regulator in the circumstances similar to those described in section 307. This section provides that the driver must notify the driver's record keeper. A maximum penalty of $6,000 applies.

310—Intelligent access reporting entity must notify record keeper if approved electronic recording system malfunctioning

Section 310 states the obligation on an intelligent access reporting entity to notify the driver's record keeper if the entity becomes aware or has reason to suspect that an approved electronic reporting system is malfunctioning or has malfunctioned. A maximum penalty of $6,000 applies.

311—What record keeper must do if electronic work diary filled up

Section 311 states what a record keeper must do if an electronic work diary has been filled up to render it incapable of receiving further information. Subsection (2) requires the record keeper to either make the electronic work diary capable of recording new information; or give the driver a new one that is in working order. Maximum penalties of $6,000 apply. The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subsections (4) and (5) deal with defences to prosecutions for the offences created by the section.

312—What record keeper must do if electronic work diary destroyed, lost or stolen

Section 312 provides that where an electronic diary has been destroyed, lost or stolen, a record keeper must replace it and give the driver any relevant information which the record keeper has which was in the replaced diary unless that information is stored in the replacement diary. A maximum penalty of $6,000 applies. The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subsections (4) and (5) deal with defences to prosecutions for the offences created by the section.

313—What record keeper must do if electronic work diary not in working order or malfunctioning

Section 313 states what a record keeper must do if an electronic diary is reported out of order or malfunctioning. In these circumstances, the record keeper must rectify the problem, replace the electronic diary or direct the driver to use a written diary and may need to provide the driver with a printout of relevant information. A maximum penalty of $6,000 applies.

Under subsection (3), the record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper. Subsection (4) provides that subsection (3) does not apply, however, where the other person has been engaged only to repair the electronic diary or bring it into working order.

Subsections (5) and (6) deal with defences to prosecutions for the offences created by the section.

Subdivision 5—Use of electronic work diaries

314—How electronic work diary must be used

Section 314 provides that a driver using an electronic work diary must comply with legal conditions and manufacturer's specifications relating to the diary. A maximum penalty of $3,000 applies. A record keeper must ensure that the driver using such a diary complies with those conditions or specifications. A maximum penalty of $6,000 applies.

Subsection (4) provides a defence to a prosecution for breach of the duties imposed by the section on drivers and record keepers.

Subdivision 6—Extended liability

315—Liability of employer etc for driver's contravention of particular requirements of this Division

Section 315 states that liability is imposed on employers, prime contractors, operators and schedulers where drivers contravene obligations imposed on them by Divisions 1, 2, 3 or 4. The same penalties apply to them as apply to the drivers. Subsection (3) provides that a mistake of fact defence does not apply. However, a person charged has the benefit of the reasonable steps defence.

Subsection (4) clarifies that legal proceedings or any conviction against the driver for a breach of work and rest requirements is irrelevant, evidence of a conviction against the driver is evidence of certain matters, and details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

Division 3—Records relating to drivers

Subdivision 1—Preliminary

316—Application of Division 3

Section 316 states that this Division 3 applies to each record keeper for the driver of a fatigue-regulated heavy vehicle.

317—Who is a driver's record keeper

Section 317 specifies who a driver's record keeper is. The record keeper is the operator where the driver operates under a BFM or AFM accreditation or a work and rest hours exemption (permit) granted in combination with such an accreditation and, in other cases, is the employer or the self-employed driver.

Subdivision 2—Record keeping obligations relating to drivers engaging in 100km work under standard hours

318—Application of Subdivision 2

Section 318 states that Subdivision 2 applies where a driver of a fatigue-regulated heavy vehicle engages only in 100km work under standard hours.

319—Records record keeper must have

Section 319 states that the record keeper must record the information specified in subsection (1) within the 'prescribed period' referred in subsection (5). A maximum penalty of $6,000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subsections (3) and (4) deal with defences available in a prosecution.

Subdivision 3—Record keeping obligations relating to drivers engaging in 100+km work under standard hours or operating under BFM hours, AFM hours or exemption hours

320—Application of Subdivision 3

Section 320 states that Subdivision 3 applies to drivers engaging in 100+km work or operating under BFM or AFM hours or exemption hours.

321—Records record keeper must have

Section 321 states the record keeper's obligations to record information and to keep documents. A maximum penalty of $6,000 applies. The record keeper must record additional information where the driver is operating under BFM hours or AFM hours. A maximum penalty of $6,000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subsections (4) and (5) deal with defences available in a prosecution.

Subsection (6) provides that the section does not apply where certain exemptions are in place.

322—General requirements about driver giving information to record keeper

Section 322 prescribes general requirements about a driver giving information to a record keeper. It states that where a driver is required to record information in a work diary and the driver must provide information to the

record keeper within 21 days after the driving. A maximum penalty of $3,000 applies. The record keeper must ensure that the driver complies with this obligation. A maximum penalty of $3,000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subsections (6) and (7) deal with defences available in a prosecution.

323—Requirements about driver giving information to record keeper if driver changes record keeper

Section 323 deals with the situation where a driver changes record keepers and provides obligations on the driver and the new record keeper, together with penalties and defences, similar to those provided by section 322 for drivers, record keepers and those engaged by them.

324—Record keeper must give printouts of information from electronic work diary

Section 324 deals with the situation where a driver stops using an electronic diary. In such a case, the driver's record keeper must immediately provide a printout of the information in the electronic diary. A maximum penalty of $3,000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subsections (4) and (5) deal with defences available in a prosecution.

Division 4—Provisions about false representations relating to work records

325—False or misleading entries

Section 325 deals with false or misleading entries in a work record. A maximum penalty of $10,000 applies for making such an entry where the person making it knows or reasonably ought to know that it was false or misleading.

326—Keeping 2 work diaries simultaneously prohibited

Section 326 imposes a prohibition against a driver keeping 2 work diaries simultaneously. Maximum penalties of $10,000 apply.

327—Possession of purported work records etc prohibited

Section 327 prohibits drivers and record keepers from possessing things purporting to be work records which the driver or record keeper, as the case may be, knows not to be work records. A maximum penalty of $10,000 applies.

328—False representation about work records prohibited

Section 328 states that a person must not falsely represent that a work record was made by the person. A maximum penalty of $10,000 applies.

Division 5—Interfering with work records

Subdivision 1—Work records generally

329—Defacing or changing work records etc prohibited

Section 329 states that a person must not deface or alter a work record which he or she knows, or reasonably ought to know, to be correct. A maximum penalty of $10,000 applies for noncompliance.

330—Making entries in someone else's work records prohibited

Section 330 prohibits the making of entries in a work record by persons unless the person is nominated by the other person to make the entry to do so or the person is an authorised officer. A maximum penalty of $10,000 applies for noncompliance.

331—Destruction of particular work records prohibited

Section 331 prohibits the destruction of work records required to be kept under this Part within the period during which they are required to be kept. A maximum penalty of $10,000 applies for noncompliance.

332—Offence to remove pages from written work diary

Section 332 states that it is an offence to remove pages from a written work diary unless legally required to do so. A maximum penalty of $10,000 applies for noncompliance.

Subdivision 2—Approved electronic recording systems

333—Application of Subdivision 2

Section 333 states that Subdivision 2 applies to an approved electronic recording system comprising the whole or part of an electronic work diary.

334—Meaning of *tamper*

Section 334 defines '*tamper*' with an approved electronic recording system. It includes conduct that may interfere with the functioning of the system and is not limited to physical contact with a system's hardware.

335—Person must not tamper with approved electronic recording system

Section 335 makes it an offence for a person to tamper with an approved electronic recording system. Subsection (2) states that a person does not tamper with an approved electronic recording system merely by repairing a system that is malfunctioning or has malfunctioned, or conduct associated with maintaining an approved electronic recording system, or an authorised officer when exercising functions under this Law. A maximum penalty of $10,000 applies for noncompliance.

Subsections (3), (4) and (5) deal with defences that are available to the person charged.

336—Person using approved electronic recording system must not permit tampering with it

Section 336 states that a person using an approved electronic recording system must not permit another person to tamper with it. A maximum penalty of $10,000 applies for noncompliance. Subsection (1) provides examples of persons who use an approved electronic recording system.

Subsections (2) and (3) deal with defences that are available to the person charged.

337—Intelligent access reporting entity must not permit tampering with approved electronic recording system

Section 337 provides that where an electronic recording system comprises, in whole or in part, an approved intelligent transport system, an intelligent transport reporting entity must not permit another person to tamper with the system. A maximum penalty of $10,000 applies for noncompliance.

Subsections (3) and (4) deal with defences available to a person charged.

Division 6—Obtaining written work diary

338—Form of written work diary

Section 338 prescribes the requirements for a written work diary issued by the Regulator.

339—Application for written work diary

Section 339 states that a driver of a fatigue-regulated heavy vehicle must apply to the Regulator for a written work diary and specifies the procedures to be followed, including those applicable to situations where the request for a diary is to replace one previously issued.

340—Issue of written work diary

Section 340 states that the Regulator must issue a written work diary where the driver follows the procedures specified in this and the preceding section and pays the prescribed fee.

Subsections (2) and (3) deal with information required or permitted to be noted by the Regulator at the time of issue.

Division 7—Requirements about records record keeper must make or keep

Note—

In the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland, this Division is numbered Division 6A.

341—Period for which, and way in which, records must be kept

Section 341 specifies the period for which and the way in which records must be kept under Chapter 6. Subsection (4), clarifies that a driver who is also their own record keeper must ensure the record or a copy of the record is kept at the driver's record location in a way that ensures it is readily available to an authorised officer at the record location by the end of the 21-day period after the day the record is made.

Division 8—Approval of electronic recording systems

Note—

In the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland, this Division is numbered Division 7.

Subdivision 1—Approval of electronic recording systems

342—Application for approval of electronic recording system

Section 342 states that a person must apply, in the approved form, to the Regulator for approval of an electronic recording system.

343—Deciding application for approval

Section 343 states that, as soon as is practicable after receiving an application, the Regulator must grant, either conditionally or unconditionally, approval or refuse it.

Subsection (2) limits the authority of the Regulator to approve a system by reference to such considerations as suitability, availability of a mechanism to alert drivers to malfunctions, accuracy, resistance to alteration of the information recorded and capability to reproduce that information.

Subsection (3) requires the Regulator to have regard to approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting approvals.

344—Steps after decision to grant approval

Section 344 deals with the procedures to be followed by the Regulator after granting an approval, including the provision of evidence of the approval.

345—Steps after decision to refuse application

Section 345 states that if the Regulator refuses an application for approval, section 345 requires an information notice to be given to the applicant.

346—Effect of approval

Section 346 provides that an approval extends to any system identical with the one approved.

Subdivision 2—Provisions about electronic work diary labels

347—Placing electronic work diary label on device

Section 347 states that a label evidencing the approval (an *electronic work diary label*) may be placed on an approved electronic recording system but it is an offence to place such a label or any other label on a system that is not approved. Maximum penalties of $10,000 apply for noncompliance.

348—Particular label indicates device is an approved electronic recording system

Section 348 provides that the label is evidence of the approval of the electronic recording system.

349—Effect of electronic work diary label on device

Section 349 states that a person is entitled to rely on the label as indicating that the device to which it is attached has been approved unless the person knows or reasonably ought to know that the contrary is the case.

350—Prohibition on using device as electronic work diary if it is not, and is not a part of, an approved electronic recording system

Section 350 states that a person must not use as an electronic work diary a device that has attached to it, an electronic work diary label if the person knows or reasonably ought to know that the device is not approved.

Subdivision 3—Amendment or cancellation of approval

351—Amendment or cancellation of approval on application

Section 351 provides that the holder of an approval for an electronic recording system may apply to the Regulator for its amendment or cancellation. The Regulator may require further information under subsection (3) but subsection (4) requires the Regulator to decide the application as soon as practicable after receiving it.

Subsections (5) and (6) require the Regulator to provide information to the applicant as to how the application has been determined.

352—Amendment or cancellation of approval on Regulator's initiative

Section 352 states the grounds for amending or cancelling an electronic recording system approval. If the Regulator decides that there is ground for an amendment or cancellation, subsections (2) and (3) require that information be provided to the holder of the approval with opportunity to make representations, which the Regulator is bound to consider before making a decision.

Once a decision has been made, the Regulator must provide the holder with information about it. Subsection (5) provides that the amendment or cancellation takes effect when that information is given or at a later time stated in the information notice.

353—Minor amendment of approval

Section 353 provides the Regulator to make amendments of a minor nature to an electronic recording system approval so as to deal with formal or clerical matters or amendments which do not adversely affect the holder's interests.

354—Requirements if approval amended

Section 354 provides that where the Regulator considers that an amendment that has been made to the conditions of an approval will or is likely to significantly affect the way in which the electronic recording system is to be used, the Regulator may give the holder a written direction to notify the amendment to each person to whom the holder has supplied the electronic recording system. It is an offence not to comply with such a direction. A maximum penalty of $6,000 applies. If the person receiving the direction has supplied the electronic recording system to others, that person must, in turn, notify those others. A maximum penalty of $6,000 applies. Subsection (6) provides that nothing in the section prevents the Regulator from publishing details of the amendment more widely.

355—Requirements if approval cancelled

Section 355 states that if the Regulator notifies the holder of an approval that the approval of the electronic recording system has been cancelled, the holder must remove any electronic work diary label relating to the approval. A maximum penalty of $6,000 applies to a contravention.

Where the Regulator cancels an approval of an electronic recording system, the Regulator may give the holder a written direction to notify the cancellation to each person to whom the holder has supplied the electronic recording system and to require the removal of any electronic work diary label still in the person's possession. It is an offence not to comply with such a direction. A maximum penalty of $6,000 applies.

If the person receiving the direction has supplied the electronic recording system to others, that person must, in turn, notify those others, imposing on them a similar requirement to remove any electronic work diary label still in their possession. A maximum penalty of $6,000 applies for noncompliance.

Subsection (7) provides that nothing in the section prevents the Regulator from publishing details of the cancellation more widely.

Division 9—Exemptions from work diary requirements

Note—

In the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland, this Division is numbered Division 8.

Subdivision 1—Exemption for emergency services

356—Emergency services exemption

Section 356 contains an exemption from Division 2 (which relates to work diary requirements) for a person who is acting for an emergency service in circumstances specified in the section on the way to, during and returning from an *emergency*, as defined in subsection (4).

Subdivision 2—Exemptions by Commonwealth Gazette notice

357—Regulator's power to exempt particular drivers from work diary requirements

Section 357 empowers the Regulator to publish a notice in the Commonwealth Gazette to exempt, for a period up to 3 years, drivers carrying out a class of work from certain electronic work diary requirements which would otherwise apply.

358—Restriction on grant of work diary exemption (notice)

Section 358 states the restrictions on the Regulator in relation to the publication of a notice under section 357. The Regulator must be satisfied of certain matters specified in the section, including safety and the unreasonableness of requiring compliance with the requirements which would otherwise apply, and must have regard to guidelines approved by the responsible Ministers under section 653.

359—Conditions of work diary exemption (notice)

Section 359 states that a notice granting an exemption from work diary requirements may be subject to conditions.

360—Period for which work diary exemption (notice) applies

Section 360 states that a notice granting an exemption from work and rest hours is in force when the notice is published or a later date specified in the notice.

361—Requirements about Commonwealth Gazette notice

Section 361 contains requirements for a notice granting an exemption from work diary requirements.

362—Amendment or cancellation of work diary exemption (notice)

Section 362 provides for the amendment of cancellation of a notice granting an exemption from work diary requirements.

Subdivision 3—Exemptions by permit

363—Regulator's power to exempt driver of fatigue-regulated heavy vehicle from work diary requirement

Section 363 empowers the Regulator to exempt a driver of fatigue-regulated heavy vehicles from work diary requirements that would otherwise apply to the driver.

364—Application for work diary exemption (permit)

Section 364 provides that a driver or employer may apply for an exemption permit in the approved form. It specifies other requirements for an application.

365—Restriction on grant of work diary exemption (permit)

Section 365 imposes restrictions on the Regulator to the grant of a permit under section 363. The Regulator must be satisfied that the driver's English literacy would impede his making the necessary entries and that a nominee can do so. The Regulator must also have regard to guidelines approved by the responsible Ministers under section 653.

366—Conditions of work diary exemption (permit)

Section 366 provides that a permit granting an exemption from work diary requirements may be subject to conditions.

367—Period for which work diary exemption (permit) applies

Section 367 states the period during which a permit granting an exemption from work diary requirements is in force.

368—Permit for work diary exemption (permit) etc

Section 368 states the contents of and, in some cases, information which must accompany a work diary exemption permit.

369—Refusal of application for work diary exemption (permit)

Section 369 states that if the Regulator refuses a permit, section 339 requires an information notice to be provided to the applicant.

370—Amendment or cancellation of work diary exemption (permit) on application

Section 370 deals with the amendment or cancellation of a work diary exemption (permit).

371—Amendment or cancellation of work diary exemption (permit) on Regulator's initiative

Section 371 deals with the grounds for amending or cancelling a work diary exemption (permit) and the procedure to be followed, including opportunity for and consideration of written representations.

372—Minor amendment of work diary exemption (permit)

Section 372 contains a provision for the Regulator to make amendments of a minor nature to a work diary exemption (permit), so as to deal with formal or clerical matters or amendments which do not adversely affect the holder's interests.

373—Return of permit

Section 373 states that where a work diary exemption (permit) is amended or cancelled, the Regulator may require its return. It is an offence not to comply with the request and a maximum penalty of $6,000 applies. The Regulator may issue a replacement permit where a permit has been amended.

374—Replacement of defaced etc permit

Section 374 states that where a permit is defaced, destroyed, lost or stolen, the holder must apply to the Regulator for a replacement. A maximum penalty of $4,000 applies for a contravention of this requirement. Section 344 also deals with the circumstances when the Regulator is to issue such a replacement and the procedure to be followed if a replacement is not issued.

Subdivision 4—Operating under work diary exemption

375—Contravening conditions of work diary exemption

Section 375 states that it is an offence not to comply with a condition of an exemption from work diary requirements. A maximum penalty of $6,000 applies.

376—Keeping relevant document while operating under work diary exemption (notice)

Section 376 provides that where a work diary exemption (notice) requires a driver to keep a document, it is an offence not to do so. A maximum penalty of $3,000 applies. Liability is extended to the driver's employers and others. A person to whom liability is so extended may rely on the defence of the taking of reasonable steps but does not have the benefit of the mistake of fact defence for the offence.

377—Keeping copy of permit while operating under work diary exemption (permit)

Section 377 states that a driver of a fatigue-regulated heavy vehicle operating under a work diary exemption (permit) must keep a copy of the permit in the driver's possession. A maximum penalty of $3,000 applies.

Division 10—Exemptions from fatigue record keeping requirements of Division 3

Note—

In the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland, this Division is numbered Division 8A.

Subdivision 1—Exemptions by Commonwealth Gazette notice

378—Regulator's power to exempt record keepers from fatigue record keeping requirements

Section 378 creates a power on the part of the Regulator to exempt record keepers for drivers of fatigue-regulated heavy vehicles carrying out a class of work from any or all of the fatigue record keeping requirements contained in Division 3 of Chapter 6 Part 4 of the Act for a period of not more than 3 years, through the use of a fatigue record keeping exemption (notice). In exercising the power the Regulator must have regard to any approved guidelines.

379—Conditions of fatigue record keeping exemption (notice)

Section 379 empowers the Regulator to impose a range of conditions on a notice issued under section 378, including but not limited to any conditions prescribed in the national regulations.

380—Period for which fatigue record keeping exemption (notice) applies

Section 380 establishes the period for which a fatigue record keeping exemption (notice) applies, being the time when the Commonwealth Gazette notice for the exemption is published, or such later period as stated in that gazette notice.

381—Requirements about Commonwealth Gazette notice

Section 381 sets out the minimum requirements a gazette notice issued for a fatigue record keeping exemption (notice) must contain and imposes an obligation on the Regulator to publish a copy of the Commonwealth Gazette notice on the Regulator's website.

382—Amendment or cancellation of fatigue record keeping exemption (notice)

Section 382 empowers the Regulator to amend or cancel a fatigue record keeping exemption (notice). The section establishes the grounds on which the notice may be amended or cancelled and specifies the procedure to be followed where the power is intended to be exercised. This procedure imposes public notice requirements and obliges the Regulator to consider representations by affected persons.

Subdivision 2—Exemptions by permit

383—Regulator's power to exempt record keepers from fatigue record keeping requirements

Section 383 empowers the Regulator to exempt a record keeper for one or more drivers of a fatigue-regulated heavy vehicle from any or all of the fatigue record keeping requirements contained in of Division 3 of Chapter 6 Part 4 of the Act for a period of not more than 3 years through a fatigue record keeping exemption (permit).

384—Application for fatigue record keeping exemption (permit)

Section 384 establishes the procedures to be followed in the making of an application for a fatigue record keeping exemption (permit).

385—Conditions of fatigue record keeping exemption (permit)

Section 385 empowers the Regulator to impose a range of conditions on a permit applied for under section 384, including but not limited to any conditions prescribed in the national regulations.

386—Period for which fatigue record keeping exemption (permit) applies

Section 386 stipulates the period for which fatigue record keeping exemption (permit) applies, being the period nominated in the permit itself.

387—Permit for fatigue record keeping exemption (permit) etc

Section 387 requires the Regulator to provide a copy of a record keeping exemption (permit) to the applicant. Where conditions have been imposed on the permit, or it has been granted for less than the period sought by the applicant, the Regulator must also provide an information notice for the decision. This section also stipulates the information the Regulator is required to include in the permit.

388—Refusal of application for fatigue record keeping exemption (permit)

Section 388 requires the Regulator to give the applicant an information notice where the Regulator has decided to refuse an application for a fatigue record keeping exemption (permit).

389—Amendment or cancellation of fatigue record keeping exemption (permit) on application by permit holder

Section 389 enables the holder of a fatigue record keeping exemption (permit) to apply to the Regulator for an amendment or cancellation of the exemption. The section outlines the procedure the applicant must follow in seeking the power to be exercised for their benefit, and the procedures to be followed by the Regulator in granting the application or refusing to grant the application.

390—Amendment or cancellation of fatigue record keeping exemption (permit) on Regulator's initiative

Section 390 empowers the Regulator to amend or cancel a fatigue record keeping exemption (permit) on its own initiative. The section sets out the grounds upon which the power may be exercised as well as the procedures to be followed where the Regulator considers a ground exists to amend or cancel the permit. These procedures include a requirement on the part of the Regulator to notify the holder of the proposed action and invite representations as to why the action should not be taken.

391—Minor amendment of fatigue record keeping exemption (permit)

Section 391 allows the Regulator to make a minor amendment of a fatigue record keeping exemption (permit) for formal or clerical reasons or other reasons that do not adversely affect the holder's interests on the giving of notice to the holder.

392—Return of permit

Section 392 provides that where a person's fatigue record keeping exemption (permit) is amended or cancelled, the Regulator may, by notice given to the person, require the person to return the person's permit for the exemption to the Regulator.

393—Replacement of defaced etc permit

Section 393 requires the holder of a fatigue record keeping exemption (permit) that is defaced, destroyed, lost or stolen to apply to the Regulator for a replacement permit as soon as reasonably practicable after becoming aware of the matter.

Subdivision 3—Exemptions by national regulations

394—Exemptions from provisions of Division 3

Section 394 creates a head of power to make regulations for the exemption of record keepers for drivers of fatigue-regulated heavy vehicles from the requirement to comply with all or stated provisions of Division 3. There is currently no such capacity to allow for 'enduring' exemptions to be prescribed in regulations but it is likely there will be a need for these in future and they already may found in jurisdictional laws (for example, regulation 115E of the *Road Transport (General) Regulation 2005* (NSW) that exempt motor hire, repair etc. companies who drive vehicles locally from record keeping).

Subdivision 4—Other provisions

395—Contravening condition of fatigue record keeping exemption

Section 395 creates an offence for a person who contravenes a condition of a fatigue record keeping exemption.

Division 11—Requirements about odometers

Note—

In the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland, this Division is numbered Division 9.

396—Owner must maintain odometer

Section 396 states that an owner of a fatigue-regulated heavy vehicle must maintain its odometer in accordance with the national regulations. A maximum penalty of $6,000 applies. Subsections (2) and (3) deal with defences to a prosecution.

397—Driver must report malfunctioning odometer

Section 397 states that a driver who suspects an odometer to have malfunctioned must within 2 business days inform each owner of the fatigue-regulated heavy vehicle, his or her employer and the operator. A maximum penalty of $3,000 applies.

Subsection (3) provides that the driver does not commit an offence if another driver has provided the necessary information.

398—What owner must do if odometer malfunctioning

Section 398 provides that an owner must have the odometer examined and brought into working order as soon as practicable after being informed of its malfunction. A maximum penalty of $6,000 applies. Subsections (3) and (4) deal with defences that are available to a person charged with an offence under this section.

399—What employer or operator must do if odometer malfunctioning

Section 399 states that an employer or operator who has been informed of a malfunctioning odometer must neither drive nor permit to be driven the fatigue-related heavy vehicle until the owner has complied with section 398. A maximum penalty of $6,000 applies. Subsections (3) and (4) deal with defences that are available to a person charged with an offence under this section.

Chapter 7—Intelligent access

Part 1—Preliminary

400—Main purposes of Chapter 7

Section 400 describes the main purposes of Chapter 7 as being to ensure the integrity of systems used for compliance with intelligent access conditions and to provide for appropriate collection, keeping and handling of intelligent access information. Sections 402 and 403 respectively define the terms 'intelligence access conditions' and 'intelligent access information'. Subsections (2) and (3) indicate how these purposes are achieved in the Law.

Intelligent access describes a concept by which electronic or technological means are used to monitor whether vehicles or drivers are complying with conditions affecting their use of roads. The concept offers advantages to both participating road users and enforcement personnel because of the streamlined alternative it presents to conventional enforcement. This Chapter provides for the monitoring of intelligent access vehicles (as defined in section 403) and the means of ensuring that the systems needed to effect the monitoring are accurate and secure.

401—What the Intelligent Access Program is

Section 401 introduces the concept of the 'Intelligent Access Program' and explains its purpose. The term has been historically applied to the regulatory activities incorporated in Chapter 7 and is well understood by users in industry and government. The retention of this concept allows for the clearer differentiation between regulatory telematics required as condition of access and non-regulatory systems used for other purposes.

402—Application of Chapter 7

Section 402 provides that Chapter 7 applies if the Regulator has imposed specified conditions, called 'intelligent access conditions' on a mass or dimension exemption or if the use of a heavy vehicle under an HML authority is subject to specified conditions. The term 'mass or dimension exemption' is defined in section 5 and refers to an exemption from a mass or dimension requirement granted by the Regulator under a mass or dimension exemption (notice) under section 117 or a mass or dimension exemption (permit) under section 122. An HML authority relates to an authorisation to operate at higher mass limits than would otherwise apply to the vehicle.

Intelligent access conditions require monitoring of such matters as the areas or roads on which a vehicle travels, the mass of the vehicle when so travelling, the time of travel or the speed at which the vehicle is travelling. The monitoring is undertaken by an intelligent access service provider (as defined in section 403) by means of an intelligent transport system.

The term 'intelligent transport system' is defined in section 5. It relates to a system using electronic or other technology, which may be installed on a vehicle, road or other place to monitor, generate, record, store, display, analyse, transmit or report information about heavy vehicles, drivers, operators or others involved in road transport using a heavy vehicle.

403—Definitions for Chapter 7

Section 403 defines terms used in Chapter 7.

Part 2—Duties and obligations of operators of intelligent access vehicles

404—Offence to give false or misleading information to intelligent access service provider

Section 404 deals with offences in relation to false or misleading information given to an intelligent access service provider by an operator. An intelligent access vehicle, as defined in section 403, is essentially one subject to intelligent access conditions. The vehicle's operator enters into an intelligent access agreement (as defined in section 403) with an intelligent access service provider to monitor compliance with those conditions. The provider is certified for the purpose by Transport Certification Australia Ltd (called TCA in the Law), which is a public company established for the purpose and with a membership comprising relevant Commonwealth, State and Territory agencies.

Subsection (1) makes it an offence for the operator of an intelligent access vehicle to give to an intelligent access service provider with whom the operator has entered into an intelligent access agreement (as defined in section 403) for the vehicle information relevant to the operation of that vehicle which the operator knows or ought reasonably to know is false or misleading. A maximum penalty of $10,000 applies. However, no offence is committed if the operator gives the information in writing and, when giving the information, informs the service provider as best able how the information is false or misleading and, if reasonably possible, gives the correct information in writing.

Subsection (4) deals with the situation where the operator of a heavy vehicle intends to enter into an intelligent access agreement with a service provider. It is an offence for the operator to give to the provider information that the operator knows or ought reasonably to know is false or misleading and intends that the service provider will enter into the agreement in reliance on that information. A maximum penalty of $10,000 applies. However, no offence is committed if the operator gives the information in writing and, when giving the information, informs the service provider as best able how the information is false or misleading and, if reasonably possible, gives the correct information in writing.

Subsection (6) deals with what may be stated in a charge for an offence against either subsection (1) or (4).

405—Advising vehicle driver of collection of information by intelligent access service provider

Section 405 requires the operator of an intelligent access vehicle to take all reasonable steps to give the driver of the vehicle specified information about the collection of information by an intelligent access service provider before the vehicle begins a journey. A maximum penalty of $6,000 applies for noncompliance.

Subsections (2) and (3) deal with how the operator can comply with the requirement.

406—Reporting system malfunctions to Regulator

Section 406 states that an operator of an intelligent access vehicle who becomes aware that a part of an approved intelligent transport system fitted to the vehicle is malfunctioning or has malfunctioned, must report the matter to the Regulator as soon as is practicable. A maximum penalty of $6,000 applies for noncompliance.

The operator is required to keep for a period of at least 4 years written records of such reports, containing specified particulars. A maximum penalty of $6,000 applies for noncompliance.

407—Advising driver of driver's obligations about reporting system malfunctions

Section 407 requires the operator of an intelligent access vehicle to take all reasonable steps to advise the driver, before the vehicle begins a journey, of the driver's obligation under section 408 (relating to reporting malfunctioning of the intelligent access system to the operator) and how the driver can discharge that obligation. Subsections (2) and (3) deal with how the operator can comply with the requirement.

Part 3—Obligations of drivers of intelligent access vehicles

408—Reporting system malfunctions to operator

Section 408 states that the driver of an intelligent access vehicle who becomes aware that a part of an approved intelligent transport system fitted to the vehicle is malfunctioning or has malfunctioned, must report the matter to the vehicle's operator as soon as is practicable. A maximum penalty of $6,000 applies for noncompliance.

The driver is required to keep for a period of at least 4 years written records of such reports, containing specified particulars. A maximum penalty of $6,000 applies for noncompliance.

However, subsection (3) provides that it is not an offence for the driver to fail to report if another driver has reported the malfunction.

Part 4—Powers, duties and obligations of intelligent access service providers

409—Powers to collect and hold intelligent access information

Section 409 authorises an intelligent access service provider to collect and hold information for the purposes of relevant monitoring of an intelligent access vehicle.

410—Collecting intelligent access information

Section 410 imposes on the intelligent access service provider an obligation to take all reasonable steps to ensure that information collected is appropriate, is not excessive, and is accurate, complete and up to date. A maximum penalty of $6,000 applies for noncompliance.

A further obligation is imposed under subsection (2) to take all reasonable steps to ensure that the collection of information does not intrude to an unreasonable extent on the personal privacy of an individual to whom it relates. A maximum penalty of $6,000 applies for noncompliance.

411—Keeping records of intelligent access information collected

Section 411 requires the intelligent access service provider to keep records of the intelligent access information collected in such a way as to allow the records to be conveniently and properly audited by an intelligent access auditor. A maximum penalty of $6,000 applies for noncompliance.

An intelligent access auditor is defined in section 5 as a person engaged by TCA for auditing activities conducted by intelligent access service providers.

412—Protecting intelligent access information

Section 412 imposes obligations on an intelligent access service provider to protect intelligent access information. It states that a provider must take all reasonable steps to protect the information collected from unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure. A maximum penalty of $6,000 applies for noncompliance.

413—Making individuals aware of personal information held

Section 413 states that an intelligent access service provider must make a document setting out its policies as to how it manages personal information publicly available. A maximum penalty of $6,000 applies for noncompliance.

Under subsection (2), the provider must also, if requested by an individual about whom the provider holds personal information, provide specified information to the individual within 28 days after receiving the request if the provider can reasonably do so. A maximum penalty of $6,000 applies for noncompliance.

However, subsection (3) clarifies that the provider is not required to inform the individual of any reports made by the provider to the Regulator under sections 422 or 423 of relevant contraventions or of tampering or suspected tampering with an approved intelligent transport system.

414—Giving individuals access to their personal information

Section 414 imposes an obligation on an intelligent access service provider who holds personal information about an individual to give the individual access to that information upon request, as soon as practicable and without cost. A maximum penalty of $6,000 applies for noncompliance.

Note that personal information is defined in section 5 to mean information or an opinion, including such information forming part of a database (whether true or not and whether recorded in a material form or not) about an individual whose identity is apparent or can reasonably be found out from the information or opinion. However, for it to be personal information under Chapter 7 it must be such personal information that is intelligent access information or otherwise collected for the purposes of Chapter 7, as set out in the definition in section 403.

Subsection (2) clarifies that the intelligent access service provider is not required to give the individual access to any reports made by the provider to the Regulator under sections 422 or 423 of relevant contraventions or of tampering or suspected tampering with an approved intelligent transport system.

415—Correcting errors etc

Section 415 deals with the making of changes to personal information held about an individual upon request by that individual.

Subsection (2) imposes an obligation on the intelligent access service provider to make the requested change if the provider is satisfied that it is appropriate to do so to ensure the accuracy, completeness and currency of the information. A maximum penalty of $6,000 applies for noncompliance.

If the provider is not satisfied as to the appropriateness of the requested change, it may refuse the request. In that case, it must notify the individual of its reasons for refusing and of the individual's right to request the provider to attach to or include with the information the individual's request for a change to the information or a record of it. If the individual makes that request, the provider must do so. A maximum penalty of $6,000 applies for not notifying the individual or not complying with the individual's request to attach the individual's request for a change to the information or a record of it.

416—General restriction on use and disclosure of intelligent access information

Section 416 creates an offence for an intelligent access service provider to use or disclose intelligent access information other than as required or authorised under this Law or another law. A maximum penalty of $6,000 applies.

As well as protection of an individual's personal information, this section also seeks to protect information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system which is commercially sensitive or which relates to an individual's or an operator's business affairs from improper disclosure.

417—Giving intelligent access auditor access to records

Section 417 requires an intelligent access service provider to give an intelligent access auditor access to the records kept for the purposes of this Chapter. A maximum penalty of $6,000 applies for noncompliance.

418—Powers to use and disclose intelligent access information

Section 418 specifies how an intelligent access service provider may use and disclose intelligent access information.

Subsection (1) authorises the service provider to use the information collected for monitoring the relevant monitoring matters for an intelligent access vehicle. The term 'relevant monitoring matters' is defined in section 403 and relates to monitoring of a relevant vehicle's compliance with intelligent access conditions (as defined in section 402).

Subsection (2) authorises the service provider to disclose the information to the Regulator for compliance purposes. The term 'compliance purposes' is defined in section 5 to mean monitoring purposes or investigation purposes (both of which are also defined in section 5).

Subsection (3) authorises the service provider to disclose intelligent access information to—

- an authorised officer, other than a police officer, for *law enforcement purposes* (a defined term in section 5) if so authorised by a warrant issued under this Law; or
- an authorised officer who is a police officer, for law enforcement purposes if so authorised by a warrant issued under this Law or another law.

Subsection (4) defines the circumstances in which an authorised officer or a police officer to whom a disclosure has been made under this section may further use or disclose the information. Those circumstances include law enforcement purposes, or a purpose otherwise authorised under this Law or any other law.

Subject to subsection (6), subsection (5) authorises the service provider to disclose the information to an operator, where that information is about the operator.

Subsection (6) provides that the provider is not required to disclose to operators information relating to noncompliance reports. A 'noncompliance report' is defined in section 403 as a report made by an approved intelligent transport system that reports a relevant contravention for an intelligent access vehicle and/or apparent tampering with or malfunctioning of the system.

Subsection (7) authorises disclosure to other parties of information about an operator if the operator gives written consent and the information does not identify or enable the identification of an individual other than the operator.

Subsection (8) authorises the use and disclosure of personal information about an individual if the individual gives written consent.

The whole of section 418 is, by reason of subsection (9), subject to section 424. That section expressly restricts the disclosure of information about tampering or suspected tampering with an approved intelligent transport system to any entity, other than disclosure to the Regulator.

419—Keeping record of use or disclosure of intelligent access information

Section 419 imposes obligations on an intelligent access service provider who uses or discloses intelligent access information to make a record of the use or disclosure within 7 days. The record must contain the information specified in subsection (2) and must be in a form to enable it to be readily accessible by an intelligent access auditor at the place where it is kept. A maximum penalty of $6,000 applies for noncompliance. Under subsection (3) the record must be retained for at least 2 years, and a maximum penalty of $6,000 applies for noncompliance.

420—Keeping noncompliance report etc

Section 420 states that where an intelligent access system generates a noncompliance report (as defined in section 403), the intelligent access service provider is required to retain a copy of the report and the information relied on to make the report for at least 4 years. A maximum penalty of $6,000 applies for noncompliance.

421—Destroying intelligent access information etc

Section 421 imposes obligations on the intelligent access service provider to destroy specified information, except in the case of a noncompliance report and supporting information that the provider is required to keep under section 419. The provider must take all reasonable steps to destroy intelligent access information within 1 year of its collection. In addition, the provider must take all reasonable steps to destroy a record of the provider's use or disclosure of intelligent access information made under section 419 within 1 year after the expiry of the time that the record is required be kept. A maximum penalty of $6,000 applies for noncompliance.

422—Reporting relevant contraventions to Regulator

Section 422 provides that an intelligent access service provider must give the Regulator a report in the approved form within 7 days of knowing of a relevant contravention for an intelligent access vehicle. The term 'approved form' is defined in section 5 to mean a form approved by the Regulator under section 735. The term 'relevant contravention' is defined in section 403. A maximum penalty of $6,000 applies for noncompliance. Subsection (3) deems the access service provider to know of a relevant contravention if it has been detected by the provider's monitoring equipment.

423—Reporting tampering or suspected tampering with approved intelligent transport system to Regulator

Section 423 imposes obligations on an intelligent access service provider who knows or has reasonable grounds to suspect tampering with an intelligent transport system to report the matter to the Regulator within 7 days and in the approved form (defined in section 5 to mean a form approved by the Regulator under section 671). A maximum penalty of $6,000 applies for noncompliance.

Subsection (2) requires an intelligent access service provider to notify TCA of its knowledge or suspicion that a *back-office intelligent transport system* (a defined term) has been tampered with. A maximum penalty of $6,000 applies for noncompliance.

Subsection (3) clarifies that a provider is not taken to know or have reasonable grounds to suspect tampering merely because the provider has accessed a report made by the system indicating that apparent tampering has been detected electronically or has analysed information generated by the system. This provision recognises that the provider will usually need to check and analyse such reports because there could be malfunctions or other innocent causes to account for what the system has detected or generated.

424—Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system

Section 424 restricts an intelligent access service provider who knows of or has reasonable grounds to suspect tampering with an approved intelligent transport system disclosing that knowledge or suspicion or information from which that knowledge or suspicion could be reasonably inferred. Disclosure of such matters can only be made to the Regulator or TCA, unless such disclosure is authorised under another law. A maximum penalty of $6,000 applies for noncompliance.

As with section 423(3), subsection (2) clarifies that a provider is not taken to know or have reasonable grounds to suspect tampering merely because the provider has accessed a report made by the system indicating that apparent tampering has been detected electronically or has analysed information generated by the system.

Subsection (3) prohibits a provider who has reported to the Regulator under section 423(1) of apparent or suspected tampering from disclosing that the report has been made or information from it could be reasonably inferred that the report has been made. Disclosure of such matters can only be made to the Regulator, unless such disclosure is authorised under another law. A maximum penalty of $6,000 applies for noncompliance.

Subsection (4) prohibits a provider who has reported to TCA under section 423(2) of apparent or suspected tampering from disclosing that the report has been made or information from it could be reasonably inferred that the report has been made. Disclosure of such matters can only be made to the Regulator or TCA, unless such disclosure is authorised under another law. A maximum penalty of $6,000 applies for noncompliance.

Part 5—Functions, powers, duties and obligations of TCA

425—Functions of TCA

Section 425 sets out the functions of TCA as approving intelligent transport systems, certifying service providers, and auditing the activities of those certified. The section also enables TCA to engage individuals, consultants and contractors to assist it in the performance of its audit functions and makes it clear that TCA's functions include cancelling the approval of intelligent transport systems for use by intelligent access service providers and approving and cancelling the certification of intelligent access service providers.

Subsection (2) clarifies that an approval, certification or engagement under subsection (1) may be given or made unconditionally or subject to stated conditions imposed or varied from time to time.

426—Powers to collect and hold intelligent access information

Section 426 authorises TCA to collect and hold intelligent access information for discharging its functions and for law enforcement purposes.

427—Collecting intelligent access information

Section 427 requires TCA to take all reasonable steps to ensure that the information it collects is necessary, is not excessive, and is accurate, complete and up to date.

It must also take all reasonable steps to ensure that the collection of information does not intrude to an unreasonable extent on the personal privacy of an individual to whom the information relates.

428—Protecting intelligent access information collected

Section 428 requires TCA to take all reasonable steps to protect the information collected from unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

429—Making individuals aware of personal information held

Section 429 states that TCA must make a document setting out its policies as to how it manages personal information publicly available.

Under subsection (2), TCA must also, if requested by an individual about whom it holds personal information, provide specified information to the individual within 28 days after receiving the request if it can reasonably do so.

However, subsection (3) clarifies that TCA is not required to inform the individual of any reports made under the following sections:

- 422–being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;
- 423–being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 438–being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 451–being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider; and
- 452–being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

430—Giving individuals access to their personal information

Section 430 states that upon request by an individual in relation to whom TCA holds personal information, TCA must give the individual access to the information without cost or undue delay.

Note that personal information is defined in section 5 to mean information or an opinion, including such information forming part of a database (whether true or not and whether recorded in a material form or not) about an individual whose identity is apparent or can reasonably be found out from the information or opinion. However, for it to be personal information under Chapter 7 it must be such personal information that is intelligent access information or otherwise collected for the purposes of Chapter 7, as set out in the definition in section 403.

However, subsection (3) clarifies that TCA is not required to inform the individual of any reports made under the following sections:

- 422–being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;
- 423–being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 438–being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 451–being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider; and
- 452–being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

431—Correcting errors etc

Section 431 deals with the making of changes to personal information held about an individual upon request by that individual.

Subsection (2) imposes an obligation on TCA to make the requested change if satisfied that it is appropriate to do so to ensure the accuracy, completeness or currency of the information.

Subsections (3) and (4) state that, if TCA is not satisfied as to the appropriateness of the requested change, it may refuse the request. In that case, it must notify the individual of its reasons for refusing and of the individual's right to request TCA to attach to or include with the information the individual's request for a change to the information or a record of it. If the individual makes that request, TCA must do so.

432—General restriction on use and disclosure of intelligent access information

Section 432 creates an offence for TCA to use or disclose intelligent access information other than as required or authorised under this Law or another law. A maximum penalty of $6,000 applies.

As well as protection of an individual's personal information, this section also seeks to protect information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system which is commercially sensitive or which relates to an individual's or an operator's business affairs from improper disclosure.

433—Powers to use and disclose intelligent access information

Section 433 specifies how TCA may use and disclose intelligent access information.

Subsection (1) authorises TCA to use or disclose the information for the discharge of its functions (set out in section 425) or for law enforcement purposes. The term 'law enforcement purposes' is defined in section 403 and refers to the investigation or prosecution of an offence against an Australian road law (defined in section 5 to mean this Law or another law of a State or Territory that regulates the use of vehicles on roads).

Subsection (2) authorises TCA to disclose the information to the Regulator, if satisfied the information is relevant to the Regulator's functions under this Law. The Regulator's functions are set out in section 659.

Subsection (3) authorises TCA to disclose the information to an intelligent access auditor, if satisfied the information is relevant to an intelligent access audit being conducted.

Subsection (4) authorises TCA to disclose the information to the operator of an intelligent access vehicle, where that information is about the operator.

Subsection (5) authorises disclosure to other parties of information about an operator if the operator gives written consent and the information does not identify or enable the identification of an individual other than the operator.

Under subsection (6), TCA may use or disclose information for research purposes if no personal information is involved.

Subsection (7) authorises the use and disclosure of personal information about an individual if the individual gives written consent.

The whole of section 433 is, by reason of subsection (8), subject to section 439. That section expressly restricts the disclosure of information about tampering or suspected tampering with an approved intelligent transport system to any entity, other than disclosure to the Regulator.

434—Restriction about intelligent access information that may be used or disclosed

Section 434 states that TCA must not use or disclose certain information unless it is reasonably satisfied that the information is accurate, complete and up to date.

435—Keeping record of use or disclosure of intelligent access information

Section 435 imposes obligations on TCA, if it uses or discloses intelligent access information, to make a record of the use or disclosure within 7 days. The record must contain the information specified in subsection (2) and must be in a form to enable it to be readily accessible by an authorised officer at the place where it is kept. Under subsection (3) the record must be retained for at least 2 years.

436—Keeping noncompliance reports

Section 436 provides that where TCA receives a noncompliance report, it is required to retain the report for at least 4 years. The term 'noncompliance report' is defined in section 403 to mean a report made by an approved intelligent transport system of a relevant contravention for an intelligent access vehicle and/or apparent tampering with, or malfunctioning of, the system.

437—Destroying intelligent access information or removing personal information from it

Section 437 imposes obligations on TCA to destroy intelligent access information collected by it or to remove personal information from it, except in the case of a noncompliance report that TCA is required to keep under section 436.

Subsection (1) requires TCA to take all reasonable steps to destroy information collected 1 year after collection unless the information is required for law enforcement purposes. If it is required for law enforcement purposes, the obligation to take all reasonable steps to destroy the information applies as soon as practicable after it ceases to be required for those purposes.

Under subsection (2), TCA will be taken to have complied with subsection (1) if it permanently removes from that information anything by which an individual can be identified.

438—Reporting tampering or suspected tampering with, or malfunction or suspected malfunction of, approved intelligent transport system to Regulator

Section 438 states that if TCA knows of or has reasonable grounds to suspect tampering with or malfunctioning of an intelligent transport system fitted to a vehicle, it must report the matter to the Regulator within 7 days. Subsection (2) clarifies that TCA is not taken to know or have reasonable grounds to suspect tampering or malfunctioning merely because it has accessed a report made by the system indicating that apparent tampering or malfunctioning has been detected electronically or because it has analysed information generated by the system. This provision recognises that TCA will usually need to check and analyse such reports because there could be innocent causes to account for what the system has detected or generated.

439—Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system

Section 439 restricts TCA, if it knows of or has reasonable grounds to suspect tampering with an approved intelligent transport system, from disclosing that knowledge or suspicion or information from which that knowledge or suspicion could be reasonably inferred. Disclosure of such matters can only be made to the Regulator, unless such disclosure is authorised under another law.

As with subsection 438(2), subsection (2) clarifies that TCA is not taken to know or have reasonable grounds to suspect tampering merely because it has accessed a report made by the system indicating that apparent tampering has been detected electronically or has analysed information generated by the system.

Subsection (3) prohibits TCA, if it has reported to the Regulator under section 438 of apparent or suspected tampering from disclosing that the report has been made or information from it could be reasonably inferred that the report has been made. Disclosure of such matters can only be made to the Regulator, unless such disclosure is authorised under another law.

Part 6—Powers, duties and obligations of intelligent access auditors

440—Powers to collect and hold intelligent access information

Section 440 sets out that an intelligent access auditor is authorised to collect and hold intelligent access information for conducting an intelligent access audit. An intelligent access auditor is defined in section 5 as a person engaged by TCA for auditing activities conducted by intelligent access service providers. An intelligent access audit is defined in section 403.

441—Collecting intelligent access information

Section 441 imposes on an intelligent access auditor an obligation to take all reasonable steps to ensure that the information it collects is necessary, is not excessive, and is accurate, complete and up to date . A maximum penalty of $6,000 applies for noncompliance.

A further obligation is imposed under subsection (2) to take all reasonable steps to ensure that the collection of information does not intrude to any unreasonable extent on the personal privacy of an individual to whom it relates. A maximum penalty of $6,000 applies for noncompliance.

442—Protecting intelligent access information collected

Section 442 states that an intelligent access auditor must also take all reasonable steps to protect the information collected from unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure. A maximum penalty of $6,000 applies for noncompliance.

443—Making individuals aware of personal information held

Section 443 provides, in subsection (1) that an intelligent access auditor must, if it is reasonably practicable to do so, within 28 days of a request by an individual about whom the auditor holds personal information, give specified information to that individual. A maximum penalty of $6,000 applies for noncompliance.

Subsection (2) clarifies that nothing in subsection (1) requires the auditor to inform the individual of any reports made under the following sections:

- 422–being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;
- 423–being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 438–being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 451–being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider;
- 452–being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

444—Giving individuals access to their personal information

Section 444 imposes an obligation on an intelligent access auditor who holds personal information about an individual to give the individual access to that information upon request, without cost or undue delay. A maximum penalty of $6,000 applies for noncompliance.

Subsection (2) clarifies that nothing in subsection (1) requires the auditor to give the individual access to any reports made under the following sections:

- 422–being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;
- 423–being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 438–being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 451–being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider;
- 452–being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

445—Correcting errors etc

Section 445 deals with the making of changes to personal information held about an individual upon request by that individual.

Subsection (2) imposes an obligation on the intelligent access auditor to make the requested change if the auditor is satisfied that it is appropriate to do so to ensure the accuracy, completeness and currency of the information. A maximum penalty of $6,000 applies for noncompliance.

If the auditor is not satisfied as to the appropriateness of the requested change, it may refuse the request. In that case, it must notify the individual of its reasons for refusing and of the individual's right to request the auditor to attach to or include with the information the individual's request for a change to the information or a record of it. If the individual makes that request, the auditor must do so. A maximum penalty of $6,000 applies for not notifying the individual or not complying with the individual's request to attach the individual's request for a change to the information or a record of it.

446—General restriction on use and disclosure of intelligent access information

Section 446 creates an offence for an intelligent access auditor to use or disclose intelligent access information other than as required or authorised under this Law or another law. A maximum penalty of $6,000 applies.

As well as protection of an individual's personal information, this section also seeks to protect information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system which is commercially sensitive or which relates to an individual's or an operator's business affairs from improper disclosure.

447—Powers to use and disclose intelligent access information

Section 447 specifies how an intelligent access auditor may use and disclose intelligent access information.

Subsection (1) states that an auditor may use and disclose the information collected for the following purposes:

- conducting an intelligent access audit (as defined in section 403);
- reporting to TCA relevant contraventions by an intelligent access vehicle, tampering or suspected tampering with an approved transport system by an operator or by an intelligent access service provider, and a failure by an intelligent access service provider to comply with the provider's obligations under this Chapter.

Subsection (2) authorises the auditor to disclose the information to the Regulator, if satisfied the information is relevant to the Regulator's functions under this Law. The Regulator's functions are set out in section 659.

Subsection (3) authorises the auditor to disclose the information to TCA, if satisfied the information is relevant to TCA's functions under this Chapter. TCA's functions are set out in section 425.

Subsection (4) authorises the auditor to disclose the information to the operator of an intelligent access vehicle, where that information is about the operator.

Subsection (5) authorises the use and disclosure of personal information about an individual if the individual gives written consent.

The whole of section 447 is, by reason of subsection (6), subject to section 453. That section expressly restricts the disclosure of information about tampering or suspected tampering with an approved intelligent transport system to any entity, other than disclosure to the Regulator.

448—Restriction about intelligent access information that may be used or disclosed

Section 448 provides that an auditor must not use or disclose information unless it is reasonably satisfied that the information is accurate, complete and up to date. A maximum penalty of $6,000 applies for noncompliance.

449—Keeping record of use or disclosure of intelligent access information

Section 449 imposes obligations on an intelligent access auditor who uses or discloses intelligent access information to make a record of the use or disclosure within 7 days. The record must contain the information specified in subsection 401(2) and must be in a form to enable it to be readily accessible by an authorised officer at the place where it is kept. A maximum penalty of $6,000 applies for noncompliance. Under subsection 401(3) the record must be retained for at least 2 years, and a maximum penalty of $6,000 applies for noncompliance.

450—Destroying intelligent access information or removing personal information from it

Section 450 states that an intelligent access auditor is required to take all reasonable steps to destroy information held by the auditor if it is no longer required for an intelligent access audit. A maximum penalty of $6,000 applies for noncompliance.

Under subsection (2), an auditor will be taken to have complied with the requirement if the auditor permanently removes anything by which an individual can be identified from the information.

451—Reporting contraventions by intelligent access service providers to TCA

Section 451 requires an auditor who knows or has reasonable grounds to suspect that an intelligent access service provider has contravened an obligation under this Chapter to, as soon as practicable, report the matter to TCA. A maximum penalty of $6,000 applies for noncompliance.

452—Reporting tampering or suspected tampering with approved intelligent transport system to Regulator or TCA

Section 452 imposes an obligation on an auditor knows or has reasonable grounds to suspect tampering with an intelligent transport system to, as soon as practicable, report the matter to the Regulator (where an operator is known or suspected) or to TCA (where an intelligent access service provider is known or suspected). A maximum penalty of $6,000 applies for noncompliance.

453—Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system

Section 453 restricts an intelligent access auditor who knows of or has reasonable grounds to suspect tampering with an approved intelligent transport system disclosing that knowledge or suspicion or information from which that knowledge or suspicion could be reasonably inferred. Disclosure of such matters can only be made to the Regulator or TCA, unless such disclosure is authorised under another law. A maximum penalty of $6,000 applies for noncompliance.

Subsection (2) prohibits an auditor who has reported to the Regulator or TCA under section 452 of apparent or suspected tampering from disclosing that the report has been made or information from it could be reasonably inferred that the report has been made. Disclosure of such matters can only be made to the Regulator or TCA, unless such disclosure is authorised under another law. A maximum penalty of $6,000 applies for noncompliance.

Part 7—Other provisions

454—Offence to tamper with approved intelligent transport system

Section 454 creates an offence, in subsection (1) to tamper with an intelligent transport system with the intention of causing it to fail to generate, record, store, display, analyse, transmit or report intelligent access information or to fail to do so correctly. A penalty of $10,000 applies.

Subsection (2) creates an offence to engage in the same conduct when the person is negligent or reckless rather than intentional in that conduct. A maximum penalty of $8,000 applies.

Subsection (3) provides an extended definition of fail for the purposes of this section.

455—Regulator may issue intelligent access identifiers

Section 455 empowers the Regulator to issue a distinguishing number (which may consist of numbers or letters or a combination of both) for an intelligent access vehicle to identify it as such a vehicle. This is called an intelligent access identifier. An entity that knows the identifier and is able to associate it with a particular individual must treat it as personal information for the purposes of this Chapter or a law relating to privacy.

Chapter 8—Accreditation

Part 1—Preliminary

456—Purpose of Chapter 8

Section 456 states that the purpose of accreditation under this Law is to allow operators of heavy vehicles who implement management systems that achieve the objectives of particular aspects of this Law to be subject to alternative requirements under this Law in relation to those aspects.

457—Definitions for Chapter 8

Section 457 provides definitions for terms used in Chapter 8.

Part 2—Grant of heavy vehicle accreditation

458—Regulator's power to grant heavy vehicle accreditation

Section 458 empowers the Regulator to grant an operator of a heavy vehicle the following types of accreditation for a period of not more than 3 years:

- maintenance management accreditation, exempting the vehicle from the requirement to be inspected before registration of the vehicle may be renewed under this Law;
- mass management accreditation, allowing the vehicle to operate at concessional mass limits or higher mass limits;
- BFM accreditation, allowing drivers of the vehicle to operate under BFM hours (which are defined in section 253);
- AFM accreditation, allowing drivers of the vehicle to operate under AFM hours (which are defined in section 257).

459—Application for heavy vehicle accreditation

Section 459 prescribes formal requirements for making an application for heavy vehicle accreditation.

Subsection (2) deals with the form of the application and what must accompany it. This includes a statement that the applicant has a relevant management system (defined in section 457 to be one relevant to the type of accreditation sought) for ensuring compliance with the relevant standards and business rules (defined in section 457 to be those relevant to the type of accreditation sought, which are approved by the responsible Ministers under section 654) and a statement from an approved auditor (being a person defined in section 457 to be an auditor of a class approved by the responsible Ministers under section 654) that the applicant's management system will ensure compliance with those standards and business rules.

Subsection (3) requires the application to be accompanied by a declaration specifying various matters relevant to whether the applicant or an associate of the applicant has been convicted of specified offences and whether the applicant or an associate of the applicant has had their accreditation amended, suspended or cancelled. The term 'associate' is defined in section 5 so as to include a number of individuals and corporations having a personal, employment or business relationship with the applicant.

Subsection (4) clarifies that the declaration does not need to include information about an amended, suspended or cancelled accreditation that occurred because of a conviction that the operator is not required to declare.

Subsection (5) empowers the Regulator to require additional information or verify information by statutory declaration.

460—Obtaining criminal history information about applicant

Section 460 provides for the obtaining of criminal history information about an application for heavy vehicle accreditation. The Regulator may, by notice, request an applicant for written consent to obtain the applicant's prescribed criminal history (defined in subsection (6) as information about any conviction of the applicant within the previous 5 years of an offence against this Law or a previous corresponding law, as defined in section 5, or an offence involving fraud or dishonesty punishable by imprisonment of 6 months or more). If the consent is not forthcoming or is withdrawn, the application is taken to have been withdrawn. If the written consent is given, the Regulator may request a written report from a police commissioner and such request may include specified particulars. The police commissioner must give the requested report to the Regulator.

461—Restriction on grant of heavy vehicle accreditation

Section 461 limits the Regulator's power to grant a heavy vehicle accreditation.

Under subsection (1) the Regulator may only grant the accreditation if satisfied as to the applicant's systems for operating under the accreditation, ability to comply with the Law and suitability for accreditation. Where the application is for AFM accreditation, the Regulator must also be satisfied that the applicant's AFM fatigue management system and the maximum work times and minimum rest times that are to apply would safely manage the risk of driver fatigue if complied with, that the applicant and drivers operating under the accreditation are likely to consistently and effectively follow the driver fatigue management practices, and the drivers are likely to comply with the maximum work and minimum rest times.

Subsection (2) deals with further matters that the Regulator must be satisfied of or have regard to in setting the maximum work times and minimum rest times that are to apply to drivers operating under AFM accreditation.

Subsection (3) makes it clear that, for an AFM accreditation, the Regulator may set maximum work and minimum rest times different from those sought by the applicant.

Subsection (4)(a) specifies matters the Regulator may consider in deciding an application and subsection (4)(b) requires the Regulator to have regard to the approved guidelines (defined in section 5 as guidelines approved by responsible Ministers under section 653) for granting heavy vehicle accreditations under this Law.

462—Conditions of heavy vehicle accreditation

Section 462 states that a heavy vehicle accreditation is subject to the condition that the applicant must comply with the relevant standards and business rules (approved by the responsible Ministers) and may be subject to such other conditions as the Regulator may impose.

463—Period for which heavy vehicle accreditation applies

Section 463 provides that the heavy vehicle accreditation may be for such period as is stated in the accreditation certificate (issued by the Regulator under section 464), which may be less than the period the applicant sought.

464—Accreditation certificate for heavy vehicle accreditation etc

Section 464 states that if a heavy vehicle accreditation is granted, the Regulator must give the applicant an accreditation certificate containing the information set out in subsection (2). Where the accreditation is subject to conditions not sought by the applicant, granted for a period less than the period the applicant sought, or for AFM accreditation sets maximum work and minimum rest times different from those sought by the applicant, the Regulator must also give the applicant an information notice. An information notice is defined in section 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in section 5) for the decision.

465—Refusal of application for heavy vehicle accreditation

Section 465 states that if the Regulator refuses an application, an information notice must be given to the applicant. An information notice is defined in section 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in section 5) for the decision.

466—Accreditation labels for maintenance management accreditation and mass management accreditation

Section 466 deals with maintenance management accreditation and mass management accreditation. It states that the Regulator must issue an accreditation label for each vehicle currently operating under the relevant accreditation. The requirement of a label for a participating vehicle is an important aid to enforcement because it enables ready recognition of the vehicles that are covered by the relevant accreditation. It also offers significant advantage to operators and drivers in that those vehicles that have an accreditation label attached should not be subjected to the delays associated with maintenance and mass checks that might otherwise occur.

Part 3—Operating under heavy vehicle accreditation

467—Compliance with conditions of BFM accreditation or AFM accreditation

Section 467 requires the holder of a BFM accreditation or AFM accreditation to comply with the conditions of the accreditation. A maximum penalty of $6,000 applies.

468—Driver must carry accreditation details

Section 468 imposes obligations in relation to the driver carrying accreditation details.

Subsection (1) requires the driver of a vehicle operating under a heavy vehicle accreditation to keep in the driver's possession a copy of the accreditation certificate and a document signed by the operator stating that the driver is operating under the accreditation, has been inducted into the operator's relevant management system and meets the requirements applying to drivers under the accreditation (if any). In the case of a driver operating under AFM accreditation, this also includes a document stating the AFM hours (defined in section 257) applying under the accreditation. A maximum penalty of $3,000 applies.

Subsection (3) provides that if an offence against subsection (1) is committed involving the driver, the operator commits an offence, to which a like penalty applies.

Extending liability for the driver's noncompliance to the operator is to encourage those who obtain accreditation benefits to ensure that the accreditation documentation is with the vehicle at all times. This will assist compliance, by ensuring drivers are aware of the accreditation conditions and enabling authorised officers to readily ascertain whether a driver or a vehicle are operating under a relevant accreditation and the conditions applying to the accreditation.

When an operator is charged with an offence under this section that person does not have the benefit of the mistake of fact defence for the offence. However, the operator does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Chapter 10 Part 4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subsections (6) specifies certain matters that are irrelevant in a proceeding and matters that constitute evidence in a proceeding against the operator. It provides that:

- it is irrelevant whether or not the driver has been or will be proceeded against or convicted. Thus it is not necessary to take action against a driver or to obtain a conviction against a driver in order to proceed against the operator;
- evidence a court has convicted a driver is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction;

- evidence of the details in an infringement notice issued for the offence is evidence the offence happened at the time and place, and in the circumstances, stated in the infringement notice.
- These are intended to facilitate proof of the relevant facts.

469—Driver must return particular documents if stops operating under accreditation etc

Section 469 states that where a driver stops operating under a heavy vehicle accreditation or ceases to meet its requirements, the driver must return to the operator, as soon as reasonably practicable, the documentation which the operator provided under section 468(1). A maximum penalty of $4,000 applies.

470—General requirements applying to operator with heavy vehicle accreditation

Section 470 imposes obligations on an operator who holds a heavy vehicle accreditation.

Subsection (1) requires the operator to ensure that each driver who operates under the accreditation has been inducted into the operator's relevant management system and meets at all times the requirements of the accreditation applying to drivers. A maximum penalty of $6,000 applies.

Where the accreditation is an AFM accreditation, subsection (3) also requires the operator to ensure that each driver is informed of the AFM hours (defined in section 257) applying under the accreditation. A maximum penalty of $6,000 applies.

Subsection (4) requires an operator who is the holder of:

- AFM or BFM accreditation to keep a list of the drivers operating under the accreditation; and
- mass management accreditation or maintenance management accreditation to keep a current list of heavy vehicles to which the operator's accreditation relates.

A maximum penalty of $6,000 applies.

Subsection (5) requires the accreditation certificate to be kept while the accreditation is current and the other documents for at least 3 years after their creation. A maximum penalty of $6,000 applies.

Subsection (6) requires that a document must be kept in a way that ensures it is readily accessible by an authorised officer at the place where it is kept, and reasonably capable of being understood by the authorised officer, and capable of being used as evidence. A maximum penalty of $3,000 applies.

If required under subsection (7) by the Regulator by notice to do so, an operator must provide the Regulator with a copy of the list referred to in subsection (4)(b) or (c), together with details of any change to the list, unless the operator has a reasonable excuse. A maximum penalty of $3,000 applies.

Subsection (9) clarifies that the obligations under subsections (4) to (6) do not apply to an accreditation certificate where it is already in the Regulator's possession (unless the Regulator has returned it or given the operator a replacement accreditation certificate) or where it has been defaced, destroyed, lost or stolen (unless the Regulator has given the operator a replacement accreditation certificate).

471—Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation

Section 471 applies where a heavy vehicle accreditation is amended or suspended or is no longer held by an operator.

Subsection (2) requires the operator, as soon as practicable, to notify affected drivers and schedulers. A maximum penalty of $6,000 applies.

A driver who is given such a notice must, as soon as is reasonably practicable, return to the operator any document relevant to the notice given to the driver for the purposes of section 468(1). A maximum penalty of $4,000 applies. Section 468(1) relates to a copy of the accreditation certificate and a document signed by the operator stating that the driver is operating under the accreditation, has been inducted into the operator's relevant management system and meets the requirements applying to drivers under the accreditation (if any). In the case of a driver operating under AFM accreditation, this also includes a document stating the AFM hours (defined in section 257) applying under the accreditation.

Part 4—Amendment or cancellation of heavy vehicle accreditation

472—Amendment or cancellation of heavy vehicle accreditation on application

Section 472 authorises applications to the Regulator for amendment or cancellation of a heavy vehicle accreditation. It includes what must be in an application, when an application must be decided, provisions dealing with the replacement of an accreditation certificate affected by amendment to the accreditation and information to be provided to an applicant about the Regulator's decision.

473—Amendment, suspension or cancellation of heavy vehicle accreditation on Regulator's initiative

Section 473 deals with the amendment, suspension or cancellation of a heavy vehicle accreditation on the Regulator's initiative. Subsection (1) specifies the grounds for the Regulator to amend, suspend or cancel the accreditation. Subsections (2) to (5) deal with the procedures to be followed, including notification requirements and giving the holder an opportunity to make written representations.

474—Immediate suspension of heavy vehicle accreditation

Section 474 empowers the Regulator to immediately suspend a heavy vehicle accreditation where it considers that a ground exists to suspend or cancel an accreditation and believes that it is necessary to immediately suspend the accreditation to prevent or minimise serious harm to public safety (which is defined in section 5).

475—Minor amendment of heavy vehicle accreditation

Section 475 allows minor amendments of a formal or clerical nature or that do not adversely affect the holder's interest. The Regulator must notify the holder of such amendments.

Part 5—Other provisions about heavy vehicle accreditations

476—Return of accreditation certificate

Section 476 states that where the Regulator, by notice, requires a holder of a heavy vehicle accreditation to return an accreditation certificate following amendment, suspension or cancellation of the accreditation, the holder must comply. A maximum penalty of $6,000 applies.

If the accreditation is amended, subsection (3) requires the Regulator to issue a replacement accreditation certificate. Annexure subsection (4) allows the Regulator to retain an accreditation certificate for the duration of a suspension but requires that it, or a replacement certificate if the accreditation has also been amended, be issued as soon as practicable thereafter.

477—Replacement of defaced etc accreditation certificate

Section 477 provides that where an accreditation certificate has been defaced, destroyed, lost or stolen, the holder must apply to the Regulator as soon as reasonably practicable after becoming aware of the matter, for a replacement accreditation certificate. A maximum penalty of $4,000 applies. The Regulator must issue a replacement certificate as soon as practicable, unless the Regulator is not satisfied that the original has been defaced, destroyed, lost or stolen. In that case, the Regulator must give the holder an information notice. An information notice is defined in section 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in section 5) for the decision.

478—Offences relating to auditors

Section 478 creates various offences relating to approved auditors, each of which has a maximum penalty of $10,000. An approved auditor is defined in section 457 to be an auditor of a class approved by the responsible Ministers under section 654.

Subsection (1) provides that a person must not falsely represent that the person is an approved auditor.

Subsection (2) prohibits a person from falsely representing that the person is an auditor of a particular approved class. For example, an auditor approved for the purposes of mass management accreditation is prohibited from representing the person was approved for the purpose of AFM accreditation, when no such approval is held.

Subsection (3) provides that an approved auditor must not falsely represent that the person has audited an operator's relevant management system. Under subsection 459(2), an application for heavy vehicle accreditation must be accompanied by a statement from an approved auditor that the auditor considers the applicant's relevant management system (defined in section 457 to be one relevant to the type of accreditation sought) will ensure compliance with the relevant standards and business rules (defined in section 457 to be those relevant to the type of accreditation sought, which are approved by the responsible Ministers under section 654).

Subsection (4) provides that a person must not falsely represent the opinion of an approved auditor as to an operator's relevant management system.

Subsection (5) inserts a new definition of approved class, to support subsection (2).

Chapter 9—Enforcement

Part 1—General matters about authorised officers

Division 1—Functions

479—Functions of authorised officers

Section 479 sets out the functions of authorised officers to monitor, investigate and enforce compliance with the Law, to monitor or investigate whether an occasion has arisen for the exercise of powers and to facilitate the exercise of powers under the Law.

Division 2—Appointment

480—Application of Division 2

Section 480 clarifies that Division 2 does not apply to an authorised officer who is a police officer. The appointment, qualifications, conditions of appointment, term of office and resignation of police officers is covered by other laws.

481—Appointment and qualifications

Section 481 authorises the Regulator to appoint authorised officers from specified classes of individuals, provided that the Regulator is satisfied that they have the necessary expertise or experience.

482—Appointment conditions and limit on powers

Section 482 empowers an authorised officer's appointment to be subject to conditions (which may restrict the officer's powers) set out in the instrument of appointment, a notice signed by the Regulator given to the officer or the regulations.

483—When office ends

Section 483 provides that an officer's appointment ends if the term for which the appointment was made expires, a condition imposed on the appointment has the effect of ending it or the officer's resignation takes effect under section 484.

484—Resignation

Section 484 specifies that an authorised officer may resign by giving a signed notice to the Regulator. However, subsection (2) clarifies that, where the holding of the office of authorised officer is a condition of the officer holding another office, the person cannot resign as an authorised officer without also resigning the other office. If, for example, a person was appointed as an authorised officer because of his or her duties as a specified class of employee of a statutory body, it would not be competent for the person to resign only as an authorised officer without also resigning as an employee of that specified class.

Division 3—Identity cards

485—Application of Division 3

Section 485 clarifies that Division 3 does not apply to an authorised officer who is a police officer. Police officers are governed by other laws regulating the issue of, production or display of and return of identity cards.

486—Issue of identity card

Section 486 requires the Regulator to issue an identity card to each authorised officer. Subsection (2) deals with the information to be shown on the card. The requirements include a recent photo of the officer and an identifying number. The officer's name does not have to be included, although this will sometimes be evident from the signature, which does need to be included. Subsection (3) allows for a single identity card to be issued for this Law and other purposes.

487—Production or display of identity card

Section 487 states that an authorised officer must produce or display the authority card when exercising a power in a person's presence or, if that is not practicable, as soon as reasonably practicable thereafter.

However, subsection (3) makes it clear that the mere entry into specified places does not necessitate the production or display of the card. Those are:

- a place entered under subsection 495(1)(b) for monitoring purposes, being a place that is open for carrying on a business, otherwise open for entry or required to be open for inspection; or
- a place entered under subsection 497(1)(b) for investigation purposes, being a public place when it is open to the public; or
- a place entered under subsection 497(1)(d) for investigation purposes, being a place that is open for carrying on a business, otherwise open for entry or required to be open for inspection.

488—Return of identity card

Section 488 requires a person to return his or her identity card to the Regulator within 21 days of ceasing to hold office as an authorised officer, unless the person has a reasonable excuse. A maximum penalty of $3,000 applies.

Division 4—Miscellaneous provisions

489—References to exercise of powers

Section 489 states that where a provision in Chapter 9 refers to the exercise of a power by an authorised officer, and does not refer to a specific power, the reference extends to any power exercised under the Chapter or under a warrant, to the extent the powers are relevant.

490—Reference to document includes reference to reproduction from electronic document

Section 490 specifies that a reference to documents in Chapter 9 includes an image or writing produced from and electronic document and not yet produced but capable of being produced from an electronic document.

491—Use of force against persons

Section 491 clarifies that the National Law does not authorise the use of force against any person by an authorised officer, or a person assisting them or acting under their direction in the exercise or purported exercise of a function under the National Law.

This restriction extends to warrants issued under the national Law. An exception is allowed where the application Act for a jurisdiction authorises the use of force against a person by a police officer. This exception is necessary to ensure the existing powers of police officers are not inadvertently constrained as a consequence of enactment of the National Law.

492—Use of force against property

Section 492 clarifies the circumstances in which an authorised officer may use force against property in the exercise of a function under the Law.

The use of force is authorised under various sections of the National Law. For example, in section 498(6) an authorised officer may use force that is reasonably necessary for gaining entry to places mentioned in section 498(2)(c), where the officer reasonably believes there may be evidence at the place of an offence against the National Law that may be concealed or destroyed unless the place is immediately entered and searched. Section 492 provides for this and other sections where the use of force against property is authorised, it is a condition of that use that the use of force is authorised under the application Act. This approach reflects the divergent and irreconcilable law and policy governing this issue in the states and territories.

The restriction does not extend to police officers, who may use force in the circumstances provided in the National Law (and in any other law of the jurisdiction) without further legislative reference.

Subsection (4) provides that the application Act of a jurisdiction may include additional circumstances in which an authorised officer, whether or not a police officer, may use force against property in the exercise or purported exercise of a function under this Chapter. This response is demanded by the conflicting policies applying to these matters in the states and territories.

493—Exercise of functions in relation to light vehicles

Section 493 makes it clear the powers provided under this Chapter are exercisable in relation to light vehicles only where the light vehicle is a pilot vehicle or escort vehicle, or where the exercise is necessary to determine whether the vehicle is a heavy vehicle.

Part 2—Powers in relation to places

Division 1—Preliminary

494—Definitions for Chapter 9 Part 2

Section 494 provides definitions of the terms 'place of business' and 'relevant place'.

A place of business is the place of a responsible person for a heavy vehicle (as defined in section 5) from which business is carried on, a place occupied in connection with the business or the registered office of the corporation if the person is a body corporate.

A relevant place is a place of business (as defined in this section), the relevant garage address of a heavy vehicle, the driver's base (as defined in section 5) or a place where records required to kept under this Law or a heavy vehicle accreditation (as defined in section 5) are located or are required to be located under this Law or a heavy vehicle accreditation. However, it does not include a place used predominantly for residential purposes.

Subsection (2) has the effect, in combination with subsection (1), that the various provisions of the Act that authorise entry of an authorised officer to relevant places to exercise powers, may extend to premises where temporary or casual sleeping or other accommodation is provided there for drivers of heavy vehicles.

Division 2—Entry of relevant places for monitoring purposes

495—Power to enter relevant place

Section 495 enables an authorised officer to enter a relevant place (as defined in section 494) for monitoring purposes. That term is defined in section 5 to mean finding out whether the Law is being complied with.

The officer may enter with the occupier's consent given in accordance with Division 4 (which makes further provision for entry by consent), provided that the officer complies with section 503, which outlines what an officer must tell a person when seeking consent. Subsection (2) provides that, if the power of entry was by consent, it is subject to any conditions attached to that consent. Further, the consent may be withdrawn, at which point the power ceases.

An officer may also enter a relevant place which is open for business, otherwise open for entry or required by the Law to be open for inspection. Subsection (3) specifies that, if such a place is unattended, the officer requires consent or a warrant to enter, unless the officer reasonably believes the place is attended. An authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended.

An officer may not use force to gain entry, but may open unlocked doors, panels and things at a place to gain entry.

496—General powers after entering relevant place

Section 496 states that, having entered a relevant place under this Division, an authorised officer may, for monitoring purposes (as defined in section 5), do the things set out in this section. These include power to inspect the place, a vehicle at the place or a relevant document (as defined in this section) at the place, to copy or take an extract from such a document or from a relevant device (as defined in this section) at the place, including using a photocopier at the place free of charge, and exercising powers in relation to a heavy vehicle at the place which the officer by exercise under section 520 (which makes further provision for the inspection of heavy vehicles for monitoring purposes).

The officer may take onto the place and use any persons, equipment, materials, vehicles or other things to assist the officer.

The officer may open unlocked doors, panels or things and move (but not take away) unlocked or unsealed things.

Subsection (1)(d) recognises that an officer may need to take away something containing a relevant electronic document (as defined in this section) in order to produce an image or writing from that document where it is not practicable to do this at the place which has been entered. In that event, subsection (4) provides that the image or writing must then be produced and the thing returned as soon as practicable.

Where entry is under consent, the officer's powers are subject to the consent conditions.

The officer may not use force to exercise a power under this section.

Division 3—Entry of places for investigation purposes

497—General power to enter places

Section 497 deals with entry into places for investigation purposes. The term 'investigation purposes' is defined in section 5 to mean investigating a contravention or suspected contravention of the Law.

The places that may be entered are wider than those provided by section 495, dealing with power to enter for monitoring purposes. In addition to those places, an authorised officer may enter a public place when it is open to the public, entry is under warrant and, where there is an occupier at the place, section 510 (dealing with procedures for entry under warrant if there is an occupier at the place) has been complied with, and where entry is authorised under section 498 or section 499 (which deal respectively with entry if evidence is reasonably suspected to be at the place and entry where there has been death, injury or property damage).

Subsection (2) clarifies that the requisite belief that triggers the investigation powers in this section can be formed during, after or independently of the monitoring of premises under Division 2 (*Entry of relevant places for monitoring purposes*).

As with section 495(2), subsection (3) provides that, if the power of entry was by consent, it is subject to any conditions attached to that consent. Further, the consent may be withdrawn, at which point the power ceases.

Subsection (4) provides that, where entry is by warrant, force may be used if reasonably necessary and the entry is subject to the terms of the warrant. If there is no warrant, subsection (8) makes it clear that force cannot be used.

Subsection (5) specifies that an officer may not, without consent or a warrant, enter a relevant place which is open for business, otherwise open for entry or required by the Law to be open for inspection where such a place is unattended, unless the officer reasonably believes the place is attended. Also, an authorised officer may not enter such a place, or part of a place, used predominantly for residential purposes.

Subsection (6) provides that an authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended.

The officer may open unlocked doors, panels or things to gain entry.

498—Power to enter a place if evidence suspected to be at the place

Section 498 enables an authorised officer to enter a specified place in the circumstances where the officer reasonably believes that either a heavy vehicle is or has been at a place or transport documentation or journey documentation is at the place and that there may be evidence there of an offence against the Law which may be concealed or destroyed unless the place is immediately entered and searched. The terms 'transport documentation' and 'journey documentation' are defined in section 5 and cover a variety of documents directly or indirectly associated with the transport task.

Where those circumstances exist, subsection (2) provides that the authorised officer may enter the place if it is open for business, is otherwise open for entry or is required to be open for inspection under the Law.

However, subsection (3) denies the power of entry if the place is unattended (unless the officer reasonably believes the place is unattended) or if it is a place or part of a place used predominantly for residential purposes.

Subsection (4) provides that an authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended.

The officer may open unlocked doors, panels or things to gain entry.

An officer may not use force, except if it is reasonably necessary to gain entry to a place that is required by the Law to be open for inspection. Force may not be used against a person.

499—Power to enter particular places if incident involving death, injury or damage

Section 499 sets out specified circumstances when an authorised officer may enter a place without the occupier's consent or a warrant.

Subsection (1) provides that the officer must reasonably believe that all of the following apply—

(a) an incident involving the death of, or injury to, a person or damage to property involves or may have involved a heavy vehicle;

(b) the incident may have involved an offence against this Law;

(c) there is a connection of a kind described in subsection (2) between the place and the heavy vehicle (dealing with the garage address of the vehicle or a vehicle in a combination, the vehicle being located or having been located at the place within the past 72 hours, or the place being otherwise directly or indirectly connected with the vehicle or any part of its equipment or load);

(d) there may be at the place evidence of the offence against this Law that may be concealed or destroyed if the place is not immediately entered and searched.

Subsection (3) restricts the power to enter a place under this section in relation to an incident that involves the death, or injury to, to an authorised officer who is a police officer.

Subsection (4) denies the power of entry if premises are unattended (unless the officer reasonably believes the place is unattended) or if it is a place or part of a place used predominantly for residential purposes.

Subsection (5) provides that an authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended.

The officer may open unlocked doors, panels or things to gain entry.

The officer may not use force under this provision. If force is required, other powers or a warrant must be relied on.

500—General powers after entering a place

Section 500 sets out the powers that an authorised officer may exercise after having entered a place for investigation powers (as defined in section 5). It applies in respect of all the places entered under subsection (1), except for a public place.

The powers are broader than the powers that may be exercised under section 496 when a place is entered for monitoring purposes. They include the power to search the place or a vehicle at the place, to inspect, examine or film any part of the place or anything at the place, to take a thing or sample for examination, to place identifying marks, and to take extracts or make copies or access and download information from a device or other thing at the place. For a heavy vehicle at the place, they include all the powers an officer may exercise under Chapter 9 Part 3 (which set out an extensive range of powers in relation to heavy vehicles).

The officer may take onto the place and use any persons, equipment, materials, vehicles or other things to assist the officer.

The officer may open unlocked doors, panels or things and move (but not take away) unlocked or unsealed things. Force may only be used if the officer has entered under a warrant but only to the extent that it is reasonably necessary.

Subsections (3) and (4) deal with the situation where a thing or sample is taken for examination. They include requirements for a receipt to be given or to be left where it is not practicable to give a receipt.

Subsection (5) allows the use of photocopying equipment at the place free of charge in order to copy a document at the place.

Subsections (6) and (7) deal with the situation where a document or thing containing an electronic document has been taken from the place for copying the document or for producing an image or writing from the electronic document. They require the return of those things as soon as practicable after they have been removed.

Subsection (8) specifies that where entry is under consent, the officer's powers are subject to the consent conditions and where entry is under warrant, the officer's powers are subject to the terms of the warrant.

Subsection (9) clarifies that the requisite belief that triggers the investigation powers in this section can be formed during or after or independently of the monitoring of premises under Division 2 (*Entry of relevant places for monitoring purposes*).

Subsection (10) clarifies that this section does not include a power to search a person.

Division 4—Procedure for entry by consent

501—Application of Division 4

Section 501 states that Division 4 applies where an authorised officer seeks consent to enter a place under section 495(1)(a) or section 497(1)(a), dealing respectively with entry for monitoring purposes and entry for investigation purposes.

502—Incidental entry to ask for access

Section 502 allows for incidental entry, without consent or a warrant, to enable the authorised officer to contact the occupier for the purpose of seeking consent.

503—Matters authorised officer must tell occupier

Section 503 requires that before asking for the consent, the authorised officer must explain why entry is desired, the powers intended to be exercised and the fact that consent may be refused or given subject to conditions and can be withdrawn at any time.

504—Consent acknowledgement

Section 504 sets out requirements for a consent acknowledgment to be signed by an occupant. It includes what the acknowledgement must contain and giving a copy of the signed acknowledgment to the occupier immediately or as soon as practicable.

Subsection (5) ensures that noncompliance by an authorised officer with the requirements in subsection (2) does not automatically invalidate the exercise of the powers (and by extension compromise any compliance action undertaken as a result of the exercise of the powers). To do otherwise may allow a defendant to establish a defence based on the officer's failure to accurately stipulate the power, when the power was available and otherwise legitimately exercised. To prevent injustice, subsections (5)(b) and (6) have been incorporated. Subsection (5) applies where the acknowledgement states some but not all the powers exercised or intended to be exercised to achieve the purpose of the entry and allows the court to determine the validity in any subsequent proceedings.

Subsection (6) provides that, if a question arises in a proceeding about whether the occupier consented and a consent acknowledgement is not produced, the party relying on the consent will need to prove the occupier consented.

505—Procedure for entry with consent

Section 505 establishes the requirements for an authorised officer intending to ask the occupier for consent to enter a place under this Division (otherwise than under section 502). Before asking for consent, an authorised officer other than a police officer, or who is a police officer not in uniform, must produce documentary evidence establishing the officer's appointment under the Act or as a police officer.

Division 5—Entry under warrant

506—Application for warrant

Section 506 provides for an authorised officer to apply to an authorised warrant official (defined in section 5 to mean an entity declared as such an official for the purposes of the Law) for a warrant for a place.

507—Issue of warrant

Section 507 empowers an authorised warrant official to issue a warrant, but only if satisfied there are reasonable grounds for suspecting that there is (or will in the next 72 hours be) at the place something that may constitute evidence of an offence against the Law. Subsection (2) sets out what must appear in the warrant.

508—Application by electronic communication and duplicate warrant

Section 508 provides for applications for warrants and their issue by electronic communication, rather than the procedures under sections 506 and 507, where the matter is urgent or there are other special circumstances, such as the officer's remote location, that make it necessary and appropriate.

509—Defect in relation to a warrant

Section 509 preserves a warrant from invalidity by reason of insubstantial defects in it or the procedures attending its application or issue.

510—Procedure for entry

Section 510 sets out the procedures to be followed by an authorised officer when entering under a warrant. An officer must do or make a reasonable attempt to identify himself or herself, give a copy of the warrant to a person at the place, tell the person that the officer is permitted by the warrant to enter the place and give the person opportunity to allow immediate entry without the use of force.

However, subsection (3) provides that these things do not have to be done where the officer reasonably believes that entry to the place is required to ensure that the execution of the warrant is not frustrated.

Part 3—Powers in relation to heavy vehicles

Division 1—Preliminary

511—Application of Chapter 9 Part 3

Section 511 specifies that Chapter 9 Part 3 applies to a heavy vehicle on a road, in or at a public place, in or at a place owned or occupied by a road authority or by another public authority or in or at a place to which entry is gained by an authorised officer under Chapter 9 Part 2 (which deals with entry to specified places for monitoring or investigation purposes). Unless the contrary is stated in Chapter 9 Part 3, it has no application to heavy vehicles in other places, such as private land which is not entered by consent or by a warrant under Chapter 9 Part 2.

512—Persons who are drivers for this Part

Section 512 extends the definition of driver (defined in section 5), for the purposes of Chapter 9 Part 3, so as to include a person in, or in the vicinity of, the vehicle whom an authorised officer who is present at the scene reasonably believes is the vehicle's driver.

Division 2—Stopping, not moving or not interfering with heavy vehicle etc

513—Direction to stop heavy vehicle to enable exercise of other powers

Section 513 empowers an authorised officer to direct the driver of a heavy vehicle to stop the vehicle so that the officer may exercise a power under this Law, such as a power to enter and inspect under section 520 or to enter and search under section 521.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal) and that the direction can be to stop immediately or at a place indicated.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $6,000 applies.

Section 513 also sets out identification requirements for the officer to follow when directing the vehicle to stop and once the vehicle has stopped.

514—Direction not to move or interfere with heavy vehicle etc to enable exercise of other powers

Section 514 empowers an authorised officer to direct the driver of a heavy vehicle or any other person not to move the vehicle or to interfere with the vehicle or its equipment or load, so that the officer may exercise a power under this Law.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal).

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $6,000 applies.

Division 3—Moving heavy vehicle

515—Definition for Division 3

Section 515 defines the concept of a vehicle being unattended for the purposes of Division 3. It means that there is no-one in or near the vehicle who appears to be the driver. However, it is also extended to include cases where, although a person is in or near the vehicle who appears to be driver, that person is unwilling or not qualified (as defined in section 5) or not fit (as defined in section 5) or not authorised by the operator of the vehicle to drive it or has been directed to leave the vehicle by an authorised officer under section 524.

516—Direction to move heavy vehicle to enable exercise of other powers

Section 516 empowers an authorised officer to direct the driver or operator of a heavy vehicle to move the vehicle or have it moved to a stated reasonable place not more than 30 km away or some other place on its forward journey, so that the officer may exercise a power under this Law.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal).

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $6,000 applies.

Subsection (4) provides an example of a reasonable excuse for not complying with a direction. It would be a defence for the person to prove it was not possible to move the vehicle because it was broken down for a physical reason beyond the person's control and the breakdown could not readily be rectified to enable the direction to be complied within in a reasonable time. However, subsection (4) does not limit what might be a reasonable excuse for not complying with a direction.

517—Direction to move heavy vehicle if causing harm etc

Section 517 deals with the situation where an authorised officer reasonably believes that a stationary heavy vehicle is causing or creating a risk of serious harm to public safety (defined in section 5), the environment or road infrastructure (defined in section 5) or is obstructing or is likely to obstruct traffic. The officer may direct the driver or operator to move the vehicle or have it moved or to do or have something else done in order to avoid the harm or obstruction.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal for the driver and by electronic communication for the operator).

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $6,000 applies.

Subsection (5) provides an example of a reasonable excuse for not complying with a direction. It would be a defence for the person to prove it was not possible to move the vehicle because it was broken down for a physical reason beyond the person's control and the breakdown could not readily be rectified to enable the direction to be complied within in a reasonable time. However, subsection (5) does not limit what might be a reasonable excuse for not complying with a direction.

518—Moving unattended heavy vehicle on road to exercise another power

Section 518 provides that where an authorised officer reasonably believes that a vehicle is unattended (as defined in section 515) and that it is reasonably necessary for a vehicle to be moved in order for the officer to exercise a power that he or she intends to exercise under the Law, the officer may move the vehicle or authorise somebody else to do so. However, neither the officer nor the other person may move the vehicle if not qualified (as defined in section 5) or not fit (as defined in section 5) to drive it.

The officer or assistant may open unlocked doors and panels and things in the vehicle and may use such force as is reasonably necessary but may not use force against a person.

519—Moving unattended heavy vehicle on road if causing harm etc

Section 519 deals with the situation where an authorised officer reasonably believes that an unattended heavy vehicle is causing or creating an imminent risk of serious harm to public safety (defined in section 5), the environment or road infrastructure (defined in section 5) or is obstructing or is likely to obstruct traffic. The officer may move or authorise somebody else to move the vehicle in order to avoid the harm or obstruction. The officer may do this even if the officer or other person is not qualified (defined in section 5) to drive it, if the officer reasonably believe that nobody else in the vicinity is more capable of driving it and fit and willing to drive it.

The officer or assistant may use such force as is reasonably necessary other than force against a person.

Division 4—Inspecting and searching heavy vehicles

520—Power to enter and inspect heavy vehicles for monitoring purposes

Section 520 empowers an authorised officer to enter and inspect a heavy vehicle for monitoring purposes. That term is defined in section 5 to mean finding out whether the Law is being complied with. The types of things an officer may do include inspecting, examining or filming any part of the vehicle and its equipment or load, inspecting a relevant document (as defined in this section) in the vehicle, copying or taking an extract from such a document or from an electronic relevant document (as defined in this section).

The officer may open unlocked doors, panels or things in or on the vehicle and may move (but not take away) unlocked or unsealed things.

The officer may not use force to exercise a power under this section.

Subsection (2)(f) recognises that an officer may need to take an extract of relevant information (as defined in this section) from a device or other thing in the vehicle in order to produce an image or writing from that document. In that event, subsection (5) provides that the image or writing must be produced and the thing returned to the vehicle as soon as practicable.

521—Power to enter and search heavy vehicle involved, or suspected to be involved, in an offence etc

Section 521 empowers an authorised officer to enter and search a heavy vehicle, using force or help, for investigation purposes. The term 'investigation purposes' is defined in section 5 to mean investigating a contravention or suspected contravention of the Law.

The officer may use this power if he or she reasonably believes that a vehicle is being or has been used to commit an offence against the Law or that the vehicle or something in it may provide evidence of such an offence or that the vehicle has been or may have been involved in an incident involving death, injury or property damage. However, the section does not authorise an authorised officer to exercise a power in relation to an incident that involves the death of, or injury to, a person unless the authorised officer is a police officer.

The powers that the officer may exercise are broader than the powers specified under section 520 when a vehicle is entered for monitoring purposes. They include the power to search, inspect, examine or film any part of the vehicle and its goods, to search for a document, device or other thing in the vehicle and to take a copy of an extract from a document, device or other thing in the vehicle.

The officer may take into or onto the vehicle any persons, equipment or materials to assist the officer.

Subsection (3) recognises that an officer may need to take a document in the vehicle somewhere else to copy it or to take a thing containing an electronic document from the vehicle to produce an image or writing from that document. In that event, subsections (4) and (5) provide that document may be copied and returned and the image or writing must be produced and the thing returned to the vehicle as soon as practicable.

Subsection (6) clarifies that the section does not authorise an authorised officer to exercise a power under this section in relation to an incident that involves the death of, or injury to, a person unless the authorised officer is a police officer.

Subsection (7) clarifies that the power to search under this section does not include a power to search a person.

522—Power to order presentation of heavy vehicles for inspection

Section 522 establishes the power for an authorised officer to order the presentation of a heavy vehicle for inspection. The exercise of the power is limited to circumstances where the officer believes the vehicle has within the previous 30 days been defective, is of a kind used by a driver other than in compliance with the Act, or does not comply with the law. The power is exercisable by the service of a statutory notice on the person in charge of the heavy vehicle, its registered operator, or its owner. The section makes provision for a person to request a change in the place or time of inspection. Failure by the recipient to produce or allow a heavy vehicle to be inspected as required under this section constitutes an offence and is a ground for suspending the registration of the vehicle.

Division 5—Other powers in relation to all heavy vehicles

523—Starting or stopping heavy vehicle engine

Section 523 enables an authorised officer to enter a vehicle and start or stop a vehicle's engine or authorise somebody else to do so to enable the officer to exercise a power under this Law (but not to drive the

vehicle). The officer may exercise this power if a power does not comply with a requirement under section 577 to start or stop the engine, or if there is no responsible person for the vehicle (defined in section 5) available or willing to start or stop the engine, or if the officer reasonably believes that there is no-one else in the vicinity who is more capable of starting or stopping the engine and who is fit and willing to do so.

The officer or assistant may use such force as is reasonably necessary other than force against a person.

524—Direction to leave heavy vehicle

Section 524 empowers an authorised officer to direct the driver of a heavy vehicle to vacate the driver's seat, to leave the vehicle or not to occupy the driver's seat or enter the vehicle until permitted by the officer. The officer may also direct anybody accompanying the driver to leave the vehicle or not to enter the vehicle until permitted by the officer.

The officer may exercise this power if:

- the driver fails to comply with a direction given under Chapter 9;
- the officer reasonably believes that the driver is not qualified (as defined in section 5), fit (as defined in section 5) or authorised by the operator to drive the vehicle so as to comply with the direction;
- the authorised officer reasonably believes it would be unsafe to inspect or search a heavy vehicle or any part of it or any part of its equipment or load while the driver occupies the driver's seat or is in the vehicle or another person accompanying the driver is in the vehicle.

A direction may be given orally or in any other way, such as a sign or electronic or other signal.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $6,000 applies.

When giving the direction, the officer must also give an offence warning unless it is not practicable to do so because of the way the direction is given. The term 'offence warning' is defined in section 5 as a warning that it is an offence not to comply with the direction or requirement, unless the person has a reasonable excuse.

Division 6—Further powers in relation to heavy vehicles concerning heavy vehicle standards

525—Definitions for Division 6

Section 525 defines certain terms used in Division 6.

526—Issue of vehicle defect notice

Section 526 states that if an authorised officer who has inspected a heavy vehicle reasonably believes it to be a defective vehicle and that its use on the road presents a safety risk (defined in section 5), the officer may issue a vehicle defect notice. The term 'defective vehicle' is defined in section 525 to mean a vehicle that contravenes the heavy vehicle standards (defined in section 5) or has a part which is either not functioning or has so deteriorated that it cannot reasonably be relied on to function as intended.

The notice may be a major defect notice or a minor defect notice, the former applying where the safety risk is imminent and serious and the latter applying in the case of other safety risk.

Subsection (3) requires the defect notice to be handed to the driver but, if the driver is not present, it is to be attached to the vehicle.

Where the notice is given to the driver, subsection (4) requires the driver, as soon as practicable, to pass it on to the operator. A maximum penalty of $3,000 applies.

Subsection (5) provides that the operator of a heavy vehicle, that is the subject of a defect notice, may request permission for the vehicle to be used on a road during a period stated in the permission. The request may only be granted where the conditions in subsection (5)(a) to (d) have been met. The permission may be extended under subsection (6) on the same grounds. Subsection (7) stipulates the form of the permission or its extension and empowers the officer to impose reasonable conditions on it.

527—Requirements about vehicle defect notice

Section 527 sets out the contents of a vehicle defect notice, including a statement that the vehicle is a defective heavy vehicle and the details of how it is defective. A major defect notice must include a statement that the vehicle is not to be used on a road other than to move it to a location and in a way stated in the notice. A minor defect notice must include a statement that the vehicle is not to be used on a road after a time stated in the notice unless the defect is rectified.

Subsection (2) empowers an authorised officer to impose conditions the officer considers appropriate for the use of the vehicle on a road on the use of the defective heavy vehicle. The breadth of the conditions that may be imposed is a consequence of the diversity of the particular defect/s that may be involved.

528—Defective vehicle labels

Section 528 states that if a major defect notice is issued, the authorised officer must attach a vehicle defect label to the vehicle. If a minor defect notice is issued, the authorised officer may attach a defective vehicle label to the vehicle. Attaching a defective vehicle label is mandatory for major defect notices but for minor defect notices it is at the discretion of the authorised officer, reflecting existing jurisdictional practice for light and heavy vehicles.

Subsection (3) creates an offence for a person to remove, deface or otherwise interfere with such a label. A maximum penalty of $3,000 applies.

The offence does not apply where the Regulator arranges for the label to be removed following clearance of the notice under section 530(2) or following withdrawal of the notice under subsection 531(4).

529—Using defective heavy vehicles contrary to defect vehicle notice

Section 529 creates an offence for a person to use, or permit to be used, on a road a heavy vehicle in contravention of a vehicle defect notice. A maximum penalty of $3,000 applies.

The inclusion of the phrase 'permit to be used' in section 529 extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle is not used in breach of a vehicle defect notice.

530—Clearance of vehicle defect notices

Section 530 provides that a vehicle defect notice may be cleared where the Regulator is satisfied that the vehicle is no longer defective or receives from an authorised officer a notice to that effect.

531—Amendment or withdrawal of vehicle defect notices

Section 531 deals with the amendment or withdrawal of a vehicle defect notice. If a major defect notice is withdrawn, the Regulator must arrange for the defective vehicle label to be removed.

If a major defect notice is cleared, the Regulator must arrange for the defective vehicle label to be removed.

Subsection (1) provides that a vehicle defect notice issued in this jurisdiction by an authorised officer who is a police officer may be amended or withdrawn by any authorised officer who is:

- a police officer of this jurisdiction;
- a police officer of another jurisdiction if the Application Act of this jurisdiction permits this to be done;
- a class of authorised officers approved by the Regulator for the purposes of this subsection.

Subsection (2) enables the Regulator to approve a class of authorised officers who may amend or withdraw a vehicle defect notice issued by any other authorised officer who is not a police officer. This is intended to assist in the delivery of services in regional areas, in particular.

Subsections (1) and (2) empower the Regulator and the participating jurisdictions to transparently address potential inconsistencies in the training and capabilities of police officers and other authorised officers in this area.

Division 7—Further powers in relation to heavy vehicles concerning mass, dimension or loading requirements

532—Application of Division 7

Section 532 states that Division 7 applies to all heavy vehicles and not just those subject to directions or requirements given or made under another provision of Chapter 9. The powers in Division 7 assist in the enforcement of the matters regulated under Chapter 4.

533—Powers for minor risk breach of mass, dimension or loading requirement

Section 533 provides that where an authorised officer reasonably believes that a heavy vehicle is subject to a minor risk breach of mass, dimension or loading requirements but not also the subject of a substantial risk breach or severe risk breach, the officer may direct the driver or operator to rectify the stated breaches or to move or cause the vehicle to be moved to a stated place and not thereafter to move it or cause it to be moved until the stated breaches are rectified.

Chapter 4 defines the terms 'dimension requirement', 'loading requirement', 'mass requirement', 'minor risk breach', 'substantial risk breach' and 'severe risk breach'.

Subsection (3) specifies that, if the officer directs the vehicle to be moved to a stated place, it must be a place the officer reasonably believes to be suitable and it must be within a 30 km radius from where the vehicle is located when the direction is given or within a 30 km radius from any point on the vehicle's forward journey.

Subsection (4) provides that an authorised officer may authorise the driver or operator to continue a journey if there has been a minor risk breach of a mass, dimension or loading requirement relating to the vehicle. The section constrains the authorisation to circumstances where the officer has not issued a direction under subsection (2) and reasonably believes the driver or operator is not, or is no longer, subject to a direction for the rectification of the breach.

Subsection (5) requires a direction under subsection (2) to be in writing (and given with or without conditions) but subsection (6) provides for an oral direction if the moving of the vehicle is carried out in the presence or under the supervision of an authorised officer.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $10,000 applies.

534—Powers for substantial risk breach of mass, dimension or loading requirement

Section 534 specifies that where an authorised officer reasonably believes that a heavy vehicle is subject to a substantial risk breach of mass, dimension or loading requirements but not also the subject of a severe risk breach, the officer must direct the driver or operator not to move the vehicle or cause it to be moved until the stated breaches have been rectified or to move or cause it to be moved to a stated reasonable place and not thereafter to move it or cause it to be moved until the stated breaches are rectified.

Subsection (3) requires the direction to be in writing (and given with or without conditions) but subsection (4) provides for an oral direction if the moving of the vehicle is carried out in the presence or under the supervision of an authorised officer.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $10,000 applies.

An important distinction between section 533 and section 534 is that, in the former, the officer has a discretion whether or not to give the direction whereas, in the latter, the direction must be given. This is because of the greater seriousness attached to a substantial risk breach and the need to ensure that stated breaches are rectified.

535—Powers for severe risk breach of mass, dimension or loading requirement

Section 535 states that where an authorised officer reasonably believes that a heavy vehicle is subject to a severe risk breach of mass, dimension or loading requirements, the officer must direct the driver or operator not to move the vehicle until the stated breaches are rectified or (if the vehicle poses a risk to public safety, as defined in section 5, or an appreciable risk to the environment, road infrastructure or public amenity, as defined in section 5) to move it or cause it to be moved to the nearest stated safe place (as defined in this section) and not to move it thereafter until the stated breaches have been rectified.

Subsection (3) requires the direction to be in writing (and given with or without conditions) but subsection (4) provides for an oral direction if the moving of the vehicle is carried out in the presence or under the supervision of an authorised officer.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $10,000 applies.

536—Operation of direction in relation to a combination

Section 536 provides that where a direction is given under this Division, a component vehicle of a combination which does not itself contravene a mass, dimension or loading requirement may be separately driven or moved if it is otherwise lawful for it to be driven or moved and if a condition of the direction does not prevent it.

Division 8—Further powers in relation to fatigue-regulated heavy vehicles

537—Application of Division 8

Section 537 states that Division 8 applies to all fatigue-regulated heavy vehicles and not just those subject to directions or requirements given or made under another provision of Chapter 9. The term 'fatigue-regulated heavy vehicle' is defined in section 7. The powers in Division 8 assist in the enforcement of the matters regulated under Chapter 6.

538—Requiring driver to rest for contravention of maximum work requirement

Section 538 applies where an authorised officer reasonably believes that a driver of a fatigue-regulated heavy vehicle has contravened a maximum work requirement under Chapter 6 and is or may be impaired by fatigue.

Subsection (2) provides that, if the officer reasonably believes the contravention is a critical risk breach or a severe risk breach, the officer must by notice require the driver to immediately rest for a stated period and thereafter to work for a stated shorter time to compensate for the excess period worked.

Subsection (3) provides that, if the officer reasonably believes the contravention is a substantial risk breach or a minor risk breach, the officer may by notice impose the same requirement.

The distinction between subsection (2) and subsection (3) is that, in the former, the officer is under a duty to impose the requirement whereas, in the latter, the officer has a discretion whether or not to impose it. This is because of the greater seriousness attached to a critical risk breach or a severe risk breach and the need to ensure that the driver takes the steps necessary to compensate for the excess period worked.

The terms 'critical risk breach' 'severe risk breach', 'substantial risk breach' and 'minor risk breach' are defined in section 222.

Subsection (4) requires an authorised officer, who has issued a requirement under subsection (2) or (3) for a contravention of a maximum work requirement, to record the details of the requirement in the driver's work diary.

539—Requiring driver to rest for contravention of minimum rest requirement

Section 539 applies where an authorised officer reasonably believes that a driver of a fatigue-regulated heavy vehicle has contravened a minimum rest requirement under Chapter 6 and is or may be impaired by fatigue.

Subsection (2) provides that, if the officer reasonably believes the contravention is a critical risk breach or a severe risk breach, the officer must by notice require the driver to immediately rest for a stated period to compensate

for the shortfall in rest and, if the driver has failed to have 1 or more night rest breaks required under a minimum rest requirement, the officer must also direct the driver to take 1 or more night breaks to compensate for the shortfall. The term 'night rest break' is defined in section 5.

Subsection (3) provides that, if the officer reasonably believes the contravention is a substantial risk breach or a minor risk breach, the officer may by notice impose the same requirement. The distinction between subsection (2) and subsection (3) is that, in the former, the officer is under a duty to impose the requirement whereas, in the latter, the officer has a discretion whether or not to impose it. This is because of the greater seriousness attached to a critical risk breach or a severe risk breach and the need to ensure that the driver takes the steps necessary to compensate for the shortfall in rest.

Subsection (4) requires an authorised officer, who has issued a requirement under subsection (2) or (3) for a contravention of a minimum rest requirement, to record the details of the requirement in the driver's work diary.

540—Requiring driver to stop working if impaired by fatigue

Section 540 applies if an authorised officer reasonably believes the driver of a fatigue-regulated heavy vehicle is impaired by fatigue.

The officer may by notice require the driver to immediately stop work and not work again for a stated period. Under subsection (3) this must be a reasonable period having regard to the matters prescribed in the national regulations.

Subsection (4) imposes a requirement on an authorised officer who has issued a requirement under subsection (2)(a) to record the details of the requirement in the driver's work diary.

Where the officer has observed the driver driving in a way the officer believes on reasonable grounds is dangerous, the officer may also by notice require the driver to immediately stop being in control of the vehicle. If such a notice is given, the officer may under subsection (5) authorise somebody else to move the vehicle to a suitable rest place for fatigue-regulated heavy vehicles (as defined in section 5) if that person is qualified and fit to do so.

Subsection (6) authorises the making of regulations to prescribe matters which an officer or a court must or may have regard to in determining whether a driver was impaired by fatigue for the purposes of this section.

541—Requiring driver to stop working if work diary not produced or unreliable

Section 541 empowers an authorised officer by notice to require the driver to immediately stop work and not to work again for a stated period up to 24 hours.

The officer may exercise this power if the officer has asked the driver to produce his or her work diary under section 568 and either the driver has failed to produce the work diary without a reasonable excuse or the driver produces a document the officer reasonably believes is not the work diary the driver is required to keep or the officer reasonably believes that the diary cannot be relied on as an accurate record.

542—Compliance with requirement under this Division

Section 542 creates an offence for a person given a notice under this Division to not comply with the notice, unless the person has a reasonable excuse. A maximum penalty of $10,000 applies.

Subsection (2) empowers an authorised officer who has given a notice under section 538, 539 or 541 to allow deferral of compliance for up to 1 hour if the officer reasonably believes it is necessary to allow the driver to drive to the nearest suitable rest place for fatigue-regulated heavy vehicles (as defined in section 5) and it is reasonably safe to do so or if the officer reasonably believes it is necessary to allow the driver time to attend to or secure the load.

Part 4—Other powers

Division 1—Powers relating to equipment

543—Power to use equipment to access information

Section 543 states that an authorised officer or a person helping the officer may operate equipment at a place or a vehicle entered under Chapter 9 so as to read information held on a storage device such as a disc or tape where it is reasonably believed to be necessary for checking compliance with the Law. However, this can only be done if the person reasonably believes the operation can be carried out without damaging the equipment.

544—Power to use equipment to examine or process a thing

Section 544 provides that an authorised officer or a person helping the officer may operate equipment at a place or a vehicle entered under Chapter 9 to examine or process a thing so as to determine whether it should be seized.

In the case of a heavy vehicle entered under section 521, dealing with the power to enter and search a heavy vehicle for investigation purposes (defined in section 5), the person may operate equipment in the vehicle to examine or process the thing or move it to another place for examination and processing if not practicable to do it where it is found or if the driver gives written consent.

However, these things can only be done if the person reasonably believes the equipment is suitable and the operation can be carried out without damaging the equipment or thing.

Division 2—Seizure and embargo notices

Subdivision 1—Power to seize

545—Seizing evidence at a place that may be entered without consent or warrant

Section 545 states that an authorised officer who enters a place the officer may enter under Chapter 9 without the consent of its occupier and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Law.

546—Seizing evidence at a place that may be entered only with consent or warrant

Section 546 deals with the seizure of things from a place that the authorised officer has entered with the consent of the occupier or under a warrant.

If the officer has entered with the occupier's consent, the officer may seize a thing which he or she reasonably believes is evidence of an offence against the Law and its seizure is consistent with the purpose of entry as explained to the occupier when obtaining consent.

If the officer has entered under a warrant, the officer may seize the evidence for which the warrant was issued.

In addition, the officer may seize anything else at a place entered with the consent of the occupier or under a warrant if the officer reasonably believes the thing is evidence of an offence against the Law and the seizure is necessary to prevent its hiding, loss or destruction or its use to continue or repeat the offence.

547—Seizing evidence in a heavy vehicle entered under section 521

Section 547 authorises seizure from a heavy vehicle entered under section 521 of a thing that the authorised officer reasonably believes is evidence of an offence against the Law. Section 521 deals with the power to enter and search a heavy vehicle for investigation purposes (defined in section 5).

548—Additional seizure power relating to information stored electronically

Section 548 provides that where an authorised officer or a person helping the officer finds at a place or in a heavy vehicle a storage device such as a disc or tape containing which the officer reasonably believes is relevant to deciding whether the Law has been contravened, this section authorises putting the information in documentary form and seizing the document, copying the information to another storage device and seizing that device or seizing the original storage device and any equipment by which its contents can be read if it is not practicable to put it into documentary form or copy it to another storage device and it is reasonably believed that the device and equipment can be seized without damage.

549—Seizing thing or sample taken for examination under section 500

Section 549 deals with the situation where a thing or sample has been taken for examination under subsection 500(1)(c). Section 500 deals with the general powers exercisable by an authorised officer who enters a place (other than a public place) for investigation purposes (as defined in section 5).

If the officer, having examined the thing or sample, reasonably believes it to be evidence of an offence against the Law, he or she may seize it if such seizure would have been authorised by sections 545 to 548 at the time it was taken had the officer formed the reasonable belief at that earlier time.

550—Seizure of property subject to security

Section 550 allows an authorised officer to seize a thing and exercise powers relating to it, even if a third party holds a lien or other security over it. However, the seizure does not affect the security holder's claim against a person other than the officer or a person helping the officer.

551—Seizure of number plates

Section 551 empowers an authorised officer to seize a number plate for a heavy vehicle where the officer reasonably believes any of the matters outlined in subsections (2) and (3). Subsection (4) empowers the officer to retain the number plates for the period necessary to facilitate the investigation of offences against the Law or another applicable law. Subsection (5) creates a head of power for determining an appropriate authority to which the number plates must be returned, and the making of guidelines to similar effect.

552—Restriction on power to seize certain things

Section 552 restricts the seizure of a heavy vehicle, a thing, or a thing of a class, prescribed by the national regulations unless the Application Act of the participating jurisdiction in which the vehicle or thing is located provides that the heavy vehicle or thing can be impounded or seized.

Concerns as to the potential for this power to be used to unjustly deprive an individual of their property is mitigated by *Division 3—Forfeiture and transfer*.

Subdivision 2—Powers to support seizure

553—Requirement of person in control of thing to be seized

Section 553 empowers an authorised officer, to enable a thing to be seized, to require a person in control of it to take the thing to a stated reasonable place by a stated reasonable time and, if necessary, to remain there with it for a stated reasonable period.

The requirement must be made (or confirmed) in writing or, if not practicable, may be given orally and later confirmed in writing.

A person so required must comply unless there is a reasonable excuse. A maximum penalty of $10,000 applies.

Subdivision 3—Safeguards for seized things or samples

554—Receipt for seized thing or sample

Section 554 sets out procedures to be followed where a thing or sample has been seized under Chapter 9 relating to the giving of a receipt for the item seized. However, this is not required where it is impracticable or unreasonable because of the condition, nature and value of the thing or sample or, in the case of a thing that has been seized other than under section 549, the officer reasonably believes there is nobody apparently in possession of the thing or the thing has been abandoned. Section 549 deals with the subsequent seizure of a thing that was taken for examination by an authorised officer who entered a place (other than a public place) for investigation purposes (as defined in section 5).

555—Access to seized thing

Section 555 states that until a thing that has been seized has been forfeited or returned, its owner must be allowed access to it to inspect it and (for documentation) to copy it unless that is not practicable or reasonable.

556—Return of seized things or samples

Section 556 provides for the return of a thing or sample that has been seized.

An authorised officer must be satisfied that the thing or sample is not or no longer required as evidence of an offence against this Law and that the continued retention of the thing or sample is not necessary to prevent the thing or sample being used to continue, or repeat, an offence against this Law.

An authorised officer must also be satisfied that the thing or sample is not subject to a dispute as to ownership, which would be appropriately resolved by making an application to the relevant tribunal or court for the return of the thing or sample.

The section provides for the seized thing or sample to be returned to the person from whom it was seized, or the owner if that person is not entitled to possess it.

Subsections (3) and (4) provide for application to the relevant tribunal or court for the return of a seized thing or sample, as well as the circumstances in which the relevant tribunal or court may make an order for return. Subsection (5) provides a regulation-making power for procedures to be followed—including notification of the Regulator—when an application is made.

This section does not prevent the return of a thing or sample to its owner if the Regulator considers there is no reason for its continued retention.

Subdivision 4—Embargo notices

557—Power to issue embargo notice

Section 557 states that where something that has been seized cannot readily be removed, an authorised officer may issue an embargo notice prohibiting any dealing with the thing or any part of it without the written consent of the Regulator or an authorised officer. The section sets out procedures relating to the issue of an embargo notice and its contents.

558—Noncompliance with embargo notice

Section 558 creates an offence for a person who knows an embargo notice relates to a thing to do anything the notice prohibits or instruct somebody else to do so. A maximum penalty of $10,000 applies.

In a proceeding for an offence relating to a charge that the defendant moved an embargoed thing or a part of it, it is a defence if the person proves that the embargoed thing or thing was moved to protect or preserve it or that the authorised officer who issued the notice was informed of the move and new location within 48 hours.

Subsection (3) requires a person served with an embargo notice to take all reasonable steps to stop any other person from doing something prohibited by the notice. A maximum penalty of $10,000 applies.

Subsection (4) provides that, despite any other Act or law, a sale, lease, transfer or other dealing with an embargoed thing is void.

559—Power to secure embargoed thing

Section 559 enables an authorised officer to take reasonable action to restrict access to an embargoed thing, including sealing it or the entrance to the place where it is or (for equipment) rendering it inoperable.

The officer may also require a person he or she reasonably believes to be in control of the embargoed thing to take such steps. It is an offence not to comply without a reasonable excuse. A maximum penalty of $10,000 applies.

If access to an embargoed thing is restricted, it is an offence against subsection (4) to tamper with the thing or anything used to restrict access to the thing without an authorised officer's approval or a reasonable excuse. A maximum penalty of $10,000 applies.

If access to a place is restricted, it is an offence to enter that place or to tamper with anything used to restrict access to the place without an authorised officer's approval or a reasonable excuse. A maximum penalty of $10,000 applies.

560—Withdrawal of embargo notice

Section 560 sets out the procedures for withdrawing an embargo notice, together with restrictions on when such a notice may be withdrawn.

Division 3—Forfeiture and transfers

561—Power to forfeit particular things or samples

Section 561 states that where a thing or sample has been taken for examination or a thing has been seized under Chapter 9 the Regulator may declare it to be forfeited to the Regulator if its owner cannot reasonably be found or the thing cannot reasonably be returned.

However, subsection (4) provides that a thing or sample seized by a police officer cannot be forfeited to the Regulator and must be dealt with under the national regulations, except as provided by applicable state or territory legislation.

562—Information notice for forfeiture decision

Section 562 sets out the requirements for giving an information notice if the Regulator decides to forfeit a thing or sample. An information notice is defined in section 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in section 5) for the decision.

563—Forfeited or transferred thing or sample becomes property of the Regulator

Section 563 specifies that a thing or sample become the property of the Regulator if it is forfeited or the owner and Regulator agree in writing to the transfer of ownership.

564—How property may be dealt with

Section 564 states that where a thing or sample becomes the property of the Regulator under section 563, the Regulator may deal with it in the Regulator's discretion, including by destroying it or giving it away.

However, the Regulator may not deal with it in such a way as to prejudice the outcome of a review of the forfeiture decision or an appeal against the decision on review. Chapter 11 deals with reviews and appeals and the decision of the Regulator that a thing or sample is forfeited is a reviewable decision for the purposes of that Chapter.

The Regulator must give 28 days' notice of its intention to deal with a thing or sample that has become the property of the Regulator to the person from whom the thing or sample was seized; the former owner of the thing or sample; and each person having a registered interest in the thing or sample

If the Regulator sells the thing or sample, the Regulator may return the proceeds of sale to the person who owned it immediately before the forfeiture, after deducting the costs of the sale.

565—Third party protection

Section 565 provides for third party protection in the event that a thing or sample becomes the property of the Regulator. The section provides for applications for an order in relation to the thing or sample to be made to a relevant tribunal or court by the owner or a person with a registered interested in the thing or sample. The section further provides that such applications may be made in relation to the proceeds of a thing or sample already sold or otherwise disposed of.

566—National regulations

Section 566 provides a regulation-making power for the circumstances in which the Regulator must apply to the Registrar of Personal Property Securities to register, amend or cancel an instrument in relation to a sample or thing. The section further provides a regulation-making power for the priority in which the proceeds of disposal of anything under this Division are to be applied.

Division 4—Information-gathering powers

567—Power to require name, address and date of birth

Section 567 deals with the circumstances in which an authorised officer may require a person to state his or her name, date of birth and address (including the person's residential and business address and, for a person temporarily in the jurisdiction, the person's residence in the jurisdiction).

The officer may do so:

- if the person is committing, or is found in circumstances to reasonably suspect the person has committed, or there is information to reasonably suspect that the person has committed, an offence against the Law; or
- if the person is reasonably suspected to be the driver of a heavy vehicle involved in an incident involving death, injury or damage to property; or
- if the person is reasonably suspected to be a responsible person for a heavy vehicle (as defined in section 5) and may be able to help in an investigation of an offence against the Law involving the vehicle.

The officer may require the person to provide verification of the name, date of birth or address if it would be reasonable to expect the person to be in possession of evidence to verify the name or address or otherwise be able to provide the verification.

Failure to comply with either requirement without a reasonable excuse is an offence. A maximum penalty of $3,000 applies.

Subsection (7) provides that, if a person is charged with a failure to state a business address, it is a defence to prove that the person did not have a business address or the person's business address was not directly or indirectly connected with road transport involving heavy vehicles.

Subsection (8) restricts the circumstances in which an authorised officer may impose a requirement under this section so that it does not extend to an incident that involves the death of, or injury to, a person unless the authorised officer is a police officer.

568—Power to require production of document etc required to be in driver's possession

Section 568 empowers an authorised officer to require, for compliance purposes (as defined in section 5), the driver of a heavy vehicle to produce a document, device or thing he or she is required by the Law to keep in the driver's possession while driving. This power arises if the vehicle is stationary on a road, or if it is in or at a place entered under Part 9 or if it has been stopped under section 513 (dealing with a direction to stop the vehicle to enable the exercise of other powers).

The driver must comply with the requirement unless there is a reasonable excuse. The maximum penalty is the same maximum penalty for the offence of failing to keep the document, device or thing in the driver's possession.

Subsection (4) clarifies that it is not a reasonable excuse merely not to have the item in the driver's possession or to refuse on the ground of self-incrimination.

In the case of a document, device or other thing required to be in the driver's possession, the officer may take a copy of or extract from a document, produce an image or writing from an electronic document or take an extract from a device or other thing. The officer must return the item as soon as practicable after inspection or, if a copy, extract or image or writing is produced from it, as soon as practicable thereafter.

Where the officer reasonably believes the document, device or other thing required to be in the driver's possession may provide evidence of an offence against the Law, he or she may seize it.

The officer may require the driver to certify that a copy, extract or image or writing from a document or an entry in a document is a true copy. The driver must comply with the requirement unless there is a reasonable excuse. A maximum penalty of $3,000 applies.

The officer does not have to return a document, where he or she has asked the driver to certify the copy, extract or image or writing of, until the driver complies with the requirement.

569—Power to require production of documents etc generally

Section 569 states that an authorised officer may require a responsible person for a heavy vehicle (as defined in section 5) to produce for inspection a document issued under the Law or document, device or other thing required to be kept under the Law or a heavy vehicle accreditation (as defined in section 5) or other specified documentation in the person's possession or control that relates to the vehicle or the transport task or the person's business practices. The person must comply with the requirement unless there is a reasonable excuse. A maximum penalty of $6,000 applies.

Subsection (4) clarifies that a claim of privilege against self-incrimination is not a reasonable excuse. Note, however, that section 588 limits the use of particular documents or information in civil or criminal proceedings. The effect of that section is that, if a responsible person who is an individual produces for inspection a document under section 569 (other than a document issued to the person under the Law or a document, device or other thing required to be kept by the person under the Law or a heavy vehicle accreditation), the document and any evidence directly or indirectly derived from it is not admissible against the individual, except in a proceeding about the false or misleading nature of the document or anything in the document.

The officer may take a copy of or extract from a document, produce an image or writing from an electronic document or take an extract from a device or other thing. The officer must return the item as soon as practicable after inspection or, if a copy, extract or image or writing is produced from it, as soon as practicable thereafter.

Where the officer reasonably believes the document, device or other thing may provide evidence of an offence against the Law, he or she may seize it.

The officer may require the person responsible for keeping the document to certify that a copy, extract or image or writing from a document or an entry in a document is a true copy. The person must comply with the requirement unless there is a reasonable excuse. A maximum penalty of $3,000 applies.

The officer does not have to return a document, where he or she has asked the person to certify the copy, extract or image or writing of, until the person complies with the requirement.

570—Power to require information about heavy vehicles

Section 570 empowers an authorised officer to, for compliance purposes (as defined in section 5), require a responsible person for a heavy vehicle (as defined in section 5) to provide information about the vehicle, its

equipment or load and personal details (as defined in this section) known to the person about any other responsible person for the vehicle.

It is an offence not to comply without a requirement without reasonable excuse. A maximum penalty of $6,000 applies.

Subsection (4) provides that it is a defence for the person not to prove that he or she did not know and could not reasonably be expected to know or to ascertain the information.

Subsection (5) clarifies that it is not a reasonable excuse to claim the privilege against self-incrimination. Note, however, that section 588 limits the use of particular documents or information in civil or criminal proceedings. The effect of that section is that, if a responsible person who is an individual provides information under section 570, the information and any evidence directly or indirectly derived from it is not admissible against the individual, except in a proceeding about the false or misleading nature of the information or anything in the information.

Division 5—Improvement notices

571—Authorised officers to whom Division applies

Section 571 states that the Division applies only where the authorised officer is authorised to issue improvement notices (through written authority from the relevant police commissioner in the case of an authorised officer who is a police officer or if stated in the instrument of appointment in the case of an authorised officer who is not a police officer).

572—Improvement notices

Section 572 provides that where an authorised officer reasonably believes that a person has contravened or is contravening the Law in circumstances that make it likely that the contravention will continue or be repeated, the officer may issue an improvement notice requiring the person to remedy the situation or the matters or activities occasioning it within the period stated in the notice. The provision sets out restrictions on the time period that can be stated and specifies the contents of the notice.

573—Contravention of improvement notice

Section 573 states that the recipient of an improvement notice must comply unless there is a reasonable excuse. A maximum penalty of $10,000 applies.

Subsection (2) provides a defence where the alleged contravention, likely contravention or matters or activities occasioning them was remedied within the time stated in the notice, although in a way different from that stated in the notice.

Subsection (3) clarifies that if a person is given an improvement notice because of a contravention of the Law, the person cannot be proceeded against for that contravention unless the person fails to comply with the improvement notice, without a reasonable excuse, or the improvement notice is revoked under section 575.

574—Amendment of improvement notice

Section 574 sets out the procedures for amending an improvement notice. It also specifies that if the notice was issued by an authorised officer who is a police officer, it can be amended by another such officer and if the notice was issued by an authorised officer who is not a police officer, it can be amended by any authorised officer who is not a police officer.

575—Revocation of an improvement notice

Section 575 deals with the revocation of an improvement notice. It specifies that a notice given by an authorised officer who is a police officer may be revoked by the relevant police commissioner or by a more senior police officer who has the relevant commissioner's authority to issue improvement notices. A notice given by an authorised officer who is not a police officer may be revoked by the Regulator.

576—Clearance certificate

Section 576 states that an approved authorised officer may issue a clearance certificate stating that the requirements of an improvement notice have been satisfied. Subsection (3) defines the term 'approved authorised officer'. In the case of an improvement notice issued by an authorised officer who is a police officer, it means another police officer who has the relevant commissioner's authority to issue improvement notices. In the case of an improvement notice issued by an authorised officer who is not a police officer, it means any authorised officer who is not a police officer.

Division 6—Power to require reasonable help

577—Power to require reasonable help

Section 577 empowers an authorised officer to require reasonable help from an occupier of or a person at a place entered under Chapter 9 or from a driver of a heavy vehicle on a road where a power under Chapter 9 is being exercised.

It is an offence not to comply with the requirement without reasonable excuse. A maximum penalty of $10,000 applies.

Subsection (5) specifies that it is a reasonable excuse for an individual if the assistance required is outside the scope of a individual's business or other activities or if self-incrimination might occur.

However, subsection (6) clarifies that it is not a reasonable excuse to claim the privilege against self-incrimination in relation to a document or information required to be kept or held by the individual under the Law. Note, however, that section 588 limits the use of particular documents or information in civil or criminal proceedings. The effect of that section is that, if an individual gives an officer a document or information in response to a requirement under section 577, the document or information and any evidence directly or indirectly derived from it is not admissible against the individual, except in a proceeding about the false or misleading nature of the document or information or anything in the document or information.

Part 5—Provisions about exercise of powers

Division 1—Damage in exercising powers

578—Duty to minimise inconvenience or damage

Section 578 provides that, in exercising a power under the Law, it is the responsibility of an authorised officer to take all reasonable steps to cause as little inconvenience and damage as possible. However, this does not confer a statutory right to compensation, other than as provided under Division 2. That Division provides for compensation for costs, damage or loss incurred because of the exercise of a power under Chapter 9.

579—Restoring damaged thing

Section 579 states that where an authorised officer, in the course of exercising a power under the Law, or a person assisting the officer damages something, the officer must take all reasonable steps to restore the thing to its condition immediately before the damage. The section only applies where there has been an improper or unreasonable exercise of a power or the use of unauthorised force.

580—Notice of damage

Section 580 sets out the procedures for giving notice of the damage and the contents of the notice, including a statement that a person may have a right to compensation under section 581.

However, the provision does not apply if the officer reasonably believes that the thing has been restored to its condition immediately before the damage, or the damage is trivial, or there is nobody apparently in possession of the thing or it appears to have been abandoned.

The provision also does not apply in relation to any damage resulting from the exercise of powers under the Law where the damage was not caused by an improper or unreasonable exercise of a power or the use of unauthorised force.

Division 2—Compensation

581—Compensation because of exercise of powers

Section 581 states that a person may claim compensation from the Regulator if the person incurs costs, damage or loss because of the exercise, or purported exercise, of a power by or for an authorised officer, under Chapter 9.

However, subsection (2) specifies that this does not apply to costs, damage or loss incurred because of a lawful seizure or forfeiture or because of an exercise, or purported exercise, of a power by or for an authorised officer.

The provision details procedures for claiming compensation and the matters a court must consider in determining whether to make a compensation order.

Subsection (6) authorises the making of national regulations to prescribe other matters the court may or must take into account when considering whether it is just to order compensation.

Division 3—Provision about exercise of particular powers

582—Duty to record particular information in driver's work diary

Section 582 deals with the situation where an authorised officer directs the driver of a fatigue-regulated heavy vehicle to stop the vehicle for compliance purposes (as defined in section 5). If the driver is detained for more than 5 minutes, he or she may request the officer to make a notation in the driver's work diary setting out specified details, including the length of time spent talking to the officer, and the officer must comply.

Part 6—Miscellaneous provisions

Division 1—Powers of Regulator

583—Regulator may exercise powers of authorised officers

Section 583 states that the Regulator may exercise powers conferred on an authorised officer under the Law which do not require the physical presence of an officer. Subsection (1) clarifies that the powers conferred on an authorised officer and exercisable by the Regulator are functions of the Regulator and therefore delegable by the Regulator to its own staff.

Division 2—Other offences relating to authorised officers

584—Obstructing authorised officer

Section 584 creates an offence for a person without reasonable excuse to obstruct an authorised officer or somebody helping an authorised officer or an assistant who is exercising a power under section 518 (dealing with moving an unattended heavy vehicle on a road to enable the exercise of another power), section 519 (dealing with moving an unattended heavy vehicle on a road if it is causing or creating an imminent risk of serious harm to public safety, the environment or road infrastructure), or section 523 (dealing with entering a vehicle and starting or stopping its engine to enable the exercise of another power). A maximum penalty of $10,000 applies.

The term 'obstruct' is defined in subsection (2) so as to include assault, hindrance, resistance and attempts or threats to obstruct.

585—Impersonating authorised officer

Section 585 states that a person must not impersonate an authorised officer. A maximum penalty of $10,000 applies.

Division 3—Other provisions

586—Multiple requirements

Section 586 makes it clear that an authorised officer may give multiple directions or requirements and may give further directions or requirements, whether under the 1 provision or 1 or more other provisions of Chapter 9.

587—Compliance with particular requirements

Section 587 clarifies that a person is not excused from compliance with a requirement imposed by an authorised officer under this Chapter on the ground that compliance might incriminate the person or make the person liable to a penalty. This provision is necessary to nullify an argument by a person who refused to comply with a requirement issued under the Act that the refusal was justified by protections against self incrimination provided under the general law.

588—Evidential immunity for individuals complying with particular requirements

Section 588 applies to a document or information required to be produced or provided under section 569(1)(c) to (f), 570 or 577 (respectively relating to the power to require production of specified documents, the power to require specified information and the power to require reasonable help).

Subsection (2) provides that evidence of or derived from information provided is not admissible in court proceedings against the individual to the extent that it tends to incriminate the individual or expose the individual to a penalty unless the proceedings relate to the false or misleading nature of the information or anything in the information.

Subsection (3) provides that a document produced is not inadmissible in evidence in court proceedings against the individual on the ground that the document might incriminate the individual.

This abrogation of the privilege against self-incrimination is necessary for compliance and enforcement purposes. In the absence of a provision compelling the production of documents and further providing for the use of those documents as evidence, prosecuting breaches of the Act – particularly offences detected during the course of on-road enforcement – would require far greater investigative resources. Public safety is liable to be compromised if prosecution of heavy vehicle offences is more difficult under the Law than existing jurisdictional laws.

589—Effect of withdrawal of consent to enter under this Chapter

Section 589 provides that any evidence obtained (including any evidence seized) up to the time the consent is withdrawn after an authorised officer enters a place with the occupier's consent, is not invalid or inadmissible in proceedings for a contravention of this Law merely because the consent was withdrawn.

Chapter 10—Sanctions and provisions about liability for offences

Part 1—Formal warnings

590—Formal warning

Section 590 states that where an authorised officer is reasonably satisfied of a contravention of the Law (other than a substantial or sever risk breach of a mass, dimension or loading requirement), the authorised officer may give the individual a written warning. When the warning is given to the individual under this section, the person cannot be proceeded against for an offence against this Law constituted by the contravention.

The warning is, however, subject to revocation within 21 days by an approved authorised officer (being a police officer who is an authorised officer and whose Commissioner has authorised them or any other authorised officer, to withdraw warnings), thereby exposing the offender to the possibility of proceedings for the contravention for which the warning was given.

Part 2—Infringement notices

591—Infringement notices

Section 591 establishes a general power for an authorised officer to issue infringement notices for prescribed offences against this Law. The section further provides that procedures to be followed in connection with infringement notices issued for the purposes of this Law as applied in this jurisdiction are to be the procedures prescribed by or under the Infringement Notice Offences Law of this jurisdiction. Subsection (3) allows for the

prescription of the offences in the Law for which infringement notices may be issued through the inclusion of the definition *prescribed offences*.

592—Recording information about infringement penalties

Section 592 authorises the Regulator to keep a record of infringement notices issued and paid. The recorded information may be used for research purposes, for proceedings related to the offence or if the information is relevant in deciding whether the individual is a systematic or persistent offender for the purpose of issuing a supervisory intervention order or prohibition order. Information in a record of an infringement notice issued for the purposes of the Law and kept by the Regulator may also be used in a proceeding for a relevant extended liability offence. Relevant extended liability offences are expressly identified through the Law by provisions authorising the use of details stated in the infringement notice as evidence in the proceedings.

Supervisory intervention orders and prohibition orders are respectively dealt with by Divisions 5 and 6 of Part 3 of this Chapter.

Part 3—Court sanctions

Division 1—General provisions

593—Penalties court may impose

Section 593 states that a court which finds a person guilty of an offence may impose any one or more of the penalties available under this Part for that offence.

594—Matters court must consider when imposing sanction for noncompliance with mass, dimension or loading requirement

Section 594 sets out that in deciding penalty for the contravention of a mass, dimension or loading requirement, a court is to have regard for the magnitude of the risk assigned by the Law (which categorises breaches of its requirements as minor, substantial or severe) to the offence.

The provision explains how the breaches have been determined in terms of the magnitude of risk in relation to such factors as accelerated road wear, unfair commercial advantage, traffic congestion, diminished public amenity and public safety.

595—Court may treat noncompliance with mass, dimension or loading requirement as a different risk category

Section 595 states that where a court is satisfied that there has been a contravention of a mass, dimension or loading requirement, but is not satisfied as to the seriousness of the contravention against the offence categories provided in the Law, the court may treat the breach as being of a lesser categorised risk breach.

Division 2—Provisions about imposing fines

596—Body corporate fines under penalty provision

Section 596 sets out that the maximum penalties specified in the Law, are generally those available to be imposed on individual offenders. Where a body corporate is involved, this provision allows the imposition of a penalty of up to 5 times the amount for an individual.

Division 3—Commercial benefits penalty orders

597—Commercial benefits penalty order

Section 597 provides that a court which finds a individual guilty of an offence may, on application of the prosecution, impose a gross commercial benefits penalty of up to 3 times the actual or anticipated gross commercial benefit (disregarding in the calculations any costs, expenses or liabilities in obtaining that benefit), which the court estimates was or would have been but for intervention by an authorised officer, derived from the conduct giving rise to the offence.

Division 4—Cancelling or suspending registration

598—Power to cancel or suspend vehicle registration

Section 598 states that a court convicting an individual of an offence may cancel or suspend the registration of a heavy vehicle to which the offence relates and to which the individual convicted is the registered operator. In addition, the court may disqualify the person or an associate of the person from applying for registration for a specified time.

The term *associate* is defined in terms of family, employment, corporate or business relationships in provision 5 of the Law.

Provision is made to protect the rights of individuals who may not be present in court, by granting them opportunity to show cause why the court should not order the suspension or cancellation.

Subsection (5) requires a court to notify the Regulator when a decision has been made to suspend or cancel the registration of a vehicle.

Division 5—Supervisory intervention orders

599—Application of Division 5

Section 599 (Division 5) applies in situations where a court that convicts an individual of an offence against the Law, considers that the individual is or is likely to become a systematic or persistent offender, having regard to the circumstances of present convictions and other convictions of the individual.

600—Court may make supervisory intervention order

Section 600 maintains that in a case to which Division 5 applies, the court, on application of the prosecution or the Regulator, may make a supervisory intervention order requiring the convicted individual to:

- do stated things to improve the individual's compliance with the Law (such as appointing or training staff, obtaining expert advice or installing equipment); or
- implement stated practices, systems or procedures for monitoring or ensuring compliance; or
- give compliance reports to the Regulator and/or the court; or
- appoint a person to assist in improving compliance.

A supervisory intervention order may be made for up to 1 year and the convicted person must bear the cost of complying with it.

601—Limitation on making supervisory intervention order

Section 601 provides that the court may make a supervisory intervention order only if satisfied the order is capable of improving the convicted person's ability or willingness to comply with the Law, having regard to the person's record of offences and certain other matters.

602—Supervisory intervention order may suspend other sanctions

Section 602 states that a court may suspend any other order it makes until the supervisory intervention order ends, unless the court is satisfied that there has been substantial failure to comply with the supervisory intervention order.

603—Amendment or revocation of supervisory intervention order

Section 603 specifies that on application by the Regulator or a person to whom a supervisory intervention order applies, the court that made the order may amend or revoke the order if satisfied there has been a change in circumstances warranting the amendment or revocation.

604—Contravention of supervisory intervention order

Section 604 provides that a person to whom a supervisory intervention order applies must comply with the order unless the person has a reasonable excuse. A maximum penalty of $10,000 applies.

605—Effect of supervisory intervention order if prohibition order applies to same person

Section 605 states that if both a supervisory intervention order and a prohibition order (made under Division 6 apply to an individual, the former is ineffective until the prohibition order has ceased to apply.

Division 6—Prohibition orders

606—Application of Division 6

Section 606 applies Division 6 in situations where a court that convicts a person of an offence against the Law, considers that the individual is or is likely to become a systematic or persistent offender, having regard to the circumstances of the present conviction and other convictions of the individual.

607—Court may make prohibition order

Section 607 states that in a case to which Division 5 applies, the court, on application of the prosecution or the Regulator, may make a prohibition order prohibiting the convicted person from having a stated role or responsibility in road transport for up to 1 year. Subsection (2) provides that such a role or responsibility does not extend to holding a driver licence or having a vehicle registered or licensed under an Australian road law.

The term *Australian road law* is defined in section 5 to mean the Law or another law regulating the use of vehicles on roads.

608—Limitation on making prohibition order

Section 608 provides that a court may only make a prohibition order if satisfied that the convicted person should not continue to have the role or responsibility prohibited by the order and that, in the light of the person's previous offences and certain other matters, a supervisory intervention order would be inappropriate.

609—Amendment or revocation of prohibition order

Section 609 maintains that on application by the Regulator or the person to whom a prohibition order applies, the court that made the order may amend or revoke the order if satisfied there has been a change in circumstances warranting the amendment or revocation.

610—Contravention of prohibition order

Section 610 states that a person to whom a prohibition order applies must comply with the order unless the person has a reasonable excuse. A maximum penalty of $10,000 applies.

Division 7—Compensation orders

611—Court may make compensation order

Section 611 provides that a court that convicts a person of an offence against the Law may make a compensation order requiring the convicted person to pay the road manager an amount awarded by the court in respect of damage to road infrastructure resulting from the offence.

Section 5 defines *road manager* as a public authority declared by law to be the manager of a particular road for the purposes of the Law. Subsection (3) allows the order to be made in respect of damage which the court is satisfied on the balance of probability was caused or partly caused by the offence. Subsection (4) provides that the order may be made at the point of conviction or later.

612—Assessment of compensation

Section 612 states that a wide discretion is conferred on the court in assessing compensation. Subsection (2) however, sets out some matters, including evidence and other relevant considerations, to which it may have regard.

The evidence which a court may consider in some circumstances includes certificate evidence given by a person on behalf of a public authority which is a road manager. In these circumstances subsection (3) provides that it is to be presumed, unless otherwise proved, that the person who signs the certificate had authority to do so.

613—Use of certificates in assessing compensation

Section 613 sets out further procedures attending the use of and challenges to, certificate evidence for which section 612(2)(c) provides.

Subsection (3) requires a defendant who intends to challenge the accuracy of any measurement, analysis or reading in the certificate submitted by a road authority to assist a court to make a compensation order to state the basis for the claimed inaccuracy and state the measurement, analysis or reading that the defendant considers to be correct.

614—Limits on amount of compensation

Section 614 requires that the compensation not:

- exceed the proportion of the loss attributable to the offender or any monetary limit in the court's civil jurisdiction; and
- be attributable to death, personal injury, the road manager's loss of income (as might happen where a toll booth was demolished) or loss to property that is not road infrastructure.

615—Costs

Section 615 states that the court has the same power to award costs in relation to proceedings for the making of a compensation order as it has in relation to civil proceedings.

616—Enforcement of compensation order and costs

Section 616 provides that compensation orders and associated costs orders can be enforced in the same way as priers for costs in civil proceedings before the court.

617—Relationship with orders or awards of other courts and tribunals

Section 617 recognises that civil proceedings are sometimes brought to recover damages for loss associated with damage to road infrastructure and provides safeguards both for the road manager and the offender by preventing unjust enrichment arising from multiple proceedings but also preserving the road manager's right to institute civil proceedings.

Part 4—Provisions about liability

Division 1—Reasonable steps defence

618—Reasonable steps defence

Section 618 states that many of the offence provisions of the Law exclude the mistake of facts defence (under which a person's belief in a state of facts which, if true, would have avoided liability). The Law however, provides a reasonable steps defence and this provision further explains the reasonable steps defence.

The reasonable steps defence is a defence for a person to show that they did not know and could not reasonably be expected to have known of a contravention of the Law and that they took all reasonable steps to prevent the contravention or could do nothing to prevent the contravention.

Division 2—Matters relating to reasonable steps

619—Application of Division 2

Section 619 specifies that some of the offences the Law provides involve a person having failed to take all reasonable steps to do or avoid an outcome, while other offences provide a reasonable steps defence as outlined in section 618. This provision states that Division 2 applies in both such situations.

620—Matters court may consider for deciding whether person took all reasonable steps—mass, dimension or loading offences

Section 620 states that a court is given a wide discretion in determining whether reasonable steps have been taken in regards to mass, dimension or loading offences. In addition, the provision sets out several factors that may be relevant to a court when determining whether a person took all reasonable steps.

621—Reliance on container weight declaration—offences about mass

Section 621 applies if the operator or owner of a heavy vehicle seeks to rely on the reasonable steps defence in relation to a charge of contravening a mass requirement. The provision excludes from the reasonable steps defence, reliance on a *container weight declaration* (as defined in section 5) which is known or ought reasonably to have been known, to be inaccurate.

622—Matters court may consider for deciding whether person took all reasonable steps—speeding or fatigue management offences

Section 622 confers a wide discretion on a court in determining reasonable steps in relation to a speeding offence under Chapter 5 or a fatigue management offence under Chapter 6. In addition, the section sets out certain matters which the court may have regard for.

623—When particular persons regarded to have taken all reasonable steps—speeding or fatigue management offences

Section 623 states that some of the provisions in Chapter 5 regarding speeding and in Chapter 6 regarding fatigue, impose extended liability on a party within the chain of responsibility, who would normally have some measure of control over the road transport task. This section explains how the reasonable steps defence may apply to a party within the chain of responsibility if charged.

624—Regulation for section 623

Section 624 authorises the making of regulations about matters dealt with in section 623.

625—Proof of compliance with registered industry code of practice

Section 625 provides that compliance with a registered industry code of practice may sometimes be relevant to a reasonable steps defence. This section sets out procedures to be followed in such a case. Section 706 deals with the registration of industry codes of practice.

Division 3—Other defences

626—Definition for Division 3

Section 626 defines the term deficiency in relation to a heavy vehicle for purposes of Division 3. The term includes for example a vehicle being unsafe, the contravention by a vehicle of a vehicle standard and a deficiency constituted by the absence of a particular thing required to be in, or displayed on, the vehicle.

627—Defence for owner or operator of vehicle if offence committed while vehicle used by unauthorised person

Section 627 provides a defence to an owner or operator of a heavy vehicle where it is proved that the person using the vehicle did so without lawful entitlement.

628—Defence for driver of vehicle subject to a deficiency

Section 628 provides a defence to a driver charged with an offence involving a deficiency of the kind described in section 626. The defence applies where the driver can prove that they did not cause the deficiency, did not know and could not reasonably know or be expected to find out about the deficiency and had no control or responsibility in respect of the deficiency.

629—Defence of compliance with direction

Section 629 provides a defence for a person charged under the Law where the person can establish that the conduct constituting the offence was done in compliance with a direction given by the Regulator, an authorised officer, or a person authorised under a law of a State or Territory.

630—Sudden or extraordinary emergency

Section 630 provides a defence for a person charged under the Law where the person can establish that the conduct constituting the offence occurred in response to circumstances of sudden or extraordinary emergency.

631—Lawful authority

Section 631 provides a defence for a person charged under the Law where the person can establish that the conduct constituting the offence is authorised or excused by or under a law.

Division 4—Other provisions about liability

632—Deciding whether person ought reasonably to have known something

Section 632 states that in determining whether a person ought reasonably to have known something for the purposes of the Law, a court is required, by section 632, to consider relevant factors including the person's abilities, experience, expertise and knowledge.

633—Multiple offenders

Section 633 sets out that where the Law imposes liability on more than 1 person, proceedings against any one of the persons can be taken regardless of whether proceedings against the other person or persons have commenced or concluded, and regardless of the outcome of any such proceedings.

634—Multiple offences

Section 634 protects a person from being punished more than once for the same contravention of this Law or for the same offence.

635—Responsibility for acts or omissions of representative

Section 635 states that in some provisions of the Law, an offence involves both an act or omission and a particular state of mind (such as knowledge or intent) on the part of the alleged offender. In such a case, section 635 provides that where somebody else (such as an employee or agent) was acting on behalf of the alleged offender, it is sufficient to prove the state of mind of that person rather than that of the offender.

636—Liability of executive officers of corporation

Section 636 provides that where a corporation commits an offence (whether or not it has been prosecuted or convicted of the offence), an executive officer may be liable for the same offence. This applies to a range of offences committed by a corporation where it can be established the executive officer knowingly authorised or permitted the conduct constituting the offence. These offences are set out in column 2 of Schedule 4 to the Law.

Subsection (2) establishes a second, alternative, basis for derivative liability where an offence is committed and the executive officer knew or ought reasonably to have known of the conduct constituting the offence or that there was a substantial risk that the offence would be committed. The range of offences for which derivative liability might arise is set out in column 3 of Schedule 4 to the Law.

The executive officer is only liable for the penalty applying to an individual, and not the 5 times greater penalty applying to a corporation under section 596. Subsection (3) provides defences for executives to prove the exercising of reasonable diligence or that they were not in a position to influence the conduct of the corporation. In addition, subsection (7) protects unpaid executives from liability under this provision.

Section 5 defines *executive officer* as someone who is concerned in or takes part in the corporation's management.

The provision is intended to bring the obligations of executive officers as far as practicable into conformity with the COAG-agreed principles for assessment of directors' liability provisions. It is intended this section forms the subject of a more comprehensive review in future to ensure the adequacy of the approach taken.

Not all offences created under the Law satisfy the requirements of the COAG principles. Accordingly the range of offences set out in Schedule 4 for which derivative liability may arise does not encompass all offences created under the Law.

637—Treatment of unincorporated partnerships

Section 637 subjects each of the individual partners to the same penalty as an individual where their partnership would otherwise be liable similarly to the approach adopted for section 636 and for the same reasons. Accordingly, derivative liability will attach to a partner in an unincorporated partnership only where the partner knew knowingly authorised or permitted the conduct constituting the offence, or ought reasonably to have known of the conduct constituting the offence or that there was a substantial risk that the offence would be committed.

However, whereas executive officers for a corporation are liable only for the offences stipulated in Schedule 4, partners are liable on behalf of the partnership for all offences that would have been otherwise committed by the partnership (which itself has no legal personality and cannot be the subject of enforcement action) to avoid the possibility no person would be liable for an offence on behalf of the partnership.

Subsection (6) provides a defence for a partner who can prove the exercise of reasonable diligence or that they were not in a position to influence the conduct of the partnership.

638—Treatment of other unincorporated bodies

Section 638 makes provision for the liability of those involved in the management of unincorporated bodies similarly to the approach adopted for sections 636 and 637 and for the same reasons. As for partners, the management members for an unincorporated body remain liable for all offences that would have been otherwise committed by the unincorporated body.

639—Liability of registered operator

Section 639 explains that references within the Chapter to the operator of a heavy vehicle, generally means the registered operator. However, special provision is made for cases of vehicles in combinations (where different operators may have responsibility for different vehicles comprising the combination) and for situations where the registered operator is not, at the relevant time, the actual operator of the vehicle.

Chapter 11—Reviews and appeals

Part 1—Preliminary

640—Definitions for Chapter 11

Section 640 provides definitions for terms used in Chapter 11 which include public safety ground, relevant appeal body, relevant jurisdiction, reviewable decision, review application, review decision and reviewer.

Part 2—Internal review

641—Applying for internal review

Section 641 outlines the timeframes and other requirements that apply when a dissatisfied person applies for an internal review. The section provides that the dissatisfied person is entitled to get a statement of reasons for the original decision they are seeking to have reviewed, even if the provision under which the decision was made does not specify that the person must be given at statement of reasons. The section further ensures that if a person is not given an information notice they may ask the Regulator to provide the statement of reasons.

This section also defines 'dissatisfied person' to ensure there is clear identification of persons entitled to seek a review of a reviewable decision.

642—Stay of reviewable decisions made by Regulator or authorised officer

Section 642 allows a person who applied for review of a reviewable decision of the Regulator or an authorised officer to apply to the relevant appeal body for a stay of the decision being reviewed. Reviewable decisions made on the basis of a public safety ground are excluded as it is not appropriate for decisions to amend or cancel an exemption or a mass or dimension authority for public safety reasons to be stayed. The section outlines the timeframes and processes that apply to the application for a stay and makes it clear that the appeal body may stay the reviewable decision to secure the effectiveness of the review and any later appeal.

643—Referral of applications for review of decisions made by road managers

Section 643 requires the Regulator to refer applications for the review of decisions of a road manager to the road manager within 2 business days of receipt.

644—Internal review

Section 644 explains who may decide an internal review of a reviewable decision and how the review is to be conducted.

645—Review decision

Section 645 requires the reviewer to, within the prescribed period as defined in the section, make a review decision to either confirm or amend the reviewable decision or to substitute another decision for the reviewable decision. The section outlines the effect of each type of review decision. The section further requires a road manager that is a reviewer to give the Regulator notice of the review decision and reasons.

646—Notice of review decision

Section 646 requires the Regulator to give the applicant a review notice of the review decision as soon as practicable, or for decisions where the reviewable decision was made by a road manager, within 7 days of the reviewer giving the Regulator the notice of the decision. If the review decision is not the decision sought by the applicant, the review notice must include the reasons for the decision and whether or not an appeal is available and, if so, how to appeal. This section also provides, for review decisions relating to mass and dimension permits, that the review notice provide information to assist in calculating the relevant jurisdiction for any appeal if available. This section also explains that if a reviewer fails to make a review decision in the prescribed time, the reviewable decision is taken to be confirmed.

Part 3—Appeals

647—Appellable decisions

Section 647 allows a person to appeal a review decision of a reviewable decision made by the Regulator or an authorised officer to the relevant appeal body and outlines the timeframes that apply. This section also provides that the filing of an appeal does not affect the review decision unless the review decision is stayed.

648—Stay of review decision

Section 648 allows a person who has lodged an appeal against a review decision of a reviewable decision of the Regulator or an authorised officer to apply to the relevant appeal body for a stay. Reviewable decisions made on the basis of a public safety ground are excluded as it is not appropriate for decisions to amend or cancel an exemption or a mass or dimension authority for public safety reasons to be stayed. The section outlines some timeframes and processes that apply to the application for a stay. The section provides that the appeal body may stay the operation of the review decision to secure the effectiveness of the appeal and may give the stay on conditions and it may be amended or revoked.

649—Powers of relevant appeal body on appeal

Section 649 outlines the powers of the appeal body including that the appeal is to be by way of rehearing and made unaffected by the review decision and on the material before the appeal body and any other evidence it accepts. The section requires the appeal body to either confirm the review decision, set aside the review decision and substitute another decision or return the matter to the person who made the reviewable decision with directions.

650—Effect of decision of relevant appeal body on appeal

Section 650 indicates the effect where the relevant appeal body substitutes a decision for a review decision on appeal.

Chapter 12—Administration

Part 1—Responsible Ministers

651—Policy directions

Section 651 provides for the responsible Ministers as a group to be able to give directions to the Regulator about the policies to be applied by the Regulator. While the Regulator must comply with a direction of the responsible Ministers, the responsible Ministers are not able to direct the Regulator regarding a particular person, heavy vehicle or application or proceeding. This section aims to ensure the Regulator is provided with strategic policy guidance without erosion of the Regulator's independence as a statutory authority entitled to make its own decisions.

652—Referral of matters etc by responsible Minister

Section 652 allows a responsible Minister for a participating jurisdiction to refer matters relevant to the responsible Minister's jurisdiction to the Regulator for action or information. These referrals must be consistent with the directions or guidelines issued by the responsible Ministers as a group and cannot interfere with the independent exercise of the Regulator's functions under the law. The Regulator may also charge a reasonable fee based on the cost of dealing with the referral. Any fee charged by the Regulator when dealing with a request by a responsible Minister is not subject to section 740(2) to (4).

653—Approved guidelines for exemptions, authorisations, permits and other authorities

Section 653 provides the responsible Ministers may approve guidelines about various matters including granting exemptions, authorisations, approvals and accreditations under this Law.

The section provides that guidelines are to be published in the Commonwealth Gazette and made available for inspection without charge at the office of the Regulator and on the Regulator's website.

654—Other approvals

Section 654 lists other matters the responsible Ministers may approve including:

- a standard for sleeper berths;
- standards and business rules relating to fatigue, maintenance and mass management schemes;
- a class of auditors for accreditation schemes.

The section provides the approvals are to be published in the Commonwealth Gazette and made available for inspection without charge at the office of the Regulator and on the Regulator's website.

655—How responsible Ministers exercise functions

Section 655 provides that the responsible Ministers, as a group, decide their procedures including voting requirements for making decisions under the law unless the law otherwise specifies. An example of when the law otherwise specifies a procedure is section 662 which indicates the responsible Ministers' recommendation for appointment of Board members is to be unanimous.

This section also clarifies that changes to the membership of the responsible Ministers do not invalidate prior decisions and that the Commonwealth responsible Minister (as defined in section 5) is not compelled by the law to participate in the exercise of functions by the responsible Ministers. The provision also clarifies that if the Commonwealth responsible Minister does decide not to participate it will not stop the remaining members of the responsible Ministers performing the functions, including making unanimous decisions.

Part 2—National Heavy Vehicle Regulator

Division 1—Establishment, functions and powers

656—Establishment of National Heavy Vehicle Regulator

Section 656 establishes the National Heavy Vehicle Regulator. The section further explains that the application of this Law by one or more State or Territory Parliaments has the effect of creating a single national Regulator that is able to exercise its functions in one or across all participating jurisdictions. 'This Law' and 'participating jurisdiction' are defined in section 5 to ensure that jurisdictions, that do not enact an Act to apply the Heavy Vehicle National Law but instead enact a law that substantially corresponds with the Heavy Vehicle National Law, or enact a law that is prescribed by a national regulation, are still participating jurisdictions with the laws being administered and enforced by the same national Regulator.

657—Status of Regulator

Section 657 provides that the Regulator:

- is a body corporate with perpetual succession; and

- has a common seal; and
- can sue and be sued in its own corporate name.

This section also states that the Regulator represents the State.

658—General powers of Regulator

Section 658 provides for the general powers of the Regulator including its ability to enter contracts, acquire, hold, dispose of and deal with real and personal property and other things necessary or convenient in the performance of its functions. This section also provides that the Regulator may enter into service agreements with participating jurisdictions. Service agreements may be for the jurisdiction to undertake activities for the Regulator to assist the Regulator in performing its functions, with examples including, but not limited to:

- provision of customer service facilities by staff in jurisdictions;
- provision of enforcement or vehicle inspection services.

Service agreements may also be about the Regulator providing services for a jurisdiction, with examples including, but not limited to:

- collection of compulsory third party insurance by arrangement with a jurisdiction or insurance provider;
- collection of vehicle registration duty;
- collection of other monies;
- provision of additional enforcement services.

659—Functions of Regulator

Section 659 provides that the main function of the Regulator is to achieve the object of this law as provided in section 3. The section further describes a range of functions in more detail, but this list of functions is not to be considered limiting.

660—Cooperation with participating jurisdictions and Commonwealth

Section 660 indicates that the Regulator is able to exercise its functions in cooperation with, or with the assistance of, a participating jurisdiction and the Commonwealth including government agencies such as departments or other entities of a participating jurisdiction and the Commonwealth. In particular, jurisdictions and the Commonwealth can share information with the Regulator to use in the exercise of its functions.

661—Delegation

Section 661 provides for the Regulator to be able to delegate its functions to:

- the chief executive of an entity or department of a participating jurisdiction or the Commonwealth;
- the Regulator's Chief Executive Officer or another member of the Regulator's staff;
- a person engaged as a contractor of the Regulator;
- Any other person the Regulator considers is appropriately qualified to exercise the function.

'Appropriately qualified' is defined in section 5 and can include qualifications, experience or standing. An example of appropriate standing would include a person's position within a public service department of a participating jurisdiction.

As required under clause 30 of Schedule 1 'Miscellaneous provision relating to interpretation', the Regulator's delegations will be by written instrument and may be limited or issued subject to conditions as the Regulator sees fit. A delegate may be allowed to further sub-delegate the function if permitted to do so through the written instrument of delegation.

This approach to delegation accommodates likely operational arrangements for the Regulator including service agreements with jurisdictions, other arrangements with contractors to provide services for the Regulator, but is flexible enough to accommodate other arrangements for the provision of services to the Regulator into the future.

Division 2—Governing board of Regulator

Subdivision 1—Establishment and functions

662—Establishment of National Heavy Vehicle Regulator Board

Section 662 establishes the governing board for the Regulator. The section further explains that the application of this Law by one or more State or Territory Parliaments has the effect of creating a single national Board that is able to exercise its functions in one or across all participating jurisdictions. 'This Law' and 'participating jurisdiction' are defined in section 5 to ensure that even jurisdictions that do not enact an Act to apply the Heavy Vehicle National Law but instead enact a law that substantially corresponds with the Heavy Vehicle National Law or enact a law that is prescribed by a national regulation are still participating jurisdictions with the same single national Board governing the national Regulator.

663—Membership of Board

Section 663 provides for the appointment of the board members by the Queensland Minister on the unanimous recommendation of the responsible Ministers. The Queensland Minister is defined in section 5 to mean the responsible Minister for Queensland. The Board will consist of 5 members with at least one member having expertise in transportation policy, at least one member having expertise in economics, law, accounting, social policy, or education and training, at least one member will have experience in managing risks to public safety arising from the use of vehicles on roads and at least one other member having expertise in financial management skills, business skills, administrative expertise or another skill considered relevant by the responsible Ministers. This section aims to ensure the responsible Ministers have sufficient guidance and the flexibility to appoint the Board it considers appropriate to govern the Regulator in the exercise of its functions.

The section also provides that the Queensland Minister will, in accordance with the unanimous recommendation of the responsible Ministers, also appoint the Chair and Deputy Chair for the Board from amongst the board members.

664—Functions of Board

Section 664 provides that the affairs of the Regulator are to be controlled by the Board. The Board's functions include, subject to directions of the responsible Ministers, deciding the policies of the Regulator and ensuring the Regulator performs its functions in a proper, efficient and effective way.

Subdivision 2—Members

665—Terms of office of members

Section 665 provides for the term of office for Board members being up to three years as determined in their instrument of appointment. The section allows for members to be reappointed if otherwise qualified.

666—Remuneration

Section 666 provides for the responsible Ministers to determine the remuneration for Board members.

667—Vacancy in office of member

Section 667 provides when the office of a Board member becomes vacant including allowing for the Queensland Minister to remove a Board member from office if the responsible Ministers recommend the removal based on the member engaging in misconduct or where they have failed to or are unable to properly exercise their functions as a Board member. This will allow a Board member to be removed for matters of incapacity, incompetence of misbehaviour. Under section 655 the responsible Ministers will decide their own procedures including voting requirements for decisions to remove a Board member.

668—Board member to give responsible Ministers notice of certain events

Section 668 requires a Board member to give notice to the responsible Ministers of certain events including if they are convicted of an offence or have become bankrupt.

669—Extension of term of office during vacancy in membership

Section 669 provides for an extension in term of office for up to 6 months for a Board member if their term of office has been completed but the member has not yet been reappointed or the vacancy has not otherwise been filled.

670—Members to act in public interest

Section 670 requires Board members to exercise their functions impartially and in the public interest.

671—Disclosure of conflict of interest

Section 671 requires Board members to disclose as soon as possible after they become aware of any direct or indirect pecuniary interests or other interests that may conflict with the exercise of the member's function as a Board member. The nature of the conflict must be recorded in a register of interests kept by the Board. Generally, after disclosure of the conflict of interest, the member must not be present during deliberations or participate in any matter that may be affected by the conflict of interest. However, if the member with the conflict is the Chair of the Board, the responsible Ministers may decide to allow the Chair to continue to participate in matters related to the conflict. Similarly, the section provides for another Board member, the Board may decide to allow a member to participate despite the conflict of interest. If a Board member contravenes this section, any decision of the Board is not invalidated, but the Board must reconsider the prior decision.

Subdivision 3—Meetings

672—General procedure

Section 672 provides for the general procedure for calling and conduct of meetings of the Board to be determined by the Board.

673—Quorum

Section 673 provides a quorum for a meeting of the Board is the majority of its members.

674—Chief executive officer may attend meetings

Section 674 allows the chief executive officer of the Regulator to attend Board meetings and to participate in discussions. However, the chief executive officer is not entitled to vote. Also the chief executive officer must disclose any direct personal interest in matters before the Board and must not be present during consideration of these matters.

675—Presiding member

Section 675 describes who will be the presiding member at a Board meeting and, if the voting is otherwise tied, this section provides for the presiding member to have a second vote to decide the matter.

676—Voting

Section 676 provides that a decision of the Board is a decision of the majority of votes cast at a meeting where there is a quorum present.

677—Minutes

Section 677 provides that the Chairperson or presiding member is to ensure minutes are taken of meetings.

678—First meeting

Section 678 provides for the Chairperson to call the first meeting. Subsequent calling of meetings will be governed by the procedures developed under section 672.

679—Defects in appointment of members

Section 679 provides that a decision of the Board is not invalidated by a defect in a Board member's appointment.

Subdivision 4—Committees

680—Committees

Section 680 allows the Board to establish committees to assist in the exercise of the Board's functions.

Division 3—Chief executive officer

681—Chief executive officer

Section 681 provides for a chief executive officer for the Regulator to be appointed by the Board. The chief executive officer may be appointed for a maximum of 5 years, but may be reappointed. The chief executive officer is considered to be a member of the staff. As a member of staff, the remuneration and conditions of employment are governed by section 684.

682—Functions of chief executive officer

Section 682 provides the chief executive officer is responsible for the day to day management of the Regulator and any other functions conferred by the Board.

683—Delegation by chief executive officer

Section 683 allows the chief executive officer to delegate is functions, other than the power of delegation, to appropriately qualified members of the Regulator staff or chief executives of departments or other entities in participating jurisdictions.

Division 4—Staff

684—Staff

Section 684 provides for the Regulator to employ staff, including the chief executive officer, on terms and conditions decided by the Regulator subject to any relevant industrial award or other agreement that applies to the staff.

685—Staff seconded to Regulator

Section 685 allows staff from participating jurisdictions, the Commonwealth or local governments to be seconded to the Regulator.

686—Consultants and contractors

Section 686 allows the Regulator to engage contractors and consultants.

Part 3—Miscellaneous

Division 1—Finance

687—National Heavy Vehicle Regulator Fund

Section 687 establishes the National Heavy Vehicle Regulator Fund to be administered by the Regulator. The Fund does not form part of the consolidated fund or consolidated account for any participating jurisdiction or the Commonwealth.

688—Payments into Fund

Section 688 provides for the monies that are to be paid into the Fund including:

- money appropriated by a Parliament for the purposes of the Fund;
- fees, charges, costs and expenses paid to or recovered by the Regulator under the Law;
- proceeds of investments of money in the Fund;
- subject to any declared trusts, all grants, gifts and donations made to the Regulator;
- money directed to be paid into the Fund by this Law or another law of a participating jurisdiction or the Commonwealth;
- other money or property received by the Regulator in connection with the exercise of its functions;
- money paid to the Regulator for the provision of services under a service agreement to a State or Territory.

Subsection (2) clarifies that, with regards to registration charges, the road user component of the charge is not automatically payable into the Regulator Fund but the regulatory component of registration charges is automatically payable into the Regulator Fund. The regulatory component will be defined by a national regulation.

689—Payments out of Fund

Section 689 provides that the moneys that may be paid out of the Fund include:

- costs, expenses, discharging any liabilities incurred in the administration or enforcement of this Law, including payments to States and Territories for the provision of services under a service agreement;
- moneys directed to be paid out of the Fund under this Law;
- other payments recommended by the Regulator and approved by the responsible Ministers.

Under section 655 the responsible Ministers will decide their own procedures including voting requirements for approval of payments out of the Fund under section 689(c).

690—Investment by Regulator

Section 690 allows the Regulator to make secure, low risk investments of moneys in the Fund.

691—Financial management duties of Regulator

Section 691 requires the Regulator to:

- carry out its operations efficiently, effectively and economically;
- keep proper books and records for all money it receives;
- ensure expenditure from the Fund is for lawful purposes and reasonable value for money is received from money expended from the Fund;
- have procedures that afford adequate safeguards for correctness, regularity and proprietary of payments from the Fund, receiving and accounting for payments into the Fund and prevention of fraud and mistake;
- prepare financial statements in accordance with Australian Accounting Standards;
- facilitate audits of financial statements including any additional audits required by the responsible Ministers.

692—Accounts payable to other entities

Section 692 clarifies that the Regulator can establish accounts for moneys that are payable to other entities, such as money collected by the Regulator on behalf of jurisdictions.

Division 2—Reporting and planning arrangements

693—Annual report

Section 693 provides for the Regulator to prepare an annual report within 3 months of the end of each financial year. The section outlines the matters to be included in the annual report and these may include matters prescribed under national regulations. The performance-reporting requirements for the Regulator are aligned with the standards and indicators outlined in the National Performance Standards. The section also provides for the tabling of the annual report in the Parliaments of each participating jurisdiction and the Commonwealth and that it is to be published on the Regulator's website.

694—Other reports

Section 694 provides that the responsible Ministers may direct the Regulator to provide other reports relating to the exercise of the Regulator's functions.

695—Corporate plans

Section 695 provides for the Regulator to annually provide a 3 year corporate plan to the responsible Ministers for approval. The corporate plan is to include the Regulator's objectives, how the Regulator intends

achieving the objectives and the proposed budget of the Regulator. The corporate plan is also to include National Performance Measures, including the standards and indicators for the term of the plan. The section also requires the Regulator to advise the responsible Ministers if it makes a significant amendment to the corporate plan or if an issue arises that would have a significant impact on implementing an objective.

Division 3—Oversight of the Regulator and Board

696—Application of particular Queensland Acts to this Law

Section 696 provides for the application of Queensland's *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009* to guide the procedures and standards appropriate for privacy, recordkeeping and access to information for the Regulator and the Board. National regulations will be used to modify the Queensland Acts to ensure they can operate effectively for this scheme in all participating jurisdictions. In particular, the national regulations will be used to make necessary adjustments to cater for administrative arrangements.

The section ensures that jurisdictional agencies, including the Department of Transport and Main Roads in Queensland, road managers, and police services continue to be required to apply their local oversight laws even where they are performing services for the Regulator under a service agreement or delegation. The modified Queensland oversight laws will apply to the activities of the Regulator regardless of which jurisdiction it operates in. This section makes it clear a national regulation can be used to modify the operation of subsection (5).

Division 4—Provisions relating to persons exercising functions under Law

697—General duties of persons exercising functions under this Law

Section 697 provides that persons exercising functions under the Heavy Vehicle National Law must act honestly and with integrity, in good faith and with a reasonable degree of care, diligence and skill. This section also provides for an offence for a person improperly using their position or information that comes to their knowledge through the exercise of their functions under this Law.

698—Protection from personal liability for persons exercising Regulator's or Board's functions under this Law

Section 698 provides for the protection of personal liability for some of the person's exercising functions under the Law. For 'protected persons' liability instead attaches to the Regulator. 'Protected persons' has been defined to clarify who would be indemnified and who would not. Where the definition of 'protected person' in this section refers to any other person exercising functions under this Law' it relates to functions of the Regulator and not other types of activities that may be mentioned in the law. For example, placing an electronic work diary label under section 347 or a statement by an approved auditor under section 459 may be activities identified in this law but it is not a function under this law.

The section clarifies that not only natural persons who are performing functions for the Regulator (including the Regulator Board) are protected from personal liability. An individual who constitutes a body corporate is also protected and other persons or classes of persons can be included by national regulations.

Chapter 13—General

Part 1—General offences

Division 1—Offence about discrimination or victimisation

699—Discrimination against or victimisation of employees

Section 699 provides protection for employees or prospective employees from being dismissed, discriminated against or victimised because they have helped or provided information to a public authority or a law enforcement agency (both of which terms are defined in section 5) or made a complaint about a contravention or alleged contravention of this Law. Such protection is afforded by the creation of offences by an employer or potential employer for such conduct, with a maximum penalty of $10,000 applying to each offence.

There is a reverse onus of proof for an offence against this section. If all the facts constituting the offence are proved other than the reason for the defendant's action, the defendant must prove that the defendant's action was not for the reason that the employee or prospective employee helped or gave information to a public authority or law enforcement agency or made a complaint.

700—Order for damages or reinstatement

Section 700 establishes that if an employer is convicted of an offence against section 639 the court may impose one or more of a range of orders as well as a penalty for the offence. For example, a court may order the employer to pay damages to or reinstate the employee.

It is an offence for a person against whom an order is made not to comply with the order, with a maximum penalty of $10,000 applying.

Division 2—Offences about false or misleading information

701—False or misleading statements

Section 701 creates offences for a person who knowingly provides false or misleading statements to an official (with a maximum penalty of $10,000 applying) or who recklessly provides false or misleading statements to an official (with a maximum penalty of $8,000 applying).

702—False or misleading documents

Section 702 creates offences for a person who knowingly provides false or misleading documents to an official (with a maximum penalty of $10,000 applying) or who recklessly provides false or misleading documents to an official (with a maximum penalty of $8,000 applying).

703—False or misleading information given by responsible person to another responsible person

Section 703 creates an offence for a responsible person for a heavy vehicle (defined in section 5) to give information to another responsible person for a heavy vehicle that they know or ought reasonably to know is false or misleading. A maximum penalty of $10,000 applies. For example, a person who prepares the schedule for a heavy vehicle must not provide information to the driver of a heavy vehicle about the schedule that they know or reasonably ought to know is false or misleading.

Subsection (2) prohibits the reckless provision of false or misleading information by one responsible person for a heavy vehicle to another. This complements and provides a lower maximum penalty ($8,000) than the knowledge based offence for the giving of false or misleading information in subsection (1).

704—Offence to falsely represent that heavy vehicle authority is held etc

Section 704 creates a range of offences, each with a maximum penalty of $10,000, for falsely representing that a current and properly issued heavy vehicle authority is held. A heavy vehicle authority is a heavy vehicle accreditation or an exemption, authorisation, permit or other authority issued under this law. For example, this section creates an offence for a person to represent that they hold a mass or dimension exemption (permit) to operate a class 1 heavy vehicle or a class 3 heavy vehicle which does not comply with a dimension requirement vehicle and to operate the vehicle accordingly, if no such permit is held.

Part 2—Industry codes of practice

705—Guidelines for industry codes of practice

Section 705 enables the Regulator to make guidelines for industry codes of practice that may be registered under the Law.

706—Registration of industry codes of practice

Section 706 provides that the Regulator may register an industry code of practice prepared in accordance with the guidelines. Subsection (2) requires the Regulator to impose a series of statutory conditions on an industry code of practice at registration. These conditions require regular review, the designation of persons to maintain the code, and an obligation to update the code following changes to the guidelines for the preparation and content of the industry code of practice that is in force. The Regulator may impose further conditions on the registration.

Subsection (7) clarifies that the Regulator incurs no liability for loss or damage suffered by a person because the person relied on a registered industry code of practice.

Part 3—Legal proceedings

Division 1—Proceedings

707—Proceedings for offences

Section 707 provides that a proceeding for an offence against this law is to be by way of a summary proceeding and establishes the maximum period for which a proceeding must start as being the later of 2 years after the commission of the offence or 1 year from when the offence comes to the complainant's knowledge but within 3 years after the commission of the offence.

Division 2—Evidence

708—Proof of appointments unnecessary

Section 708 provides that it is not necessary to prove the appointment of an official or the police commissioner.

709—Proof of signatures unnecessary

Section 709 provides that a signature purported to be the signature of an official or the police commissioner is evidence of the signature.

710—Averments

Section 710 provides that in a proceeding for an offence against this Law, certain statements made in the complaint for the offence are evidence of the matters so stated. Examples of matters that may be stated include that at a stated time or during a stated period a vehicle or combination was a heavy vehicle, or that a person was the registered operator of a heavy vehicle, or that a stated location was or was part of a road or a road-related area.

711—Evidence by certificate by Regulator generally

Section 711 provides that a certificate issued by the Regulator may be used as evidence of the matter so stated in the certificate. Examples of matters that may be stated include that at a stated time or during a stated period a vehicle was or was not registered under this Law, or a stated exemption or authorisation under this Law applied or did not apply to the stated person or stated heavy vehicle.

712—Evidence by certificate by road authority

Section 712 provides that a certificate issued by a road authority may be used as evidence of the matter so stated in the certificate. Examples of matters that may be stated include that at a stated time or during a stated period a vehicle was or was not registered or licensed under a law administered by the road authority or a stated location was or was not part of a road or road-related area.

713—Evidence by certificate by Regulator about matters stated in or worked out from records

Section 713 provides that a certificate issued by the Regulator stating that a matter appears in or has been worked out from a record kept by the Regulator or appears in or has been worked out from a record accessed by the Regulator for the administration or enforcement of this law, is evidence of the matter so stated.

714—Evidence by certificate by authorised officer about instruments

Section 714 provides that a statement made by an authorised officer about the functioning of a weighing device or an intelligent transport system is evidence of the matter so stated.

715—Challenging evidence by certificate

Section 715 requires that a defendant who intends to challenge evidence provided by certificate under section 711, 712, 713 or 714(1) must give notice of their intention to challenge and describes the way in which such notice is to be given.

716—Evidence by record about mass

Section 716 provides that a record made by the operator of a weighbridge or weighing facility about the mass of a heavy vehicle or a component of a heavy vehicle is admissible in a proceeding under this Law and is evidence of the mass of the vehicle or component of the vehicle at the time it was weighed.

717—Manufacturer's statements

Section 717 provides that a manufacturer may make a written statement as to a range of matters relating to:

- the mass rating for a heavy vehicle or a component of a heavy vehicle; or
- the performance rating for equipment used to restrain a load.

The manufacturer's statement is admissible in a proceeding and is evidence of the matter so stated.

718—Measurement of weight on tyre

Section 718 provides that the maximum load capacity marked or printed on a tyre is evidence of the maximum load capacity for the tyre at cold inflation pressure decided by the manufacturer. It also provides for how mass can be determined if it is impracticable to work out the mass on each tyre in an axle or axle combination.

719—Transport and journey documentation

Section 719 provides that transport documentation and journey documentation are admissible in a proceeding under this Law and provide evidence about certain matters, such as the status of parties to a transaction, the destination of a load, the location of a person, the time and date at which a range of events took place, and the location of anything mentioned in the documentation.

720—Evidence not affected by nature of vehicle

Section 720 provides that evidence obtained in relation to a vehicle is not affected merely because the vehicle is not a heavy vehicle.

721—Certificates of TCA

Section 721 provides that a certificate purporting to be signed by a person on behalf of TCA is evidence of a matter so stated in the certificate. Examples of matters that may be stated include that at a stated time or during a stated period an intelligent transport system was or was not approved, or that a person was or was not an intelligent access service provider.

A person signing a certificate is presumed, unless the contrary is proved, to have been authorised by TCA to sign the certificate on behalf of TCA.

722—Approved intelligent transport system

Section 722 provides that for a range of matters relating to the operation of an approved intelligent transport system there is a presumption that the system was operating properly at the time unless proved otherwise. Examples of matters relating to the operation of the system include the information generated, stored, displayed, recorded, analysed, reported or transmitted by the system are correct.

This section also establishes that in a proceeding where it is established by contrary evidence that particular information was not a correct representation of the information generated by the system, the presumption continues to apply to the remaining information.

A defendant who intends to challenge a matter provided for under this section must give notice of their intention to challenge and describes the way in which such notice is to be given.

723—Evidence as to intelligent access map

Section 723 establishes a series of evidential presumptions to facilitate the admissibility of IAP maps in legal proceedings. Subsection (1) establishes a conclusive presumption that a particular certified map was or was not the intelligent access map as issued by TCA on a stated date or during a stated period. Subsections (2) and (3) establish rebuttable presumptions as to the correctness of the contents of the certified map, and the authority of the signatory respectively.

724—Reports and statements made by approved intelligent transport system

Section 724 provides that a report purporting to be made by an intelligent transport system is presumed to have been properly made and correct and is admissible in a proceeding under this law as evidence of the matters stated in it.

However this does not apply to information that was manually entered into the system by the operator or driver of a heavy vehicle. For example if a driver enters information about the mass of a vehicle into the system, the mass stated in a report generated by the system is not evidence of the mass of the vehicle.

It also states that in a proceeding where it is established by contrary evidence that part of a report was not a correct representation of the information generated by the system, the presumption continues to apply to the remainder of the report.

There is a requirement that a defendant who intends to challenge a matter provided for under this section must give notice of their intention to challenge and describes the way in which such notice is to be given.

725—Documents produced by an approved electronic recording system

Section 725 provides that documents purporting to be made by an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part is admissible in a proceeding under this Law and is evidence of a matter stated in it.

726—Statement by person involved with use or maintenance of approved electronic recording system

Section 726 provides that a statement made by a person involved with the use or maintenance of an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part about the maintenance of the system is admissible in a proceeding under this Law and is evidence of the matters stated in it.

Part 4—Protected information

727—Definitions for Chapter 13 Part 4

Section 727 provides definitions of certain terms used in this Part of the Law including 'authorised use', 'law enforcement agency' and 'protected information'.

The definition of authorised use provides for the authorisation, disclosure and use of personal information about a person in certain circumstances, including without the person's consent. This could infringe on a person's right to privacy.

Subsection (2) clarifies that it is also an authorised use of protected information disclosed to or otherwise held by a police agency for any purpose or for a particular purpose to disclose the information to another police agency authorised to hold protected information (whether or not for the same purpose).

Subsection (3) clarifies that the authorised disclosure of protected information to an entity includes a reference to the disclosure of the information to a duly authorised employee or agent of the entity.

728—Duty of confidentiality

Section 728 places a duty of confidentiality on a person who is or has been exercising functions under this Law not to disclose protected information to another person. However, the Regulator may disclose information which confirms that a stated person is the registered operator of a stated heavy vehicle or disclosing registration details to the executor or administrator of a person's deceased estate. In addition, disclosure may be made to an entity for an authorised use or to, or with, the consent of the person to whom the information relates.

729—Protected information only to be used for authorised use

Section 729 requires that protected information may only be used for certain purposes and outlines those purposes.

Part 5—National regulations

730—National regulations

Section 730 gives authority to the Governor of the State of Queensland acting with the advice of the Executive Council of Queensland to make regulations under this Law on the unanimous recommendation of the responsible Ministers.

This section prescribes the matters which may be included in the regulations and establishes maximum penalties which may be imposed under the regulations. The maximum penalty for an individual is $4,000 and is $20,000 for a corporation, this is higher than that which is normally included in regulations.

731—National regulations for approved vehicle examiners

Section 731 authorises the making of regulations to establish and manage a scheme for persons performing vehicle examination functions under the Law. Subsection (2) allows for the recognition of existing schemes by which comparable entities are currently managed under State and Territory laws as an interim measure to prevent dislocation during the establishment of the new scheme.

732—National regulations for publication of agreements for services to States or Territories

Section 732 allows for the making of regulations to specify particular matters contained in or relating to agreements with States or Territories to provide services that are to be published on the Regulator's website.

733—Publication of national regulations

Section 733 provides that regulations made under this Law are to be published on the New South Wales legislation website.

It also provides that a regulation commences on a day or days to be specified in the regulation, being not earlier than the date it is published.

734—Scrutiny of national regulations

Section 734 provides a process to allow responsible Ministers to give due consideration to, and advice on, issues raised during jurisdictional parliamentary scrutiny of national regulations with the aim of avoiding possible disallowance.

Subsection (1) requires the responsible Minister for a participating jurisdiction to refer any adverse report about a national regulation from a legislation scrutiny body for that jurisdiction to the responsible Ministers for consideration and advice.

Subsection (2) requires responsible Ministers to prepare advice on the adverse report and provide a report to the relevant responsible Minister about the issues raised.

The process provides an avenue for the responsible Ministers to be advised of issues raised, and to provide advice that may assist a local Minister in maintaining national consistency across the regulatory scheme.

Part 6—Other

735—Approved forms

Section 735 states that the Regulator may approve forms and it requires the Regulator to publish the approval of a form on its website.

736—Penalty at end of provision

Section 736 provides that the maximum penalty for an offence or contravention of a requirement of the Law is the penalty stated at the end of the relevant provision.

737—Increase of penalty amounts

Section 737 allows for the indexation of penalties for offences against the Law. The indexation mechanism is to be set out in regulations and is intended to be derived from generally accepted indexes such as inflation, for example, or the consumer or labour price indexes published by the Australian Bureau of Statistics. The note to subsection (2) recognises that the application of the index may result in no increase at all in a given year.

In addition to the ordinary requirement of a unanimous recommendation required for regulations made under the Law in section 730, a regulation establishing the index referred to in subsection (2) requires responsible Ministers to be satisfied that the method generally accords with increases in relevant inflation indexes or similar indexes.

738—Service of documents

Section 738 sets out the procedure for serving documents required or permitted to be served on a person under this Law.

739—Service by post

Section 739 prescribes the procedure for serving documents required or permitted to be served under this Law by post. It establishes that service is taken to have been effected at the time at which the letter would normally be delivered in the ordinary course of post unless proved otherwise.

740—Fees

Section 740 provides that the regulations may prescribe fees payable for an application under this Law or for the issue of a work diary for the driver of a fatigue-regulated heavy vehicle. It also enables the Regulator to set fees for the provision of a service in connection with the administration of this Law (other than the fees which must be prescribed in the regulations), and establishes that the fees set by the Regulator must be reasonable and not more than the reasonable cost of providing the service.

It is also a requirement for the Regulator to publish the fees it sets in the Commonwealth Gazette and on the Regulator's website.

Subsection (3) provides a head of power for the making of national regulations to provide that stated kinds of fees may be set by the Regulator for inspection services, except so far as those fees are provided for under another law of this jurisdiction.

Subsection (6) allows the Regulator to waive fees in circumstances prescribed by national regulations.

Subsection (7) clarifies that a decision maker can decline to deal with a matter if the fee is not paid.

741—Recovery of amounts payable under Law

Section 741 states that a fee, charge or other amount payable under this Law is a debt due to the Regulator and may be recovered.

742—Contracting out prohibited

Section 742 has the effect of voiding any contract or agreement to the extent to which it is contrary to the Law or purports to change the effect of a provision of the Law or requires the payment or reimbursement of a penalty payable by another person under the Law.

This section does not limit parties from entering into a contract that imposes greater or more onerous obligations than those required by the Law.

743—Other powers not affected

Section 743 provides that this Law does not affect any power a court, tribunal, or official has apart from the Law. This includes a power or obligation under another law to amend, suspend, cancel or otherwise deal with the registration of a heavy vehicle.

Chapter 14—Savings and transitional provisions

Part 1—Interim provisions relating to Ministers and Board

744—Responsible Ministers

Section 744 states that any jurisdiction that has signed the Inter-governmental Agreement on Heavy Vehicle Regulatory Reform may nominate a responsible Minister (as defined in section 5) even though the jurisdiction is not yet a participating jurisdiction (as defined in section 5) for the purposes of relevant provisions of the Law. Those are defined in this section as the provisions relating to the function of responsible Ministers other than section 652. Section 652 allows a responsible Minister for a participating jurisdiction to refer a matter relevant to that jurisdiction to the Regulator for action or to ask the Regulator for information about the exercise of the Regulator's function as applied in that jurisdiction.

Subsection (3) specifies that this applies until the prescribed day for the jurisdiction. This is defined as the earlier of the participation day for the jurisdiction (defined in section 5 as the day it becomes a participating jurisdiction) or 30 June 2014.

The effect of this section is to ensure that responsible Ministers may participate in key decisions of the responsible Ministers as a group during the initial implementation of the scheme, including recommendations about appointment of the Board members and national regulations.

745—Exercise of powers by Board between enactment and commencement

Section 745 provides that if the responsible Ministers rely on section 30 of Schedule 1 to the Law to appoint the members of the Board after enactment but before commencement of section 663 and a provision conferring a function on the Board has not yet commenced, the members may meet and exercise such a function in the same way and subject to the same conditions as if the relevant provision had commenced. Section 30 of Schedule 1 deals with the exercise of specified powers between the enactment of a provision and its commencement.

For example, the Board may appoint the chief executive officer for the Regulator even if section 681 has not yet commenced. This will allow necessary operational matters to be in place for the simultaneous commencement of the Regulator and relevant provisions of the Law.

The section also provides that in exercising functions, Board members are entitled to receive the remuneration and allowances specified under section 666, even if that section has not commenced. However, in determining duration of office, a member's term does not start until section 663 commences. In addition, the exercise of a function does not confer a right or impose a liability on a person before the relevant provision commences.

Part 2—General provisions

746—Application of Part 2

747—Definitions for Part 2

748—General savings and transitional provision

749—Expiry of certain permits, exemptions, notices and authorities

750—Amendment or cancellation of instruments carried over from former legislation

751—Expiry of industry codes of practice

752—Pending matters

753—Preservation of current PBS scheme

754—Preservation of contracts for current PBS scheme

755—National regulations for savings and transitional matters

Chapter 14 Part 2 (sections 746 to 755) provides general savings and transitional arrangements. This Part will work with national regulations and provisions in local application laws (that is the provisions in local laws that apply the National Law) to collectively manage the savings and transitional arrangements. The savings and transitional provisions in Chapter 14 Part 2 ensure or facilitate the following:

- As a general principle, from commencement of the National Law in a jurisdiction, matters relating to the administration of heavy vehicles under the National Law will be transferred from the jurisdictional agency to the Regulator, unless excluded. For example, applications for permits which have not yet been decided by the jurisdictional agency will move to the Regulator for finalisation. However, the transitional arrangement will still support a cooperative arrangement between the Regulator and jurisdiction in finalising these matters.
- Permits, notices or other exemption instruments in force prior to the commencement day will continue for a period as if they were made under the National Law. Consequently, after the commencement day these matters will be subject to the National Law and may be cancelled as if they were issued under the National Law.
- Permits will be saved for up to 3 years from commencement unless they sooner expire or are cancelled.
- Notices and similar exemption instruments of a class nature, will continue for a maximum of 5 years from commencement in the jurisdiction unless they sooner expire, are cancelled or are replaced by a new notice or instrument that covers the same matters in a substantially similar way as the previous notice.
- Industry Codes of Practice will be preserved for up to 3 years unless they have an earlier review date.
- The bulk of the administrative aspects of the PBS scheme and the instruments and decisions made under the scheme prior to the commencement of the *Heavy Vehicle National Law* will continue until the arrangements introduced by the *Heavy Vehicle National Law Amendment Act 2012* are implemented.

As a general principle, matters relating to offences under local laws or decisions already made under local laws (including for example, review and appeals of decisions or prosecutions made under local laws) are not to be automatically transferred to the Regulator.

The savings and transitional scheme is intentionally designed to be flexible enough to provide an effective response for savings and transitional matters across a broad range of matters that may arise through implementation.

Schedule 1—Miscellaneous provisions relating to interpretation

Schedule 1 to the Law contains miscellaneous interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory. The schedule is necessary to provide consistency in interpretation across jurisdictions—see section 10.

Schedule 2—Subject matter for conditions of mass or dimension authorities

Schedule 2 to the Law sets out the types of conditions the Regulator may consider appropriate to impose under a mass or dimension exemption (notice), or a mass or dimension (permit), or a class 2 heavy vehicle authorisation (permit)—see sections 119, 125 and 146.

Schedule 3—Reviewable decisions

Schedule 3 to the sets out the decisions that are reviewable decisions for the purposes of Chapter 11 of the National Law. Part 1 identifies the reviewable decisions of the Regulator, Part 2 identifies the reviewable decisions of an authorised officer, and Part 3 identifies reviewable decisions of a relevant road manager—see section 640.

Schedule 4—Provisions specified for liability of executive officers for offences by corporation

Schedule 4 is inserted to outline the provisions specified for liability of executive officers for offences by corporations—see section 636.

Debate adjourned on motion of Hon. S.G. Wade.

## STATUTES AMENDMENT (HEAVY VEHICLE NATIONAL LAW) BILL

Received from the House of Assembly and read a first time.

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (22:10):** I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

I am pleased to introduce the *Statutes Amendment (Heavy Vehicle National Law) Bill 2013* (the Consequential Amendments Bill).

This Bill accompanies and gives full effect to the *Heavy Vehicle National Law (South Australia) Bill 2013* (the Application Bill). Passage of the two Bills will enable South Australia to fulfil its commitments under the Council of Australian Governments' *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform* (IGA).

The purpose of the Application Bill is to establish a national system of heavy vehicle regulation governed by one national law (the National Law), that brings together model legislation developed through national heavy vehicle regulatory reforms over the last twenty years. This includes registration, fatigue management, accreditation schemes, mass, dimension and loading limits, compliance requirements and enforcement powers for all heavy vehicles over 4.5 tonnes.

The National Law also includes matters not the subject of the model legislation, but which are necessary for it to be self-contained and fully operational. Examples of such matters include provisions establishing a National Regulator as a corporate entity to administer the scheme, associated financial controls and governance structures, a review and appeals system, and requirements regulating the use and release of information.

The Consequential Amendments Bill principally amends the *Road Traffic Act 1961*. Amendments to that Act remove the heavy vehicle matters now covered in the National Law and its Application Bill. The Road Traffic Act will only cover light vehicle standards, defective light vehicles and light vehicle mass, dimension and load restraint requirements. However, drink and drug driving, careless and dangerous driving, excessive speed and the Australian Road Rules requirements, which are outside the ambit of the National Law, will continue to apply to heavy vehicles as well as light vehicles. The long title of the Act has been amended to reflect these changes.

Where relevant, definitions in the Road Traffic Act (e.g. 'garage address,' 'goods') have been aligned with provisions in the National Law for ease of interpretation and enforcement. Matters only relevant to heavy vehicles, heavy vehicle sanctions and the chain of responsibility concept have been removed.

In some cases, where there are equivalent enforcement powers in the National Law and the Road Traffic Act, those in the Act have been restricted to light vehicles only. Other powers continue to apply to both light and heavy vehicles as it is necessary to have powers to enforce the offences that continue to apply to both types of vehicle.

In terms of light vehicle mass, dimension and load restraint offences, there has been a return to the position before the national heavy vehicle compliance and enforcement model law was implemented into the Road Traffic Act in 2006. Concepts from this model law that are more applicable to heavy vehicles have been removed (such as the reasonable steps defence and the classification of breaches into minor, substantial and severe risk). The maximum penalty for a light vehicle mass, dimension and load restraint offence will be $2,500.

The Consequential Amendments Bill also amends the *Motor Vehicles Act 1959*. The main amendment to this Act is to repeal the heavy vehicles speeding control scheme. The Ministerial Council agreed that this policy initiative from 1999 overlapped with the heavy vehicle speeding compliance model law which the Ministerial Council approved in December 2007 and it was agreed the latter scheme achieved the same intent and provided greater consistency. Other amendments align definitions with the definitions in the National Law for ease of interpretation and enforcement; and to allow information gained in the administration of the Motor Vehicles Act, for example heavy vehicle registration information, to be provided to the National Regulator in connection with the administration of the National Law.

Minor amendments have also been made to section 23 of the *Second-hand Vehicle Dealers Act 1995* to ensure that the duty of a second-hand vehicle dealer to repair a vehicle after sale will continue to apply to second-hand heavy vehicles when matters such as vehicle standards relating to heavy vehicles are covered under the National Law rather than under the Road Traffic Act as at present.

The Consequential Amendments Bill and the Application Bill form a package and both Bills need to be passed before the National Law can be commenced.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Motor Vehicles Act 1959*

4—Amendment of section 5—Interpretation

This clause alters a number of definitions to make them consistent with those in the Heavy Vehicle National Law (HVNL) and redefines 'authorised officer' to reflect changes to the Road Traffic Act contained in this Bill.

5—Repeal of Part 2A

This clause repeals Part 2A of the Motor Vehicles Act which created the heavy vehicles speeding control scheme. This matter is now covered by the HVNL (see Chapter 5 of the HVNL text in Schedule 1 of the *Heavy Vehicle National Law (South Australia) Bill 2013*).

6—Amendment of section 139D—Confidentiality

This clause amends section 139D to enable information to be disclosed for the purpose of administering the HVNL.

7—Amendment of section 141—Evidence by certificate etc

This clause amends section 141 so that certificates issued under the HVNL in other jurisdictions can be admitted as evidence in relation to heavy vehicle matters.

Part 3—Amendment of *Road Traffic Act 1961*

8—Amendment of long title

This clause amends the long title of the Act to reflect its content. The long title has not been altered since the Act was originally enacted in 1961 when its purpose was then to consolidate the laws relating to road traffic.

9—Amendment of section 5—Interpretation

This clause alters a number of definitions to make them consistent with those in the HVNL (see section 5 of the HVNL text). It also removes definitions which are no longer needed. The definition of 'authorised officer' has been altered to include police officers so that it is not necessary to refer to police officers separately throughout the Act wherever the term 'authorised officer' is used.

10—Repeal of sections 8 and 9

This clause repeals sections 8 and 9 which contain redundant definitions ('driver's base' and 'associates').

11—Amendment of section 35—Appointment of authorised officers

This clause amends section 35 to consolidate the provisions relating to the power of the Minister to impose conditions on the appointment of authorised officers.

12—Repeal of section 36

This clause repeals section 36 as its content has been transferred to section 35.

13—Substitution of section 38

This clause substitutes section 38.

38—Identity cards

New section 38 relates to the issue of identity cards to authorised officers. The section has been redrafted to make it consistent with the HVNL (see section 486 of the HVNL text).

14—Amendment of section 39—Production of identification

This clause removes references to police officers.

15—Amendment of section 40—Return of identity cards

This clause makes a minor semantic change to section 40.

16—Repeal of section 40A

This clause repeals section 40A.

17—Substitution of section 40C

This clause substitutes a new section 40C.

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

The definitions of 'qualified,' 'fit' and 'authorised' to drive a vehicle, or to start or stop its engine, have been altered to align these terms more closely with the HVNL and the definition of 'authorised to drive' has been restructured to simplify it.

18—Amendment of section 40D—Meaning of unattended vehicle and driver of disconnected trailer

This clause amends section 40D to align the meaning of 'unattended vehicle' more closely with the HVNL (see section 515 of the HVNL text).

19—Substitution of sections 40E and 40F

This clause substitutes sections 40E and 40F.

40E—Meaning of broken down vehicle

This section has been redrafted to simplify the structure of the provision.

40F—Meaning of compliance purposes

This section has also been redrafted in order to remove obsolete references to 'approved road transport compliance scheme.'

20—Amendment of section 40G—Application of Subdivision

This clause makes a minor semantic change to section 40G.

21—Insertion of section 40GA

This clause inserts a new interpretation provision.

40GA—Interpretation

This section defines 'road law' for the purposes of Part 2 Division 5 Subdivision 2 to include the HVNL legislation (including national and local regulations).

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

This clause removes references to 'police officer.'

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

This clause removes references to 'police officer,' substitutes 'this Act' with 'a road law' in order to apply the definition of 'road law' inserted by clause 21 to section 40I and amends section 40I in relation to the maximum penalty for contravening such a direction.

24—Amendment of section 40J—Direction to move vehicle if danger or obstruction

This clause removes a reference to 'police officer' and restricts the application of section 40J to light vehicles.

25—Amendment of section 40K—Direction to leave vehicle

This clause removes references to 'police officer' in section 40K.

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

This clause removes a reference to 'police officer' and substitutes 'this Act' with 'a road law' in order to apply the definition of 'road law' inserted by clause 21 to section 40M.

27—Amendment of section 40N—Removing unattended or broken down vehicle if danger or obstruction

This clause removes a reference to 'police officer' and restricts the application of section 40N to light vehicles.

28—Amendment of section 40P—Notice of removal of vehicle and disposal of vehicle if unclaimed

This clause restricts the application of section 40P to light vehicles.

29—Amendment of section 40Q—Power to inspect vehicle on road or certain official premises

This clause removes a reference to 'police officer' and 'approved road transport compliance scheme.'

30—Amendment of section 40R—Power to search vehicle on road or certain official premises

This clause removes a reference to 'police officer' and references to 'approved road transport compliance scheme.'

31—Amendment of section 40S—Power to inspect premises

This clause removes a reference to 'police officer' and 'approved road transport compliance scheme' and amends the types of premises covered by section 40S to reflect changes elsewhere in this Bill.

32—Amendment of section 40T—Power to search premises

This clause removes a reference to 'police officer' and references to 'approved road transport compliance scheme' and amends the types of premises covered by section 40T to reflect changes elsewhere in this Bill.

33—Amendment of section 40V—Direction to give name and other personal details

This clause removes references to 'police officer.'

34—Amendment of section 40W—Direction to produce records, devices or other things

This clause removes a reference to 'police officer.'

35—Amendment of section 40X—Direction to provide information

This clause removes a reference to 'police officer.'

36—Amendment of section 40Y—Direction to provide reasonable assistance for powers of inspection and search

This clause removes a reference to 'police officer' and substitutes 'run' an engine with 'start or stop' an engine to make the wording of the section consistent with the HVNL.

37—Amendment of section 40Z—Provisions relating to starting or stopping engine

This clause substitutes 'run' an engine with 'start or stop' an engine to make the wording of the section consistent with the HVNL.

38—Amendment of section 41B—Warrants

This clause removes a reference to 'police officer.'

39—Amendment of section 41C—Use of assistants and equipment

This clause removes references to 'police officer.'

40—Amendment of section 41D—Use of equipment to examine or process things

This clause removes a reference to 'police officer.'

41—Amendment of section 41E—Use or seizure of electronic equipment

This clause removes a reference to 'police officer' and a reference to 'scheme' (i.e. approved road transport compliance scheme).

42—Amendment of section 41F—Receipt for and access to seized material

This clause removes a reference to 'police officer.'

43—Repeal of section 41G

This clause repeals section 41G which provides for the issue of embargo notices in relation to heavy vehicles. This matter is now covered by the HVNL (see sections 557 to 560 of the HVNL text).

44—Substitution of section 41I

This clause substitutes section 41I.

41I—Various powers may be exercised on same occasion

This section has been redrafted to delete a reference to 'police officer' and expand the meaning of 'road law' for the purposes of section 41I to include the HVNL legislation (including national and local regulations).

45—Amendment of section 41J—Restoring vehicle or premises to original condition after action taken

This clause removes a reference to 'police officer.'

46—Amendment of section 41M—Obstructing or hindering authorised officers

This clause removes a reference to 'police officer.'

47—Amendment of section 41O—Division not to affect other powers

This clause makes a minor semantic change.

48—Repeal of Part 3AA

This clause repeals Part 3AA of the Act which contains provisions related to the management of heavy vehicles (fatigue, speed and intelligent access program). These matters are now covered by the HVNL (see Chapter 5 (Speeding), Chapter 6 (Driver Fatigue) and Chapter 7 (Intelligent access) of the HVNL text).

49—Amendment of section 110C—Offences

This clause removes a reference to 'police officer'

50—Amendment of heading to Part 4

This clause alters the heading to Part 4 to restrict its operation to light vehicles.

51—Substitution of Part 4 Division 1

This clause substitutes new provisions related to light vehicles.

Division 1—Light vehicle standards

111—Rules prescribing light vehicle standards

This section provides the Governor with power to make rules prescribing vehicle standards for light vehicles.

52—Substitution of Part 4 Division 2

This clause substitutes new provisions related to light vehicles.

Division 2—Light vehicle mass and loading requirements

113—Regulations prescribing light vehicle mass and loading requirements

This section provides the Governor with power to make regulations prescribing requirements relating to the mass and loading of light vehicles.

53—Repeal of Part 4 Division 3

This clause repeals Part 4 Division 3 of the Act which provides the Governor with power to make regulations prescribing standard form conditions applying to the driving of heavy vehicles the subject of oversize or overmass vehicle exemptions. This matter is now covered by the HVNL (see Chapter 4 Part 5 of the HVNL text).

54—Amendment of heading to Part 4 Division 3A

This clause amends the heading to Part 4 Division 3A to restrict its application to light vehicles.

55—Amendment of section 116—Meaning of breach of light vehicle standards or maintenance requirement

This clause amends section 116 to restrict its operation to light vehicles.

56—Amendment of section 117—Liability of driver

This clause amends section 117 to restrict its operation to drivers of light vehicles.

57—Amendment of section 118—Liability of operator

This clause amends section 118 to restrict its operation to operators of light vehicles.

58—Amendment of heading to Part 4 Division 3B

This clause amends the heading to Part 4 Division 3B to restrict its operation to light vehicles.

59—Substitution of sections 119 and 120

This clause deletes sections 119 and 120 and substitutes a new section 119.

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

This section defines 'breach of a light vehicle mass, dimension or load restraint requirement.'

60—Repeal of Part 4 Division 3B Subdivision 2

This clause repeals Part 4 Division 3B Subdivision 2 as the reasonable steps defence is now covered in the HVNL (see Chapter 10 Part 4 Division 1 of the HVNL text).

61—Amendment of heading to Part 4 Division 3B Subdivision 3

This clause amends the heading to Part 4 Division 3B Subdivision 3 to restrict its operation to light vehicles.

62—Substitution of sections 123 and 124

This clause substitutes sections 123 and 124.

123—Liability of driver

This section has been redrafted to limit its operation to drivers of light vehicles.

124—Liability of operator

This section has been redrafted to limit its operation to operators of light vehicles.

63—Repeal of sections 125 to 129

This clause repeals sections 125 to 129 which deal with the liability of consignors, packers, loaders and consignors and specifies penalties. These matters relate to heavy vehicles only and are covered by the HVNL. Penalties for the offences in the substituted sections 123 and 124 are inserted in those sections.

64—Repeal of Part 4 Division 3B Subdivisions 4 to 7

This clause repeals Part Division 3B Subdivisions 4 to 7 which deal with sanctions, container weight declarations, recovery of losses resulting from non-provision of or inaccurate container weight declarations and transport documentation. These matters relate to heavy vehicles only and are covered by the HVNL.

65—Amendment of section 145—Defect notices

This clause amends section 145 to align the definition of 'safety risk' with that in the HVNL, to restrict the section's application to light vehicles and to remove references to 'police officer.'

66—Substitution of Part 4 Division 4 Subdivisions 2 and 3

This clause repeals Part 4 Division 4 Subdivisions 2 and 3 and substitutes a new Subdivision 2 (which is limited to light vehicles). Formal warnings in relation to heavy vehicles are dealt with by the HVNL (see Chapter 10 Part 1 of the HVNL text).

Subdivision 2—Powers relating to breaches of light vehicle mass, dimension or load restrain requirements

146—Directions and authorisations.

This section consolidates the provisions of sections 148, 151, 152, 153 and 154.

67—Amendment of section 161A—Driving of certain light vehicles subject to Ministerial approval

This clause amends section 161A to limit its application to light vehicles.

68—Repeal of Part 4 Division 6

This clause repeals Part 4 Division 6 which requires prescribed vehicles to be marked in accordance with the regulations. This matter is dealt with in the HVNL.

69—Substitution of section 163G

This clause substitutes section 163G.

163G—Inspection of certificates

This section has been redrafted to remove references to 'police officer.'

70—Repeal of Part 4B

This clause repeals Part 4B which contains special provisions relating to heavy vehicle offences (improvement notices, sanctions for heavy vehicle offences and criminal responsibility in relation to organisations and employers). These matters are covered by the HVNL.

71—Substitution of section 164B

This clause substitutes section 164B.

164B—Approval or exemption does not operate in favour of person who contravenes a condition

This section has been redrafted so that it applies in relation to Ministerial approvals under section 161A and Ministerial exemptions granted under the Act.

72—Repeal of section 173AA

This clause repeals section 173AA which contains the reasonable steps defence now covered by the HVNL (see section 618 of the HVNL text).

73—Section 173AB—Further defences

This clause amends section 173AB to remove a reference to 'police officer.'

74—Repeal of section 174F

This clause repeals section 174F which deals with industry codes of practice which is covered by the HVNL (see Chapter 13 Part 2 of the HVNL text).

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

This clause amends section 174G by replacing the definition of 'public agency.' This change is consequential on the removal of certain definitions in section 5.

76—Substitution of section 174I

This clause substitutes section 174I.

174I—Amendment or revocation of directions or conditions

This section allows authorised officers to amend or revoke directions given, or conditions imposed, by them or other authorised officers (but authorised officers who are not police officers cannot amend or revoke the directions given or conditions imposed by police officers).

77—Amendment of section 175—Evidence

This clause amends section 175 to remove unnecessary evidentiary provisions, remove references to 'police officer' and make amendments consequential on clause 71.

78—Amendment of section 176—Regulations and rules

This clause amends section 176 to remove the power to make regulations relating to the establishment and administration of approved road transport compliance schemes.

Part 4—Amendment of *Second-hand Vehicle Dealers Act 1995*

79—Amendment of section 23—Duty to repair

This clause amends section 23 to insert references to the *Heavy Vehicle National Law (South Australia)* and *Heavy Vehicle National Regulations (South Australia)*. This will ensure that defects in second-hand heavy vehicles found after sale are repaired by the second-hand vehicle dealer as required by the section.

Schedule 1—Statute law revision amendment of *Road Traffic Act 1961*

This Schedule contains statute law revision amendments to the Act. These minor semantic changes do not alter the substantive effect of the amended provisions.

Debate adjourned on motion of Hon. S.G. Wade.

At 22:11 the council adjourned until Thursday 4 July 2013 at 11:00.