HOUSE OF ASSEMBLY

Thursday 2 May 2013

The SPEAKER (Hon. M.J. Atkinson) took the chair at 10:31 and read prayers.

CHILDREN'S PROTECTION (LAWFUL SURRENDER OF NEWBORN CHILD) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 March 2013.)

Mrs VLAHOS (Taylor) (10:33): I would like to speak on behalf of the minister today, as she is already occupied in another part of the building. Firstly, I would like to acknowledge that the Children's Protection (Lawful Surrender of Newborn Child) Amendment Bill has been discussed and debated for some time now, and the intent of the draft amendment is to enable women to relinquish the care of their infant in a manner that prevents them from being identifiable to the infant or the government, and without criminal charge.

The child will be placed in the minister's care with the view that the infant will be adopted. The bill intends to allow a six-week window for the parent to apply to the minister for their infant to be returned if they change their mind. As it has been stated consistently by our government, we do not support this amendment.

This bill raises many sensitive and emotive issues regarding women who have or may wish to anonymously relinquish their child; however, I am acutely aware that we in this place must be mindful of enacting legislation which may have the very best of intentions but, in the longer term, actually produce harmful consequences.

The apology for past adoption practices reminds us of our need to scrutinise these proposals beyond our best intention. What is the outcome for these families? Will the legislation seek to ensure the best possible outcome for children: children who have become adolescents and ultimately adults who themselves become parents? What about their sense of loss of identity—the ripple effect that a feeling of disconnect from their family would place on them and their lives, and a child lost forever from their family? As with the apology for past adoption practices, people in their 30s, 40s, 50s and 60s and beyond are still impacted by the deep hurt and pain of being separated from their families.

This proposed amendment to the Children's Protection Act may have good intentions but it seeks to, once again, alienate people from their families and their origins. It allows for families to be disconnected from one another. It will mean that we have a system, once again, that ensure sons and daughters will be strangers to their mothers and fathers, compounding people's grief about the loss of contact, the loss of knowledge about where they come from, and about important genetic and medical information that may have an intergenerational impact.

Can we confidently say that the parents of these children will not be pressured into anonymously relinquishing their child? The bill in its current form will allow for the anonymous abandonment of a child with little or no safeguards to ensure that the mother or father are aware of the enormous support mechanisms that the state government has made available to them. This support includes the universal home care contact; the Family Support Program, Torrens House, Pregnancy, Birth and Baby Helpline, the Parents Helpline, the Respite Care Program, the Early Childhood Intervention Program, our Children's Centres or even simply contacting the Child and Family Health Centres to seek advice and support from qualified and trained staff.

Importantly, if a mother wanted to relinquish the care of an infant she can do so through Families SA. In addition to this option there are supports to assist in strengthening and supporting a mother's parenting skills and the opportunity to be reunified with her infant. None of these options would be possible if the bill was passed to allow for the anonymous abandonment of a child.

Parental inability or unwillingness to provide care in the context of neglect of the baby rather than the anonymous abandonment of the baby is the most common reason for anonymous abandonment occurring. Our priority in South Australia should remain on early intervention services that are already in place to assist mothers and families.

A Victorian research paper on abandoned children and baby safe havens for the Standing Council Community Housing and Disability Services makes clear that the South Australian approach to early intervention is consistent with the national approach, which is to fund services aimed at supporting parents and preventing universal secondary or specialist responses. The research paper does not provide any evidence that would suggest that the early intervention approach should be changed.

The research paper, led by Victoria for the Standing Council Community of Housing and Disability Services, suggests that the policies developed in response to child abandonment must consider the complexity that is generally thought to be present in the lives of those who are abandoning their children. Early intervention services are the best option to address these complexities. Our priority, as a government, should be to ensure support services which allow families to remain together, not policies and laws which seek to separate them.

As I highlighted earlier, there is clear research that details long-term psychological and emotional impacts on the children who do not have the opportunity to develop their identity in relation to their biological heritage. I remain concerned at the longer term outcomes for those infants and there is no way that this bill can prevent this occurring. If children were to be adopted or placed under the guardianship of the minister through this amendment bill, significant concerns would be raised regarding their right to access information about their identity and the long-term impact this would have on their emotional and physical well-being.

My concern for this amendment bill is the infringing of a child's human rights. South Australia, as a signatory to the UN Conventions of the Rights of the Child, may be contravening Australia's agreement to the rights of a child and possibly to understand their identity. I asked earlier: what is the outcome? Do these laws reduce tragic cases of child abandonment that result in the awful death of a child?

The research paper led by the Victorian standing committee concluded that, whilst research and data regarding abandoned children is limited, the evidence does suggest that abandonment and neonaticide rates do not reduce through the introduction of baby safe havens. If this legislation is not able to decrease the small number of infants unsafely abandoned and neonaticide then what does this amendment bill add to the safety and wellbeing of children in South Australia? It does not offer anything further to the services already under existing legislation to support women and infants who are the target of this bill. It does not add to the whole government and non-government approach to the prevention and early intervention where children are included and infants are at risk.

Establishing and administering the proposed amendment bill and the possible subsequent baby safe haven system would require diversion of resources from existing service delivery, without the citing of any evidence that there would be any gain for the abandoned child, parents or the community. Indeed, some of the existing evidence suggests that it could result in additional risks for the infants concerned.

A Criminal Law Journal article by Lorana Bartels draws upon safe haven laws in the US state of Pennsylvania and it suggests that the laws there have not had an impact on reduced child abandonment. In fact, the number of unsafe baby abandonments may have actually increased since the introduction of the legislation.

Another study by the Evan B. Donaldson Adoption Institute claims that enacting the baby safe haven law may encourage women to conceal their pregnancy and then abandon their infant when they otherwise would have sought assistance or had the child raised by a relative. This research paper also raises the issue of fathers. Under the proposed amendment bill, fathers can be denied the right to care for their child if the mother relinquishes the child under these laws—and fathers are incredibly important in families.

The South Australian government will remain committed to our universal, secondary and intensive support services aimed at supporting parents and protecting the health and wellbeing of children. The proposed amendment seeking to legalise the abandonment of children will not solve the complex issues that ultimately lead to a child being relinquished by their parent.

Furthermore, if we cannot offer the support services to the mother and a child is left anonymously, what results is a very similar outcome down the track to those faced by forced adoption. The member for Morialta stated about past adoption practices, specifically, 'the denial of a mother's love.' He mentioned how, 'In this day and age, children are put up for adoption in South

Australia only where there is genuinely no opportunity for family to stay together', and he is absolutely correct in saying that.

We fundamentally believe, on this side of the house, that our focus should be on supporting vulnerable families, intervening where we need to in order to support them and making sure the early warning signs for potential risk or harm are identified. We fundamentally believe the best place for a child is with both of their parents.

Debate adjourned on motion of Mr Griffiths.

EDUCATION AND EARLY CHILDHOOD SERVICES (REGISTRATION AND STANDARDS) (MODIFICATION OF NATIONAL LAW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 February 2013.)

Mrs VLAHOS (Taylor) (10:43): The government opposes this bill also and it revisits the original debate from 2011 and pre-empts the results of the COAG review of 2014 and seeks to delay quality improvements in childcare services in South Australia. It does this by trying to amend or, effectively, revoke relevant sections of the Education and Care Services National Regulations that operate in South Australia under Part 2 of the Education and Early Childhood Services (Registration and Standards) Act 2011. Specifically, the bill seeks to:

- reduce open floor space requirements;
- delay improvements in staff-child ratios;
- enshrine in legislation provisions about which staff can cover others whilst on breaks for up to an hour; and
- allow a person who is working toward a teaching qualification to occupy a role that is currently intended to be filled by a fully qualified teacher.

On 16 January 2013, Goodstart Early Learning issued a press release with inputs from the Goodstart CEO and the CEO of Early Childhood Australia. The press release expressed concern about South Australia's high ratio and said that the sector was committed to the new national quality reforms. If we had the worst quality or staff figures in the country in any other area, the opposition would be howling in protest. In this case, however, they are prepared to shamelessly promote the lowest common denominator. In my own electorate, having visited a Goodstart childcare centre and, having seen the improvements they have put into the Salisbury North area recently, they are to be commended in their seizing of the quality childhood framework.

I am proud to say that many South Australian operators already provide more staff than the minimum required by the law, and currently the law ensures that all toddlers will receive appropriate care ratios by 2016. With regard to the proposal to allow staff with lower qualifications to cover teacher breaks for up to an hour, I understand the current policy provides for breaks up to 30 minutes. The regulatory authority is responsible for managing these matters, and the government's view is that this is an appropriate thing. Queensland and WA are much more proscribed with this requirement.

Finally, the proposal to allow a person who is actively working towards a recognised teaching requirement to work in the role of a qualified teacher is not supported by the government. I understand the current legislation allows the regulatory authority to grant exemptions to the degree qualification requirement on a case-by-case basis for a fee of $100, and where the board is satisfied that that specific person should be granted the exemption. By creating a blanket exemption a person could enrol part-time in the four-year degree program, work for many years in the role before they are actually qualified, and then there is no guarantee that when they have completed their degree that they will not leave and be replaced by another person who has not completed their training.

I note that the member for Waite, in his speech supporting another childcare motion, has been openly critical of the emerging educational focus in early childhood services. The legislation takes a firm position with the specialist early childhood educators in childcare centres being responsible for designing, delivering and managing key curricula for our children and their futures. For other workers in the childcare centres, there is more flexibility. For example, a requirement of the current legislation that, by 2014, 50 per cent of staff must have or be working towards a diploma qualification is a good thing. The remaining staff will be required to have or be working

towards a certificate III. Similar to specialist teacher positions, there are a number of degrees of flexibility and exemption provisions built into these requirements.

I remind the house that passing this bill may put our national partnership funding at risk, especially with regard to the staff ratio, because they are at the heart of quality reform. This bill seeks to revert space requirements to those which are included in the 1985 requirements of 2.8 square metres per child. Both the 1998 regulations and the 2011 legislation provided exemptions for centres that were in compliance with the old rules when they changed. This exemption applies until the centre is renovated or transferred to another provider. This exemption is targeted so that our children's childcare centres will comply with the new requirements over time.

Conversely, the member for Waite's bill is seeking to turn back time. With regard to staff/child ratios, the member for Waite has been very economical with the detail—less than fulsome. The existing legislation requires that centres have a staff/child ratio of 1:5 for children aged between 24 and 36 months by 2016. By the time this comes into operation, centres will have had five years to prepare for the change.

South Australia currently has the worse staff/child ratio for this age group in Australia. Centres can operate with just one staff to 10 toddlers. If you have been a mother with one child, image trying to deal with 10 in this situation, and the impact it has on many children and their future. The member for Waite has been quite happy to quote the former Queensland premier in his second reading speech, claiming that she was concerned with additional costs to parents due to regulation changes. What the member for Waite neglected to say was that Queensland already had a 1:6 ratio, whilst we have been operating on a 1:10 ratio, an important fact.

In response to several points raised by the member for Waite in his second reading speech, I note that his view about the impact of fees on families seems to change quite regularly. On 20 February 2013 the member stated:

> The only people who can afford this are the wealthy and those who are able to access the maximum of the childcare benefit, those most in need. Middle Australia—the families in the middle—are the ones getting crushed.

On 21 February, he went on to state:

> These pressures are felt hardest by single parent families and families from lower socioeconomic groups.

These are the people I represent in this house. He further goes on to say:

> They are the very children who will be moved out of child care first.

In my area I am not seeing that. On one day, the member believes the poorest families are fine because of large government benefits, but the next day he believes these benefits seem to have disappeared.

The house should treat with caution some of the media reports quoted by the member for Waite. The Australian Community Children's Services 'Trends in Community Children's Services Survey' reported that 89 per cent of respondents from the non-profit sector and 11 per cent of the commercial respondents believed that fees were significantly lower than those reported in the media by opponents of the National Quality Framework.

The 2012 Report on Government Services also showed that after rebates and subsidies childcare costs for families with one child in care were about 8.2 per cent and 9.4 per cent of weekly disposable income. Families with two or more children in care were spending between 14 per cent and 17.4 per cent on care after rebates. In his second reading speech, the member for Waite talked about:

> ...husband and wife teams, both with a job and earning perhaps up to $150,000, who are completely means tested out of the childcare benefit. These are the people who are falling through the crack.

This fails to mention the rebate which is not means tested and provides 50 per cent of the out-of-pocket costs up to $7,500.

I welcome any suggestions to improve the quality and affordability of childcare services. I do not particularly welcome amendments designed to benefit a small proportion of providers who have chosen not to make progress towards the national new quality framework or who operate systems compliant with regulations that are almost 30 years old. The member for Waite in his second reading speech on childcare issues harked back to the unregulated days before 1972, and turning the clock back to 1985 would take us three-quarters of the way there. The government opposes this bill.

Debate adjourned on motion of Mr Griffiths.

ADOPTION (CONSENT TO PUBLICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 February 2013.)

Mrs GERAGHTY (Torrens) (19:53): I move:

That the debate be adjourned.

The SPEAKER: It is moved that the debate on order of the day No. 3 be adjourned. Is that seconded?

An honourable member: Yes, sir.

The SPEAKER: I will put it at once.

Ms Bedford: Don't you have to put it at once, anyway?

The SPEAKER: I will consult the Clerk about the member for Florey's point. I say 'I will put it at once' because there have been times when we have had debates in here about adjourning things and it has gone back and forth and ended in a division, so I am giving due notice to members with this small remark that the motion for the adjournment and the date that it is to be adjourned is coming on for a vote, if you want to have a Donnybrook about it—as we have (that is Irish for a fight. Does that answer the member for Florey's query?

Ms BEDFORD: Well, I will be interested now, sir, to notice that becoming the norm in our chambers all over Australia.

The SPEAKER: Glad to be a leader.

Debate adjourned on motion of Mrs Geraghty.

FIRE AND EMERGENCY SERVICES (VOLUNTEER CHARTERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 November 2012.)

Mr VAN HOLST PELLEKAAN (Stuart) (10:57): I stand to wholeheartedly support the member for Morphett in his moving the Fire and Emergency Services (Volunteer Charters) Amendment Bill. He is an active CFS member, as am I, and I declare that interest up front. I speak as the member for Stuart and as an active CFS volunteer. I also speak, in this instance, really on behalf of the 15,000 or so emergency services volunteers who work across our state, from the CFS, the SES, the ambulance service, the Coast Guard, etc. This is a very important bill that the member has put forward because what it is trying to do is get the government to keep a commitment that it has already made.

Back in 2008, the Emergency Services Charter was signed by the Premier, the Minister for Emergency Services, the Minister for Volunteers, the Commissioner for Fire and Emergencies, the South Australian CFS Chief Officer and the President of the CFS Volunteers Association. Part of that charter was that it would be reviewed whenever any of the agencies thought it was important to do so or after four years, whichever came first.

One of the reasons this is so important is that the charter has actually been broken by the government. It was broken by the government when it formed the Community Safety Directorate without properly consulting with all the emergency services groups. I am sure the government would say that it did consult, but the reality is that the consultees do not believe that it was done properly and they totally disapprove of the way the Community Safety Directorate was formed. They are very disappointed in how it came together. They are very disappointed in the fact that they do not believe their views were listened to; they think they were just ridden over.

This is not actually a debate about the Community Safety Directorate. This is actually a debate about trying to hold the government to account, which is exactly what the member for Morphett is trying to do here and it is exactly what the emergency services volunteers want done. It is one thing to come and sign a charter and say, 'Yes, we will be fantastic partners. We will do everything that we are meant to do and you can trust us', but years down the track when they find that that is not what the government did, and so clearly that is not what the government intends to continue to do, the government has made that charter essentially invalid from its own perspective.

What the member for Morphett is trying to do here is to bring some legislation in that would enshrine exactly what the charter—the agreement—is meant to do in legislation, so that all parties then would actually be bound by legislation because the government being bound by the charter has clearly not been enough for the government. So, that is what is happening here; not asking for any more or any less commitment than the government has already made, just trying to find a way to force the government to keep its commitment.

It is important for a few reasons. Obviously, having governments keep their commitments is important for the obvious reason, but the other very important reason is, as I mentioned before, there are about 15,000 emergency services volunteers working across our state. Nobody press-gangs them into this. Nobody makes them contribute their time. Nobody has any capacity to force them into service to their friends, neighbours, communities and the state in the way that they provide it, so if they cannot trust the government, they are naturally going to be less inclined to continue to participate. Having a system in place through legislation, which seems to be unfortunately necessary because the charter is not enough, is hopefully going to give those volunteers some comfort, give those volunteers some reason to continue to contribute, because if they cannot trust the government to keep the agreement that it has made with them as volunteers, then naturally enough they will start to drop off.

We all know these days it is tough enough as it is to get volunteers to come forward, whatever it might happen to be, whether it is in a caring capacity or an emergency services capacity or whatever it might be, but we do not need added pressure on that problem provided by the government not keeping its word. That is why the member for Morphett is putting this forward. That is why I support his motion. That is why the opposition supports his motion and that is why the emergency services organisations support the motion.

Mr GARDNER (Morialta) (11:02): The Fire and Emergency Services (Volunteer Charters) Amendment Bill comes to the house with the strong support of the Liberal Party and it does so for a range of reasons and I applaud the member for Morphett for bringing it forward. I know the member for Morphett grew up in a firefighting household and is a CFS volunteer to this very day and it is certainly a contribution that so many people across our community make and they do so as volunteers. The volunteer service that they provide is of a very high level of standard to the point where we actually ask our volunteer CFS firefighters to serve in MFS stations when there is a significant event, as there was recently in the north with the toxic fire that called upon many resources of the MFS across South Australia to that event. I know that CFS volunteers from my own electorate in Norton Summit and other brigades were called upon to serve at the Beulah Park MFS station that day.

I am privileged in Morialta to have a significant number of CFS volunteers serving in brigades including Norton Summit-Ashton, Athelstone, Montacute, Cherryville and Basket Range, and I am very pleased that, according to the redistribution of the boundaries that has happened recently, I am getting to know some of the volunteers at Cudlee Creek and Paracombe as well.

They do a significant service to their community and they do so without seeking much. They certainly do not seek money. They require, obviously, some support to enable the activities that they serve to take place and so something like this bill, which recognises the support that those volunteers give, is very important. It is very important because, firstly, it provides a reassurance to them that they are taken seriously, their efforts are respected and not maligned or denigrated in any way, and the way that the government has handled the CFS Volunteers Charter over the last five years has not been satisfactory.

We know that the SA CFS Volunteers Association has been unhappy about the government's lack of consultation on the community safety directorate and other issues. The CFS Volunteer Charter was signed in 2008 by the Premier, the minister for emergency services, the minister for volunteers, the Fire and Emergency Services Commissioner, the SA CFS chief officer and the president of the CFS Volunteers Association. Four years after that date it was required to be reviewed by the agreement of all parties.

The government committed itself to consultation. Nevertheless, a charter is only worth how the agreements are put into place, and when the charter is not taken seriously by all sides, then clearly it is not sufficient. This bill seeks to formalise the relationship. It would put the relationship that is talked about in the charter into legislation by amending part 2 of the Fire and Emergency Services Act. It would insert a new section 58A and through parliamentary recognition of the South Australian CFS Volunteers Charter, the parliament would recognise that the South Australian

Country Fire Service is first and foremost a volunteer-based organisation in which volunteer officers and members are supported by employees in a fully integrated manner.

They are not subservient to the paid employees. It is a partnership between government and volunteers, people contributing significantly to their community. It is something that has already happened elsewhere. In the Victorian Country Fire Authority Act 1958, their volunteer charter has formal recognition through the legislation and I do not see why we cannot do the same for our CFS volunteers here in South Australia.

The principles and relationships between volunteers, the government, the South Australian CFS and the South Australian CFS Volunteers Association clearly need this formal recognition. I think it will hold this government to account. Of course, as of 16 March next year, we hope that there will be a Liberal government, which through its very nature—

The Hon. C.C. Fox: The 16th?

Mr GARDNER: The 16th is the day after the election. I am assuming that unless the minister has other plans, the reins of power would not be handed over until after the declaration of the poll.

The Hon. C.C. Fox: I was thinking of a birthday.

Mr GARDNER: Of a birthday? That would be two weeks later, of course. Thank you for your assistance. I stand corrected. What would that be—30 March perhaps, we might see a new relationship, with a new government.

The SPEAKER: Oh, well before then.

The Hon. C.C. Fox: I would just like to make that clear: I was discussing a family birthday, not anything else.

Mr GARDNER: I am very pleased to hear it. You may expect a birthday card, minister.

Members interjecting:

Mr GARDNER: I fear that we are digressing from the point and so I will return to the point at hand. The support for these volunteers will of course happen under a Liberal government in the way that it should, but in the meantime we think that this piece of legislation will ensure that any government, even a Labor government, will be able to deal with CFS volunteers in a cooperative and productive way. I commend the bill to the house.

Debate adjourned on motion of Mrs Geraghty.

DEVELOPMENT (INTERIM DEVELOPMENT CONTROL) AMENDMENT BILL

Second reading.

The Hon. R.B. SUCH (Fisher) (11:18): I move:

That this bill be read a second time.

The Hon. R.B. SUCH: The purpose of this bill—which, as members can see, originated in the Legislative Council—is to stop a government from reducing the community rights of participation in relation to planning. In particular, the bill would prevent a government from using a provision of the Development Act, section 28 Interim Operation, that allows government to bring planning changes into effect immediately and thereby circumvent the statutory public consultation regime. Section 28 allows the minister to bring a development plan amendment (DPA) into operation on an interim basis at the same time that it goes out for public consultation.

There are three examples that have been listed which indicate why this measure is considered necessary. The first one relates to the Regulated Trees Development Plan Amendment and members would know that issue was the subject of a bill, regulations and then a DPA. The DPA was brought in under interim operation on 21 November 2012.

The purpose of that, presumably, was to make it harder to chop down trees to try to preserve some trees until the final planning arrangements had been put in place. It is argued that that would have been an appropriate use of interim operation. Instead, the consequence of that amendment has been to make it easier to remove trees, thereby ignoring public consultation and we are seeing in the community the impact of that DPA and the removal of a significant number of trees.

The second case relates to the Statewide Wind Farm DPA. This DPA was brought in under interim operation and it made it easier to build wind farms by removing public notification and appeal rights in the majority of cases.

The third matter which has given rise to concern is the Capital City DPA. This was brought into operation at the same time as the public consultation commenced. It went to public consultation on 28 March, but submissions closed on 1 June. The planning department's website states:

> It is in operation on a temporary (interim) basis while feedback is sought from the community. During this time, all the proposed policies are in effect.

In the case of the Capital City DPA, most of the controversy is centred around the approval of a multistorey residential development in Sturt Street known as the Mayfield development. The development consists of three towers, the highest being 14 storeys. The ground floor will be offices and shops and the higher floors residential. There will also be basement car parking.

I do not need to go through all of these cases in further detail, but I think the purpose of the bill is quite clear. In effect, it is to stop governments engaging in practices which deny the community any meaningful say in relation to planning issues. Whilst that DPA process might be well-intentioned, the reality is that it takes democracy out of the planning process. The bill seeks to ensure that interim operation is not a fast-tracking tool to be used by a minister without proper regard to planning principles. At the moment, all a minister has to do is to be of the opinion that it is necessary, in the interests of orderly and proper development, to use these interim provisions.

In essence, what this bill seeks to do is to ensure that public consultation is only curtailed in the most necessary circumstances. As I indicated at the start, this bill originated in the upper house and was introduced and guided through the upper house by the Hon. Mark Parnell. I commend the bill to the house.

Debate adjourned on motion of Mrs Geraghty.

SOUTH AUSTRALIA POLICE

Mr VAN HOLST PELLEKAAN (Stuart) (11:24): I move:

That this house—

(a) congratulates the South Australian police force for 175 years of service to our state; and

(b) recognises the excellent work of police officers who have served and currently serve our community.

It gives me great pleasure to move this motion, both as the member for Stuart and also as the shadow Minister for Police. The police in our state do excellent work. I will start by working through a few key dates. It is not possible to go through everything that could possibly be relevant to 175 years of history, but I will pick out a few that I think are particularly relevant. The South Australian police force, now renamed South Australia Police (or SAPOL), is unique in the history of Australian police forces in as much as, since its foundation on 28 April 1836, it has been continually centrally administered. This makes it the oldest police organisation in Australia and in Australasia, and one of the oldest established police forces in the world. Members will know that our state was proclaimed in 1836, so very shortly after that.

This happens by Governor Hindmarsh appointing inspector Inman, and asking inspector Inman to go and find 20 officers—10 on foot and 10 mounted—to support him. It was a pleasure to be at the Police Academy on Sunday and see a re-enactment of that, with the minister and many other people. For 120 years the fundamental structure of the South Australia Police was the division between mounted—typically country—and foot—typically metropolitan—police, even though some mounted police were in Adelaide and some foot police were in the country.

In 1838 the first police barracks were built on the north side of North Terrace, behind the present SA Museum. Prior to that, mounted constables, who later became known as troopers, had to be quartered in public houses or private lodgings. The administration of the Northern Territory was taken over by South Australia in 1863. The Northern Territory police were established in 1870, with one inspector and six men. They were part of the South Australia Police, but were managed entirely by an inspector in charge, who was responsible to the minister for the territory.

In 1890 the force was divided into three branches—mounted, foot and detective—and the state was divided into six police divisions: metropolitan, suburban, south-eastern, central, northern

and Far North. Police stations had also been established throughout the interior following the telegraph line to Darwin. It is interesting to see that these days South Australia is split up into 12 LSAs—six metro and country/outback—which is not a lot different to what was done back in 1890.

In 1891, 1 Angas Street, Adelaide became the permanent address of the headquarters of the South Australia police department. Again it is interesting to see that today we have a brand new police headquarters just down the road at 100 Angas Street, Adelaide. Very importantly, in 1911 the Police Association was established. It is fair to recognise that the Police Association is a very longstanding—just over 100 years old—organisation representing its members, and I think most people would acknowledge that, as far as organisations which represent police go, it is one of the most successful operating in our state. The South Australia women's police branch came into operation on 1 December 1915, the primary reason being the growing social problem of immorality in the community.

Ms Bedford: And it's all women's fault!

Mr VAN HOLST PELLEKAAN: I am not sure what they might think of today's situation—

The SPEAKER: I call the member for Florey to order.

Mr VAN HOLST PELLEKAAN: While we know that we live in a very fine state, I am sure the people from 1911 would find extraordinary the lifestyle we lead today.

Ms Bedford interjecting:

Mr VAN HOLST PELLEKAAN: The member for Florey might find this particularly interesting: the branch was the first women's police service in the then British empire and the second in the world, following Los Angeles in 1910. Since their inception, South Australian women police have had the same powers of apprehension as male officers. I think that is a credit to the South Australia Police and to our state.

In June 1922, the department purchased two Harley Davidson motorcycles with side cars for the control of traffic and special urgent police cases. These were the first motorised transport for South Australia Police, and in 1923 the first police car (a Hudson Tourer) was purchased. Again, it is fascinating to look at what we do today, with police having cars, boats, four-wheel drives, helicopters, planes and so on. Also, it is interesting to see that bicycles back then were pivotal modes of transport for police, as they are still today.

Ever since 1938, the police have been run as two distinct branches, the foot and the mounted, later to become the metropolitan and the country police. In July 1958, the department amalgamated into one service. In 1961, the former military establishment at historic Fort Largs was acquired by the police and began operating as the police academy. The site was vacated when a new training facility was built adjacent to the former, opened in 2012 as the South Australia Police Academy, where training continues today.

It was a great pleasure to be there on Sunday with the minister and many police officers of all ranks (from cadets all the way through to the commissioner), representatives of emergency services, corrections, justice and the military, and of course many men, women, boys and girls from the public, to see a re-enactment of the history and much of the equipment being used and on display. It was an absolutely fantastic day at the Police Academy.

I would also like to touch on three other key dates. In 1982, we had the first Blue Light Disco; in 1985, Neighbourhood Watch was established; and, in 1966, Crime Stoppers was established. They are very important because they move on to the vital interactive two-way role between police and the community, and it is very important, in my mind, that that relationship is very much a two-way street: neither can do well without the other.

We have come a long way as a society over the last 175 years, and so has SAPOL. Public expectations have changed and two examples are the treatment of Aboriginal people and the treatment of women over the last 175 years, which has changed significantly, just as the roles Aboriginal people and women play in the police force have certainly grown over that time, as they should have. SAPOL's role has changed in line with changed public expectations, but what has not changed is SAPOL's commitment to meet those expectations.

Let me also say that the police are not perfect, neither the organisation nor the individuals, just like the rest of society. Mistakes occur and, very rarely, some things inappropriate are done which could not be classified as mistakes. The police are just the same as everybody else in

society—1 per cent of us are angels, 1 per cent of us are devils and the vast majority of the rest of us are in the middle. Police are absolutely no different, just like members of parliament and just like people in any other field of work.

I do occasionally get complaints in my electorate about the police and I do take them seriously, but what is very important is that there are almost always two sides to the story. In the same way as police should not all be lumped together into one category, neither should police lump all members of the public into one category, and I get concerned when I hear reports of categories of people being targeted by police, and I get concerned when I hear reports of individual police officers using the full extent of their powers when less would have been sufficient and probably more useful to all concerned.

However, having said that, we are extremely fortunate in South Australia not only to have the oldest police force in the nation but also to have the most popular, most trusted and most respected police force in the nation, with an 85 per cent public satisfaction rating. I can tell you, Mr Speaker, that is an extraordinary result and something that all South Australians, but particularly SAPOL, deserve to be extremely proud of. I genuinely thank the South Australian police service, sworn and unsworn, cadets through to commissioners, who have served us and serve us today. From the Angas Street headquarters to police stations in Yalata, Marla and Cockburn, doing work from Hindley Street to Innamincka, congratulations on your 175 years and thank you for your work on behalf of our state.

Thankfully, most days police officers do not deal with personally dangerous situations, but every single day they go to work with the full knowledge that they may do so that day. Some days they do take calculated risks with their own personal safety on behalf of the people in their state, and I very genuinely thank them and their families for that. Every single day a police officer goes to work, he or she knows that it might be a day that they have to put their own personal safety (or potentially their own life) at risk on behalf of our community, and that is something that should never, ever be forgotten or taken for granted.

Police officers deserve to have their own safety treated as the highest priority when they are at work. They deserve to have the resources they need to do their job properly. I think it is also very important for them and the community to know that they serve the community. The police do not and should not serve themselves as individuals. The police do not and should not serve SAPOL above the community. They are there to serve the community. They are an asset to the community. We are incredibly fortunate to have them working on behalf of our community, and I again congratulate them and thank them for their 175 years of service to our state.

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (11:36): In responding to the shadow minister's motion, I would like to congratulate him on the comprehensive suite of history that he has laid before us. I think it was extremely well researched. I will deal predominantly with recent history because what has happened in the last two decades in particular has significant bearing on the future history of the South Australia Police. It is a history that we should be cognisant of going into the next state election.

As many members are aware, in 1994 there was a desperate impasse when the negotiation of the enterprise bargaining agreement for our policewomen and men ran into some difficulty. So unhappy was our police force with its treatment at the hands of the Brown government that it threatened industrial action. For such a dutiful and civic-minded group to contemplate strike action, it is fairly clear the extent of the heavy-handed treatment that was being meted out to them by the then Liberal government.

We probably should also be aware—and I think you would be, Mr Speaker—of the vehement opposition to the police bill that was introduced by the Olsen government. I will refresh the minds of those in the chamber today who are actually unaware of that particular piece of legislation. The bill sought to introduce contract employment for those at or above the senior constable rank; remove the right to appeal over promotion and discipline; and increase the commissioner's powers to dismiss, transfer or demote officers for unsatisfactory performance. Over 2,100 members of the South Australian Police Association signed a petition urging that amendments be made to the bill. The petition was an example of how individuals can actively involve themselves in the political process through their trade union.

Further to the petition, many members contacted their local members of parliament, and the eventual amendments spoke volumes, both about the inadequacy of the bill as well as the determination of the Police Association to have it changed.

Fortunately the current state of affairs for our police is substantially rosier than it was 20 years ago. Not only does South Australia enjoy more police per head of population than any other state or territory, but victim-reported crime has fallen 40 per cent in the past decade. There are 70,000 fewer crimes reported than when the opposition was last in office.

This past Sunday I was present at the public unveiling of the new Police Academy at Taperoo, and I welcomed the presence of several members of the house. As he mentioned in his speech, the shadow minister was present, and I think it was very much appreciated that he was able to attend.

Mr Venning interjecting:

The Hon. M.F. O'BRIEN: He does. The state-of-the-art facility—and I think there is a general recognition that it is—will train our next generation of police officers. It is purpose built in a modern campus style to meet training and staff development needs. The academy boasts cutting edge facilities for intelligence and detective training. I made the comment on the day that the state, if you like, of police academies very much expresses the esprit de corps and professionalism of an agency at that particular point in time, and the new academy at Taperoo designed in large part by SAPOL and run by them on a day-to-day basis is very much reflective of the inherent professionalism within that particular organisation.

The academy will replace the dependable but sadly no longer suitable facility nearby at Largs North which was serviced some 50 years ago. From the moment when Army Commander Brigadier CE Long formally handed the keys to Police Commissioner John McKinna on 30 November 1961, the old fort became the spiritual home to many thousands of officers in training. Over its lifetime it hosted 240 graduation ceremonies involving over 8,000 officers. The facility nurtured the culture, standards and attitudes which permeate SAPOL today and undoubtedly there are countless stories and memories of the old fort in the collective memory of SAPOL today.

The new academy along with the opening of the new headquarters at Angas Street heralds a new age for SAPOL. The facilities offer a suite of training programs for recruits and managers alike, an advanced scenario village to realistically recreate practical experiences, spacious outdoor facilities, the capacity to accommodate boarders from interstate and more. The hope is that in time the new facilities will produce as rich a canon of history as the old facility did when it was in operation.

At a cost of $53.4 million the new academy represents the largest single investment in our force for over 50 years. It comes off the back of a sustained increase in resourcing to ensure our police force is better able to service the community and usher in this new age. The most recent bargaining agreement negotiated successfully in 2011 ensures our police are better paid than ever before. The police budget has more than doubled in the last 10 years. There are now more than 800 additional uniformed police on our streets than a decade ago.

Including the new academy, $180 million has been spent on the construction or refurbishment of facilities since 2002. This includes the new headquarters; vehicle impounding facilities; new or upgraded stations in metropolitan, regional and remote areas; and in March I was at the opening and participated in the commissioning of a new station at Murray Bridge.

The commitment of money and infrastructure has been matched by a tireless effort to enshrine legislation which is better able to combat crime. This government has extended firearm prohibition orders, protection for vulnerable witnesses and a raft of laws in 2012 covering serious and organised crime. In short, we have been busy as a government creating the legislative framework which allows SAPOL to carry out their work in confidence.

An entire year of celebration is planned in recognition of SAPOL's 175 years. Any less than a full year of celebration would be grossly inadequate. The Police Historical Society will be conducting open day events throughout May, featuring the memorabilia of the force's early years. These historic artefacts from the organisation's rich past offer us a lesson for its future. I recommend that everyone in the parliament avail themselves of the opportunity to participate in this host of activities.

Structurally today, SAPOL bears scant resemblance to what it was in April 1838. I think it is worth bearing in mind that this is only two years after the foundation of the then province of South Australia. It has been pointed out also that we were the first state to have a centralised police force, which in large part was due to the fact that we were established as a free colony; we were not a penal settlement, we did not rely on regiments of the British Army to perform the policing function. We actually had a civilian force well before any other colony or province in the nation and that is something of which we can be duly proud. We started off with 10 mounted and 10 foot constables in that year of 1838, and today we have 4,500 serving officers who are housed at 28 metropolitan and over 100 regional and rural stations.

The force has been an integral part in the development of our society and the development of our economy. They have provided surety to our community, given them a great sense of personal safety and this, in turn, has been a major driver for the prosperity of the state. When looking at the overall history of this particular state, we have to recognise that, in all years but the first two, SAPOL has been with us, and every step that we have taken as a community SAPOL have been in lock step with us. I think they have made a great contribution to the state and I am sure that the 175 year celebration will be warmly embraced by the community.

Mr PISONI: Sir, I draw your attention to the state of the house.

A quorum having been formed.

Mr GARDNER (Morialta) (11:48): I am very pleased to rise today to speak on the motion that this house congratulates the South Australian police force for 175 years of service to our state and recognises the excellent work of police officers who have served, and currently serve, our community, and I commend the member for Stuart for moving this motion. It recognises the excellent work of both past and present officers who have dedicated their lives to keeping South Australia safe.

I have been, from time to time, extremely interested to read up on the history of the South Australian police, who we now know as SAPOL. As members in this chamber would be aware, when South Australia was founded it was not a colony, but a free province. As such, unlike our cousins interstate, there was no provision made for a police force initially because there was no crime anticipated. Marines who travelled with the early pioneers were responsible for addressing crime, were it to arise. Unfortunately, unforeseen circumstances led to the need for a police force. Apparently, crime happened.

According to Chas Hopkins' book, *South Australia Police 1938-2003*, 'unsavoury characters entering the new settlement from the neighbouring colonies' meant that a police force was established to 'protect the citizens from various concerns'. Governor Hindmarsh established the South Australian police on 28 April 1838, when he appointed inspector Henry Inman (from which Inman Valley in the member for Finniss's electorate derives its name) as the sole commander of SAPOL at the rank of inspector. He had allocated to him 10 mounted constables and 10 foot constables. Within two years, the size of the police force had more than doubled to 51. You may believe that asking 51 people to police our province would be a big ask, but interestingly enough the number then of police officers for the population was almost identical to today, with around 0.35 per cent of the population being police then and approximately 0.37 per cent today.

SAPOL has a long history of being a police force of firsts, as the member for Stuart has described. It was the first police force to be centrally administered by the province. In 1893, it was the first police force in Australia to use bicycles for work—appropriate, given the reputation Adelaide is seeking to establish as a city friendly for bikes. In 1915, it became the first police force in the British Commonwealth to have two policewomen commence their careers, Kate Cocks and Annie Ross. The member for Stuart described how the policewomen at the time had the same powers as policemen at the time. I believe a member in the chamber suggested they should have more powers, and that may well be justified. Anyway, uniformed policewomen later entered the scene in 1974. It was also the first police force in the world to use fingerprint technology and to install radios in police cars.

SAPOL's official vision is to be held in the highest regard as a modern, motivated, progressive and professional organisation, responsive to the community's needs and expectations. From past experience, it is clear that SAPOL has illustrated its ability to professionally meet its vision. On a personal level, I have spoken occasionally in the house—and I am sure many other members have colleagues and friends serving in the police force—of one of my groomsmen, a very close friend of mine. I remember the absolute pride he felt when he was admitted to the Police

Academy. It was an absolute pleasure to attend, along with the Hon. David Ridgway and the member for Lee, the graduation ceremony when he became a police officer. The fact that people who enter our police force have such incredible pride in their uniform, and in the service they perform, is a sign of the high regard in which SAPOL is held throughout much and most of our community.

In Morialta, I only have the one lonesome police shopfront at Newton. Currently, my electorate is shared between the Eastern Adelaide LSA and the Hills Fleurieu LSA, and I suspect members would remember the issues I have raised in the past in regard to Woodforde and Teringie and other near-city areas being held within the Hills Fleurieu LSA, as opposed to the Eastern Adelaide LSA. While I have the utmost respect, as I said, for all SAPOL's officers, I believe that asking them to get from Mount Barker to Woodforde or Teringie, or even the Adelaide Hills section of Rostrevor, within 10 minutes is possibly beyond even their driving skills, and possibly beyond the laws of physics.

Given that the development is about to go ahead in Woodforde, I am hopeful that further consideration will be given to moving these suburbs into the Eastern Adelaide LSA. I note that the DPA released by the Deputy Premier a couple of weeks ago, which he was kind enough to eventually send me a copy of and which arrived on my desk today, does in fact identify the nearest police station to that new development as being Glynde. I look forward to his explanation as to why he is telling the new DPA that their local police station is not in fact in their local service area. Given that at the next election Morialta has been redistributed, Morialta is also gaining sections of the Holden Hill LSA on the northern side of the River Torrens.

On Saturday, SAPOL celebrated its 175th birthday by opening up the academy at Taperoo to 2,000 interested members of the public, and I am informed that it was a fantastic occasion. It is probably a good time to commemorate that 61 officers have died in the line of duty of the 175 years. I know that on National Police Remembrance Day, which is on 27 September, those members of the House of Assembly and Legislative Council who have served in the police force will pay particular memory to those, and I believe all members will as well. I will be wearing my tie, presented by the association, with great pride.

There are six core functions of SAPOL: to uphold the law; preserve the peace; prevent crime; assist the public in emergency situations; coordinate and manage responses to emergencies; and regulate road use and prevent vehicle collisions. I think that, almost exclusively, SAPOL are doing a fantastic job. They are very highly regarded; certainly, when I talk to colleagues around the nation and other jurisdictions, I take great pride in talking about the high esteem in which South Australia's police are held. I congratulate the force and all those who serve in it on the 175th anniversary of the South Australian police force.

Mr VENNING (Schubert) (11:55): I join the member for Stuart in congratulating the South Australian police force on 175 years of magnificent service to our state, and I commend him for bringing it here. I also note the words of the minister in seconding that motion. I also commend the member for Stuart's research on this matter; he has put a lot of time in.

I know his predecessor, the Hon. Graham Gunn, also had a high admiration for the police force, and he gave me a lot of good advice in relation to representing small communities: go to the local police station first and they will tell you how things are, and develop a good relationship and you will always know what goes on in the town.

As a member of this place for over 22 years, I have enjoyed and appreciated wonderful cooperation and a relationship with South Australia Police, especially officers in the small communities, as I have just said. In the old days, back in the 1800s, Crystal Brook had a police officer who was referred to as the 'Trooper'—that must have been the earlier police. The hut of the old trooper still exists in the former national trust, which is now called the Crystal Brook History Trust, of which I was the first president.

The first trooper was a fellow called Trooper Munday. History tells us that he was quite fearsome, and used to ride around on his pushbike or the old 1922 Humber car, which still exists in the community. The Munday family have been in the community ever since, and I note that his grandson Graham has just retired from the Nuriootpa police, where he was very much respected. I am sad that he left.

I want to apologise for my inaction when I did not publicly support the three officers who were publicly pilloried in the media over the incident with that young lady. All the locals knew that these officers had an impossible situation, and there should have been a public response to

support these police officers because all three are very good and well-respected citizens. If that is the reason Graham Munday resigned, I regret that, because he was a very good officer and a very good member of the community.

The Hon. R.B. Such: What was the outcome?

Mr VENNING: The outcome? The police officers were publicly humiliated. There was no case to be heard; the media just chose to side with this young woman, who was allegedly way out of order—it was apparently shocking, the way she used to carry on, and she apparently had a history of that too. But, the police officers took the perceived rap, as you do in a public job, and I am sorry. I should have come out then and there, and I was going to, but I thought at the time, 'Well, maybe I shouldn't,' but I should have, in hindsight.

A cousin of mine, Milton Clark, was also a very high-ranking police officer (I believe he was a detective-sergeant), and he retired a couple of years ago. These people are career officers and really do live their job. He too was a fine officer and a fine person and is still volunteering in the community.

The police live in the community and most become a vital part of these communities, particularly the smaller communities, as the member for Stuart would know. His predecessor would certainly have given him the same information and advice he gave to me. Even though some conflicts can occur in a small community, when your job is to maintain law and order and there is an incident, the job comes first, and I think we all appreciate the position they have.

The Nuriootpa police do a wonderful job. Nuriootpa has the basic command centre of the whole region, and they have many officers stationed there. I have a direct contact in there, and if anything happens I just pick up the phone and I speak to a senior officer straightaway, without any paperwork, any nonsense or any red tape. I am told of the situation straightaway, without any hoo-ha, carry-on or whatever, and I really appreciate that. There is no ringing up ministers, no getting up in this place and grandstanding. We fix it. I have never been let down once—not ever. They are really on the ball, especially with calls to my office, and I have had several.

With one caller to my office, I will tell you, we had to push the panic button because a constituent got out of control and the police were there, I reckon, in three minutes. In three minutes they were there. They got the situation handled very quickly indeed. It was excellent. Also, we have had a couple of false alarms with the burglar alarm system and they have proven that they are usually there before Adelaide informs us that the alarm has gone off. So, we get very good service from there.

The South Australian Police Association do a wonderful job as well, supporting all their ranks in all their roles. I enjoy reading the police magazine, which we all get in this place. I always go through it. It is a great production. I congratulate the editor and all the contributors. Last Saturday at the football, which was incidentally a great match where Port won, I spent time with Peter Alexander. He wished to be remembered to all you guys. He is retired now, but he had an important role in heading up the Police Association.

I was also very pleased in my representations to the police, particularly in relation to police numbers in some of our small communities. I cite one at Mannum. There can often be a hiccup at Mannum, particularly when the bikies are in town, and I have often raised concerns. Eventually, we got an extra officer placed down there, but it seems to come up pretty regularly that these communities have a need, and I have made several representations on that.

I was also pleased that, probably about eight or 10 years ago now, we were very successful, and I led the charge, to be able to get all retired police officers issued with the Police Medal. They did introduce the medal, but they were not going to backdate it beyond the date that they were bringing them in. Eventually, after a lot of discussion with ministers and whatever, we were successful. So, all serving police officers, as long as they retire honourably, get the medal, which I think was a great and successful outcome.

To Commissioner Gary Burns, to all past commissioners, to all ranks, past and present: congratulations and thanks for 175 wonderful years. We have a proud force, and those who choose this vocation are to be very much respected. We take our safety and our peace for granted. We thank you very much for being out there to maintain that. Again, 175 years—happy birthday.

The Hon. R.B. SUCH (Fisher) (12:02): I would like to make a brief contribution to this motion. It is a long time of service, 175 years—

The Hon. J.D. Hill interjecting:

The Hon. R.B. SUCH: —but I think it is fair to say that—sorry?

The Hon. J.D. Hill: I said, 'almost as long as yours'.

The Hon. R.B. SUCH: No, mine seems like 175. That's perception, not reality. We have, I think it is fair to say, in South Australia one of the best police forces, not only in Australia but in the world, in my assessment. They are not perfect, and I will touch on a few imperfections later, but at the outset, I would just highlight the service given by nearly all police officers that has been of the highest possible standard and the highest possible integrity.

When I was at school, we had to do an aptitude test. The result was that I was suited for the police force or to be a plumber. I think there were two choices there: one to become wealthy and one to wear a uniform. Anyway, a lady who lived nearby influenced me to go down the path of education rather than to get into the police force, but I think I would have been a good detective.

Growing up in Blackwood, we had Sergeant Gregory, who was the father of Bob Gregory, who was a minister in here. A good bloke, Bob—his father was the old-style police officer who, if he caught a young lad, would say, 'If you do that again I'll give you a kick up the you-know-what.' Nowadays, unfortunately, police are not allowed to use those sort of tactics, which were minus paperwork and probably more effective than all the paperwork that results today.

Sergeant Gregory, being the local police officer based at Blackwood, was a member of the community, like they are in most country areas. It is worth acknowledging, I think, that police—a bit like judges and magistrates—are separate from the rest of the community in the sense that they cannot really be one of the boys or one of the girls in terms of their behaviour.

That is both a good and a bad thing because I think in some ways it does isolate them from the rest of the community by definition, and I think that is compounded when you have single-person police patrols and police who are working by themselves, for example, on traffic duties day in, day out. I do not think that is healthy for them and then, to be largely mixing socially only with other police, does give rise to concern.

I know a lot of fine police, some currently serving and some not. Up the road we have Ken Cocks who is an ex-traffic officer from Sturt—fantastic bloke, honest as they come. He is now retired. My local superintendents are Tom Rieniets—fantastic bloke, ex-Star Force, straight shooter in more ways than one—and Superintendent Graeme Adcock. Several of my close friends' sons are inspectors. I will not be too precise for obvious reasons, but one of them is ex-Army, ex-Duntroon, and the other one has been and still is involved in the Army Reserve as well.

I think they are the new face of policing because they are tertiary educated, and I think it is important that, over time, the education level of police be raised. I know they can do courses but I think the days of being a thumper are well and truly over. It is a paradox: we try to teach our young people not to be violent and aggressive and then we expect some of them to be in the military and deal with people who want to kill them. I guess the same applies to a police officer. They do not know whether the person they pull over is going to give them a kiss or kill them, so that does create some issues.

Senior Sergeant John Wallace was a police officer who ran Hindley Street Police Station. He is another fantastic police officer. When I became the local member, he was operating in the Aberfoyle Park area. He had an old Holden—not a police vehicle; they have modern ones—and he used to go around in his spare time and talk to young people who were often, but not always, in single-parent families. He would chat to them and say, 'Are you helping mum? Are you going to school? Are you doing this?' His approach, I think, was fantastic.

In Hindley Street he had a complaint made against him by other police who said, 'We're not social workers like he is; we're meant to be law enforcers.' His view was that you do not need to get a young person up against the wall and beat the daylights out of them. You can interact with them, and he used to buy fish and chips and sit with the street kids. I know for a fact that he probably saved the life of many young people. It was fantastic. That has always been a bit of an issue in the police force: those who see their role as enforcers in the narrow sense and those who see their role not as social workers but as something more than just enforcers.

Over time, we have had some issues within the police force. When you have, as we currently do, over 4,000 police, you will get a few bad apples but it is not many, and I think it is to

the credit of the police force that they have been able to generally ferret them out and get rid of them and bring them before the court or some other disciplinary tribunal.

I do have some concerns as a result of talking to police about the internal disciplinary process of the police. I am not sure that sometimes it is not a bit over the top and the police, like most organisations—paramilitary—are often tougher on their own people than they are on other people. That process within the police force is largely secretive. They have a magistrate come in, but I think at some stage there should be an overall review of the police force, not because I am suggesting they are bad but because situations change. I think there should be a focus on efficiency and effectiveness to see whether the way in which the police force is structured and the way it operates should continue.

I will not name the senior person who spoke to me recently and queried whether the police should actually be doing traffic matters. I can see the logic—if you are on highway patrol, the person you pull over may be trafficking drugs, so it may be more than just a traffic issue—but there are some functions that are performed by uniformed police that probably need not be performed by uniformed police. Clearly, if you had a different branch of traffic police you would have to have them in some sort of uniform.

In talking about some of the blackspots, if you like, in the history of the police force, we had the saga of commissioner Harold Salisbury which, as we know, arose because of a suspicion and a claim that the police were running secret files on members of parliament and others, in particular to identify whether they were a security risk and perhaps engaged in homosexual practices. I think we have moved on from then. We have had some notorious characters—Colin Creed and Barry Moyse—and the reason we know them is that they are rare in terms of that level of offending.

When I met with the outgoing commissioner recently, he said to me, 'Look, at the end of the day it comes down to the integrity of the officer,' and that is true; it is self-evident—I found out in my little traffic matter, which is not that little in terms of, in effect, how you are labelled. You cannot both be telling the truth. Someone is not telling the truth. I do not lie and never have, but this traffic officer Gregory Luke Thompson, who was based at Sturt, lied from go to whoa, and his colleagues have said to me that he was always very rubbery. He caught a lot of people because he did not do the right thing.

I think it is important in terms of traffic enforcement that there is proper supervision of what people do and proper assessment of the reports they make. I have spoken to senior New Zealand police and they said that what happened to me would never have happened in New Zealand because it was so rubbery. There was no photograph, and it was just a beat-up and a whole pack of untruths. I think the police force needs to have a look at how it handles some of those things. In terms of traffic, I think the focus should be on education, rather than punitive measures.

Mr BROCK (Frome) (12:12): I also rise to support the member for Stuart's motion to congratulate the South Australian police force for 175 years of service to our state and to recognise the excellent work of police officers who have served and currently serve our community. Again, I congratulate the member for Stuart on bringing this to our attention in this great year.

Along with other members speaking here today, I reinforce my dedication to, belief in and confidence in the South Australian police force. We have had some great history over the 175 years, but I will not go into the history: I will talk about the last few years as I have seen them myself. As the member for Stuart said, these police officers, whether they are male or female, go to work every day and they do not know whether they are going to come home. They take their lives in their hands and they do not know if they are going to come up against a violent person, somebody with a firearm or whatever.

The other issue I really appreciate and understand sincerely is that when especially country police attend an accident or an incident they most probably know those people. They understand and they may know that person. They have to attend domestic violence, road accidents, robberies and many other incidents. It is a real issue, and the general public may not understand that. Other people go to work and they are protected. They can go to work and work safely, but the South Australian police officers do not know what they are going to encounter when they get there. I just believe that they are the best in Australia. As the member for Fisher may have indicated, they are world class. That must be an indication because of the number of recruits coming from overseas who want to join our police force in South Australia.

These officers, and not only officers but cadets, come into a community like Port Pirie—and I will talk about my community in particular. As I have known for many years, they are reluctant to

come into certain communities, but once they get there they become a part of that community. They become part of school councils, sporting groups, and the Rotary and Lions clubs. Some of them go far and beyond what they have to do as part of their duties.

They bleed when something happens. I will just relate an incident where, unfortunately, I was caught speeding on a road. I was picked up and I disputed the issue so they asked me to have a look at the camera. I got out of the car but, unfortunately, the officer who was talking to me was squatting alongside the front door and when I opened the door I pushed him over. He was only a cadet but I did apologise very sincerely.

I am relating this story to show that these people are human. I went over and spoke to the officer and saw the camera. They wanted to show me the camera. I said, 'If you're saying I've done the crime, I'll do the time.' I was picked up for speeding on Three Chain Road where the limit is 60 kilometres and I was doing probably 65.

However, that officer from SAPOL used to walk past my place every morning. Then, all of a sudden, I did not see this gentleman. After a few weeks I questioned him and asked, 'Don't you live in the area now?' He said, 'Yes.' I asked 'Do you go for your walk every morning?' He answered, 'Yes.' I said, 'I don't see you any more.' He was very embarrassed that he had pinged me and gave me a speeding fine. I said, 'You were doing your job.' That shows the dedication of country people: they do bleed when they have to book somebody for an offence.

It just goes to show that these police officers are very human. In my electorate—which is a great electorate—in the LSA there are some great police stations and quite a few of them are one-officer stations. The trauma is that when these people go on planned leave or planned sickness, we need to ensure—and I know the government is trying to control money—that they are replaced in the community. The community feels very safe or a lot safer when there is a police officer in the location.

It does not take long for the word to get around that one of the stations may not be staffed and then somebody may do something they should not do. However, if a police officer is there it is a deterrent. It is the same when I am driving—and I do a lot of kilometres in my job as the member for Frome; probably about 80,000 to 100,000 kilometres a year—where I would rather see a police officer on the road—

An honourable member interjecting:

Mr BROCK: Yes, I do about 80,000 to 100,000 kilometres; I basically do a car a year. However, I would rather see police cars on the road as a deterrent because people respect that. That would stop a lot of crimes like speeding and things like that. The other thing is that we have been very fortunate in my LSA, in Port Pirie in particular, because we have had some great, very dedicated police officers. There has been great respect for them in the community. We have had some great superintendents.

Unfortunately for our LSA, we do not appear to keep our superintendents for very long because while they are there it is a great training opportunity and they then go on to greater things. At the moment we have Bryan Fahy, for argument's sake—and there have been quite a few others who have come down to Adelaide and gone on to greater things: assistant commissioners and so forth.

The idea today is to commemorate and say thank you very much to the South Australian police force for their 175 years of service. As with other members here, I will also congratulate the new commissioner, Gary Burns, who is a terrific guy. I have known Gary for many years through my local government experience. I think he is going to be a great asset in the role. I congratulate the police force for a dedicated 175 years and wish them very well for the future.

Mr ODENWALDER (Little Para) (12:20): I rise to make a very brief contribution to this. I have obviously spoken many times in this place about my admiration for the police and I do not want to harp on it. I think members have made really good contributions today. I want to thank them all and I want to particularly thank the member for Stuart for bringing this motion. I want to also thank him for not using the occasion as a political football.

Mr Griffiths: Never intended to be.

Mr ODENWALDER: No, never intended to be, that is right. It was a genuine motion. I have actually been out to the excellent new academy for the Minister for Police and the member for Stuart was there. I know that he approaches this in a bipartisan way, which may not have always

been the case but hopefully this is a new start for all of us. I think this house should always have bipartisan support for our police. They obviously work very hard. Members here have articulated that very well, so I will not go over that.

I want to echo the support that the member for Stuart showed for the Police Association. I think they do an excellent job representing their members. They have very wide coverage. When I was in the academy, it was strongly encouraged that you join the association for your own best interests and I think that is exactly right. I am no longer a member of the association, but I try to eat and drink with them as often as possible.

The Hon. J.D. Hill interjecting:

Mr ODENWALDER: More of one than the other. I also want to congratulate the member for Stuart for singling out the Blue Light initiatives, Neighbourhood Watch and Crime Stoppers because those three things, I think, have really been integral in cementing the place of the police in our community, not just as enforcers, as the member for Fisher described. So, they really are part of the community and they really do welcome public interaction.

They have shown that recently as well with Facebook and Twitter by embracing that new social media. We have seen a lot of success in that actually so, if you do not follow SA Police News on your social media, you should because they have a lot of success and they get a lot of crooks out of it.

As people have mentioned, SAPOL are consistently rated the most trustworthy of the nation's police. As most of you obviously know, I used to be a serving police officer in another life, admittedly for a relatively short time, so I know firsthand how hard these police officers work. I also know that they are, almost without exception, people of pretty high integrity who are really committed to the safety of the people in this state.

Obviously, a bit like our culture in here, there is a bit of black humour. Amongst themselves, they are not often as politically correct as we are publicly, but they do that sometimes as a self-defence mechanism and I think it is pretty understandable. I still talk to serving police as often as I can. I rate some of them as friends and even more of them as Facebook friends, so I am constantly having interactions with police officers and hearing their views about the job and how it has changed. You get some old coppers who say the job has changed for the worse. I think they are in the minority, but I am also receptive to some of their complaints.

Their complaints are largely about things like paperwork and processes which take them off the road. They believe, quite rightly, that their job should be on the road. I think we have done what we can to help that. I know the new commissioner is committed to that. I was lucky enough to be at a Police Association lunch—I am not sure if the member for Stuart was there—where the commissioner articulated pretty well some of the measures they are taking in terms of streamlining some of the processes and making some of the documentation submissions electronic because you have to produce some of these documents in triplicate and quadruplicate and it wastes a lot of time that these coppers quite rightly believe should be spent out on the road. I am glad the new commissioner is addressing those processes.

On ANZAC Day, I was lucky enough to catch up again with an old friend of mine called Athalie Edman who, in 2006, was made the South Australian Police Officer of the Year for her work out at Elizabeth. When I was there, she was instrumental in establishing the community policing teams out there. So it was good to catch up with her and hear about their successes and about some of the challenges they faced. She is no longer there, but she outlined it very well and I certainly believe there should be more of that community-based policing in our communities. It does work and it does help demystify the police so that people do not see them as enforcers or paramilitary but see them as there to help the community. I am more than happy to support this motion. I think it is an excellent motion, and I take this opportunity to thank and acknowledge all our state's hardworking police.

The Hon. J.D. HILL (Kaurna) (12:25): I thank the member for Stuart for raising this motion, and I am very pleased to stand and support it. I was brought up in New South Wales and came to South Australia in 1974, and I remember my first impressions of Adelaide compared to my home town of Sydney. There were three of them. One was that I found it remarkable how people queued for buses in Adelaide, whereas in Sydney they just rushed to cram in the door. The second thing I noticed was that when I walked down the street (and I still find this to be the case) I walked about twice as fast as most of other pedestrians. I guess that is part of growing up in a bigger, busier town.

The third thing—which was, I guess, the most noticeable—was how much more polite and respecting the police officers were in South Australia compared to Sydney. I was frightened of policemen in Sydney, and most young people (as I was at that stage) were, because they would harass young people, they would pick you up and they would search you. I recall having my car stopped randomly by a police officer who started searching through it, I assume looking for drugs. He was looking at all the crap on the floor of the car, asking me to unfold bits of tin foil and God knows what, looking for something. He did not find it—there was nothing there to find, I should say!

Members interjecting:

The Hon. J.D. HILL: That is my story, and I'm sticking to it. I do recall that lack of respect for the law and lack of respect for citizens which was part of the culture of the New South Wales police force. That was a culture led by a corrupt police establishment and by a corrupt policeman, the then police commissioner Allan, who was in cahoots with the then premier Robin Askin. They exchanged bundles of money between them and were collectively corrupted by the gambling industry in New South Wales, which was everywhere to behold.

The Hon. R.B. Such: The famous words, 'Run over the bastards.'

The Hon. J.D. HILL: Exactly, but of course I will not repeat that. So I grew up not thinking very highly of the police. When I came to South Australia as a 24 year old to work as a teacher I was astonished how much more civil, responsible and law-abiding the police in South Australia seemed, and that is still the impression I have. I think we are very lucky in this state to have a police force that is well trained, well controlled, very disciplined and dedicated to serving the interests of its citizens by upholding the laws.

In my own electorate of Kaurna, where the Christies Beach police station is adjacent to my office, I have had nothing but excellent interactions with all the serving police officers there. I have met many of them over the years and when I have had issues, which I think the member for Schubert mentioned, I just ring up the local police station and they tell you what is going on. If you have information which has been passed on to you—which you do from time to time—they thank you for it and use it appropriately.

I also accept what the member for Fisher said. I guess there have been some examples in the history of our state, particularly around the Duncan drowning, where the reputation of the police force has been affected, but I think they have overcome that and they now have a culture that they work to which has produced one of the finest police forces in the world. I am very happy to add my congratulations on their anniversary this year.

Mr GRIFFITHS (Goyder) (12:28): I also wish to congratulate all members who have contributed to this motion. I have never had any pretensions of being a police officer; I do not think my personality was ever suited for it. However, my wife does say that with the commentary I make about people when I drive I could have been a patrol officer out on the roads, because I do have an opinion on many of the drivers I see on the road. In saying that, I want to put on record the respect that I hold.

I am one of those people who reads the *Police Journal* when it comes to our electorate office because I want to see some of the emotion that has been captured in it. I look at stories about an investigation, and sometimes about a life that has been spent, and it is often emotional, talking about some absolutely terrible things that officers have seen and investigated, and when they have found the culprit as part of their work. I also make sure I read the resignation letters. Many of those people have chosen to leave the police force after a relatively short time, but a lot of them have served for 30 years and even for up to 43 years, which I think is the longest term I have seen served.

From the longer term members and, indeed, all of them, comes a camaraderie that they feel as a group of people who try, under very challenging conditions, to do the absolute best they can for their community and their families. I have some respect for the impact it has on their families, too, especially on those based in regional areas where there might be a single officer station with the expectation of a response to many different things and the challenges that puts upon not only their life but also on social opportunities and their family.

I am an old-style person and I appreciate the old-style police tactics that were used. Given that we are here not necessarily admitting things but talking about some of the facts of our lives, as a much younger man celebrating a footy grand final I had had a little bit too much to drink on a Saturday night and I drove my car. The police officer was good enough to look at me and say,

'Steven, I'm going to go past your house in five minutes' time; if you're there, we shan't talk about this again; if you're not, you'll be in trouble,' and I was there and I was waving to him as he drove past and then I went to bed. I appreciated that very sound advice he gave to me—

Mr Venning: That's what you tell us.

Mr GRIFFITHS: No, that's truthful. I appreciated his advice to me because he recognised that he could have made a ping on me, no doubt about that, and I would have been absolutely guilty of it, but he gave me a chance, and I have respected it ever since and tried to make my kids recognise that, too. We all have to have a life and a personality and do some things, but I appreciated his very sound advice, and it stayed with me for a very long time.

I am one of the members who has a great level of respect for the LSA officers and the ability to contact them to find out some things. As members of parliament, we are spoken to by people in the community who are concerned about an action taken by police. Indeed, I have always believed that there are two sides to a story, so it is not until I get the other side that I can form a judgement. I have found that whenever I have been in contact with police—normally, for me it is through the senior sergeant who is based at the Kadina station—the reply has come very quickly, setting out the facts and giving me some information that has really put some equality into the discussion.

When I have relayed that to the people that I have spoken to, a lot of the time it has opened up their eyes to information they were not aware of that might have related to a family member, too. So, I congratulate police on their ability to be able to respond quickly to information sought by members of parliament. It is actually a great pleasure to see that that process works beautifully, even as an opposition member, because it helps us serve our community very well.

Not long after I first came in here, I was in a car with a lady who worked within this building at the time and who was a former police officer, and she told me something I found very interesting. At that stage, she had been in the police force and left, but it was her observation and, I presume, from talking amongst police officers, that in recent years it had been a trend that a male entering the police force stays for about eight years and for a female about five years. The member for Little Para is nodding his head at that, so it might be generally true.

That shows the challenges they face. Others move on to different career, and when you read the *Police Journal* you see that others have chosen to work for the Federal Police sometimes, or they have gone interstate for opportunities, or they have gone into completely different things, or they have retired. It is not an easy life. You have a sense of involvement with the team of police who are around you, and you work within the law that is provided, but then you have the challenge of not only what it does for you personally but also what level of respect exists within the community.

That is an important issue. If we look back a generation and even further, there was a level of respect attached to the police that I presume made it an easier role to undertake. Now the challenge is to hold a very responsible position, to be sometimes forced to make difficult choices, and to enforce the law at all times, but people do not like it. A lot respect it, but a lot completely disregard it, and those are the ones who create a lot of problems for police. We all have stories to tell.

In my electorate, I am contacted quite often by people who are concerned about the younger members of our society who sometimes choose to do silly things in cars and, because of the technology available to them with phones that makes them aware of where police are and what they might be responding to, they can get away from that circumstance and it makes it really hard to ping people. So, police are trying to develop tactics that allow them to get around that and still uphold the laws and still do what the community expects in a very demanding time, so all power to them for doing that; it is a very hard life.

I have a person in my electorate, a retired police officer, who is now an elected member in local government, and I have heard him speak at a public function of the time when he was an undercover police officer. He did some royal commission work and worked in Western Australia in an undercover role, and he spoke to about 120 people the night I heard him talk about it, and it was just amazing.

He put himself in life and death situations while maintaining another self, to some degree, but he actually had multiple versions of that; it depended on where he was and who he was with as to who he had to become. I cannot imagine how you can keep the secret, be true to your principles

of being a police officer in trying to catch the bad guys, but actually get the information you need to try to ping them, while all the time saving your own life. I think this bloke is truly amazing, but I understand that he is representative of a lot of other people out in the community who have played those roles in the past, and I have complete envy for them with what they have done, and total respect for it, and they are the ones who deserve to be looked after by society as they retire, because they have put themselves in very difficult situations. It is amazing story, and if you want to hear Mark Wasley speak, you would be totally caught up in it for quite some time.

I refer to another police officer, Brian Finch from Minlaton. He recently retired, about two years ago. He was a police officer at Minlaton for a bit over 20 years and an absolutely great bloke. He had the respect of the community, played cricket forever, plays golf still and was involved in community and sporting issues. His family became involved and daughters have since married into the area, and that sort of thing. He and his wife have chosen to retire and still live in the community, and they are still exceptionally well respected. I know that heaps of police officers have to make difficult choices and can never walk down the street and hold their head high because of the community's perception of them, so I commend him.

I also note that yesterday the member for Giles referred to Superintendent Scott Denny leaving Whyalla. He has come to the Yorke/Mid North LSA area. Scott and I have had some email contact, but I have not actually met him yet, so I am looking forward to that. The member for Torrens smiles, so he must be a good bloke! I hope he does some great things for policing in the area. There has been a bit of change over in LSA leaders, as occurs in a lots of different industries, but he has a good cohort of people there, and he is lucky that the majority of the community respect what the police do. I welcome him to the region and hope his time will be well spent and the community benefits from that.

In closing, I recognise that this is 175 years—the member for Fisher has represented parliament for about 14 per cent of that time, so he has had a long commitment too. To think of the stories, the people and the families affected by policing over 175 years, the challenges they have had, and I cannot even imagine what it was like being a horseback police officer who was by themselves for months at a time, hundreds of miles away from other levels of support and always proud in their uniform, in their presentation and proud of the laws they represented. South Australians as a whole should commend the member for Stuart on this, and we should congratulate Commissioner Gary Burns and his total police team for what he does, what they do and what all their predecessors have done to make South Australia a great place.

Mr SIBBONS (Mitchell) (12:39): I rise to speak on the motion moved by the member for Stuart, and I congratulate him on this wonderful motion, and congratulate everyone here today who has spoken on this topic. As many members have said, I also have a great respect for our police force in South Australia, and I have a great relationship with my local LSA, the Sturt LSA, and I guess a number of members also would have great relationships with their local LSAs and superintendents. Also, the work that our local LSA officers do in our community is another thing that is part of our community, the great work that they do in relation to Neighbourhood Watch and various other things such as community education and being there to guide our youth who are possibly at risk. Their education role is pivotal to our community, and I really thank them for the work they do in that particular area.

From a personal interest, my son Luke from a very young age has wanted to be a police officer, and his dream was to get into the police force. From that point I started to take a very keen interest in understanding the police force a lot more and understanding the risks that potentially are involved. Certainly, from a parent's point of view, you really want your son going into a career that you believe is going to be safe and long-term. From researching police and understanding that career I came to the conclusion very quickly that, yes, the job does have risks and there are going to be times when you are going to really rely on your training and the expertise that you have learnt during the role, but in general it is a very safe and rewarding career.

Luke was lucky enough at the age of 18 to be accepted into the police force as a cadet. He will be graduating in May, and that is something that makes me very proud as a father, to see him get through and ultimately graduate as a probationary constable. I understand that he is heading off to the eastern LSA, which is around the city and also through Norwood, and so on, so he is going to enjoy that quite well. I also have a greater appreciation for the training for police officers. It is such a diverse amount of training that they go through. It was not until Luke went to the academy that I got a full appreciation of the actual training that they go through.

On one of Luke's first out-phases, when he went out to one of the police stations, he went into a situation where somebody had passed away. He instantly resorted back to that training about how to deal with grieving people. On reflection he said to me, 'Dad, I thought when I was going through this training, no, no, we're never going to use this, but instantly it switched on and the training was there.' He was able to deal with that situation and deal with the grieving family, and when he walked away he was amazed at how training in day-to-day life really helps. I think the training that does go on at the academy is a true indication of how well our police officers work in South Australia and how well things are going within the police force.

I do not want to take up too much more time, but I would also like to thank the now Commissioner Gary Burns for his leadership. I think his leadership has been fantastic over the period since he took over the helm. In his new direction, I think police are certainly heading for a great period. I would also like to congratulate the wider police force for the work that they do in our community, and I certainly wish them well for the next 175 years. Let's not underestimate the people in the police force who made our police force what it is. That history needs to be told, and I thank the member for Stuart for identifying some of those achievements and I also thank everybody else in the house for sharing some of those memorable moments. Once again, I congratulate the police force. I wish them well and thank them for the service that they provide to our community in keeping us safe.

The DEPUTY SPEAKER: If the member for Stuart speaks, he closes the debate.

Mr VAN HOLST PELLEKAAN (Stuart) (12:44): Thank you Mr Deputy Speaker, and let me acknowledge you as a former police minister. In the role of Deputy Speaker, you would certainly, I am sure, share everybody's support for this motion. I do genuinely appreciate everybody's support. I think it is very fair that this house gives the police the credit that they deserve. It is wonderful to have had that and I appreciate all of the contributions. The minister, certainly, was the only person who strayed away from the content of the motion and no doubt he felt that was important to do that, but I appreciate his support for the motion.

I particularly recognise the member for Little Para and the member for Mitchell who have direct connection: one as a former serving police officer; and one as a very, understandably, proud father of a nearly-probationary constable. I think that is wonderful and I do remember being at one of the Police Academy graduations with the member for Mitchell recently where he represented the Minister for Police and told me at the time that his son was coming through, I think the second or third one after that. I know how proud he is and we are all very pleased for him. So thank you for your genuine contribution.

Let me also just add, as many members have said—the member for Goyder, the member for Frome, the member for Schubert, and others—what good support we get with regard to working relationships with police in our local our electorates. It is 100 per cent true that all we have to do as members of parliament is pick up the phone, talk to the right person and we will get the direct information. I think that responsible relationship in both directions is something that we all value very highly and really do appreciate. Certainly, in the electorate of Stuart, which covers a broad part of the state, that is the case in all parts of that electorate.

I touch very briefly on the role of country police—something that the member for Goyder touched on. Again, it is particularly pertinent to the electorate of Stuart and I know that, as a person who lived in Pimba (a very small, tiny place) for seven years—nothing to do with parliament, in fact, I never imagined at that stage that I would be a member of parliament—the way the police interacted with all the community in that district then and there was very important. It is critical in Hindley Street, it is critical at Christies Beach, it is critical in the lovely leafy suburbs of Adelaide and I think it is perhaps even more critical in the country areas where the two-way relationship becomes even more critical. The community need a policeman or woman and it is very often just one person, but the police officer needs the community as well and that relationship almost always works extremely well.

I was brought up as a small boy and told by my parents, 'If you ever get yourself in trouble, if you are ever lost, find a police officer.' That was the beginning of my relationship with the police. I was taught that they would be the people who would help you if you needed a hand. Of course, that moved on to, 'Don't break the speed limit when you're driving because they will be the people who will ping you'—quite understandably. So I have a very positive view of the police from my early growing up, but not everybody does. I have close friends who do not share that view and I respect that for various reasons. I respect their opinion; I do not share it.

Police are not perfect in the same way as members of parliament are not perfect. Mistakes happen; things happen for one reason or another that should not happen, and they need to be recognised as incidents, as mistakes. It is inappropriate to brand a whole profession for the fact that occasionally mistakes are made or the wrong thing is done.

On the whole, South Australian police are absolutely outstanding. They are the most trusted and most respected of all of the police in our nation. I think it is an extraordinary credit to the South Australian police that they are the oldest police force in Australia. Today, 175 years later, they are also the most trusted and most appreciated police force in Australia.

I thank all the people who have had anything to do with the police, obviously serving officers, but many other people who have worked in police as well for the last 175 years. I give my thanks and gratitude to their families as well, whether it is their children, their siblings, their spouses, their parents or grandparents. When you have a police officer in the family, you share some of the tension, you share some of the risk that those people take when they go to work every day to represent us and keep us safe.

Motion carried.

MORGAN-WHYALLA PIPELINE

Mr VENNING (Schubert) (12:50): I move:

That this house—

(a) notes the rusty condition of the Morgan to Whyalla pipeline; and

(b) urges the government and SA Water to immediately begin a painting program to protect the pipeline from further corrosion.

Since I gave notice of this motion some time ago, I have noted there has been some painting commenced near the Spalding end of this pipe.

Mr Sibbons: Was it you?

Mr VENNING: No, it wasn't me. But they have got a long way to go, so I will continue. The Morgan to Whyalla pipeline is a significant historical asset in our state and spans some 379 kilometres. Construction of this first $5 million pipeline commenced in 1940 and was completed in 1944 and, up until now, it has been pretty well maintained: that is why it is still there after all these years. The pipeline was constructed because it soon became evident, with the expansion of industries in Whyalla, that the continued growth of the region would depend entirely on the provision of an assured water supply.

A second pipeline, the duplication, was built in 1963, and I can recall that quite clearly, again to meet Whyalla's industrial expansion. Historical documents state that the construction of the pipeline was regarded as urgent to ensure the state's future. It was a huge project. Imagine doing something like that even today with modern equipment. It was a big outlay and a credit to the government of the day, particularly premier Playford—that man, again.

This pipeline is a vital asset for Port Pirie, Port Augusta and Whyalla, and all the towns in between. Sadly, its current condition is deplorable. The external aspects of the pipeline are rusting significantly and I would go as far as saying that it is becoming almost an eyesore in places. It is vital that this pipeline, which essentially acts as a lifeline, is maintained to its best possible condition.

As we know, rust can destroy anything, and I am a big advocate of ensuring our assets are maintained and retained in their original condition, rust free. Once it rusts through and starts to leak, we will be in serious trouble. Remember the old adage: a stitch in time saves nine—in this case, probably 29. Regular maintenance and a regular painting program will extend the life of this pipeline, and the cost of maintaining it would be far less than having to replace parts of the pipeline in the near future.

This government really needs to become more proactive. To see this pipeline rusting is appalling. It is not just an eyesore: it is money going down the drain—or is it the pipeline? The government is more concerned about big flashy buildings for their staff, particularly in Victoria Square. When you consider the SA Water office building in the heart of the city—a building they do not even own—and the $21 million spent to fit it out, it really makes you wonder where their priorities are. I wonder what the maintenance costs for infrastructure like this would be. Here we have an essential piece of the state's infrastructure just left to rust out.

I gave notice of this motion to the house last month and I noted a few weeks ago, as I drove near Spalding, that it appeared that some painting of the pipeline had begun. I hope my eyesight was not failing me and that SA Water had realised the awful state this pipeline was in and taken some action because, if the government does not paint this pipeline and begin to maintain it properly, maybe an alternative will have to be found.

Painting this is a pretty straightforward job and could be undertaken by unskilled workers, which could be service groups, working for the dole groups, prisoners from Cadell, or even retired MPs. Irrespective, this is a major state asset and it is a disgrace to see the condition it is in. I urge the house to support this motion and to, therefore, encourage SA Water to step up the painting to protect this vital state asset.

Mr GRIFFITHS (Goyder) (12:54): I wish to support the member for Schubert's motion today. I do so having inspected the pipeline about five years ago with one of my constituents, who rang me out of concern about the lack of maintenance. When the member for Schubert proposed this motion I thought I would do justice to the time spent and to the letter that was sent to the responsible minister at the time and the reply that came back.

Much of the pipeline on Yorke Peninsula was installed in the 1950s when there was a greater network of SA Water staff in the area, therefore a lot more time was devoted to the maintenance of the pipeline. There was a very strong belief in the community that it was all safe and that nothing would be a problem.

There is a sand and metal merchant in my town who is also a machinery operator, and I know that they get called out quite often to repair breaks to pipelines. That is probably a more efficient way of managing the infrastructure, and I understand that. However, in a financially challenging situation people might deem that level of service to support infrastructure to be an excess and it could be criticised, but for those of us who live in areas where the underground water supply situation is not always good and the SA Water network is relied upon to provide water to the area, the maintenance of the pipework is the real pure thing.

About five years ago Mr Price—and there are quite a few Mr Prices—from the Paskeville area contacted me—

Mr Venning: Lots of them.

Mr GRIFFITHS: Yes, there are lots of them—and asked me to come up and go around in his ute to look at a few of the pipe networks. When you get up close, you can understand why the member for Schubert has moved this motion: for it to be looked at and an appropriate painting program be put in place to try to protect the infrastructure that is there, because there were some areas of real concern. He did not contact me just trying to be flippant or cheeky or smart; he did so out of a concern about the security of the water network and after recognising the damage that can occur quite easily and what can happen to a community when a break occurs and a water supply is not available.

Yorke Peninsula had an example of what that could be like in early 2000, I think, when the Paskeville storage dam—which was exposed then—had an algal outbreak, which made it impossible for people to drink the water that was in the pipe network supplying all of Yorke Peninsula, other than the Copper Coast area. People had to either drink bottled water or rely upon their rainwater. SA Water had to put an enormous amount of effort into getting bottled water supplies out to people to try to give those who did not necessarily have a rainwater supply a water supply. That was a real crisis. It was not long after I returned to York Peninsula that that the Paskeville storage dam was upgraded. The previous member for Goyder, Mr John Meier, put a lot of effort into ensuring the upgrade of that storage dam. A bladder-type configuration, like a waterbed, was constructed there to give some protection from the algal outbreak and to ensure a guaranteed supply of water.

I see the linkages between not only dams but pipes as being very close, and that is why I think this motion is appropriate. At times, I have written asking for a copy of the details relevant to my area of the inspection regimes that take place on the water network, their life expectancy and the amount allocated to regular maintenance required to ensure that that expectancy is reached and that people's supplies are guaranteed as much as possible.

This is not a cheeky motion from the member for Schubert. It is actually quite a serious issue that affects much of regional South Australia and all the metropolitan area that has pipes underneath the ground that burst from time to time, too. This motion has been moved on the basis

that a really important infrastructure is there for all of us. I would hate there to be a situation where water was required for a firefighting situation and a break occurred in a pipeline. That is the absolute dilemma for me because that would create the perfect storm: where we desperately need water to control a fire. We might suck every nearby tank dry to get the water we need but no pipe network would be working properly to do water refills to control the fire because of an infrastructure issue that caused a break. So I support the member for Schubert's motion and hope that the parliament takes the issue seriously and has some detailed contact with SA Water about the efforts that it does make.

Mr BROCK (Frome) (12:59): I also rise to speak on the motion of the member for Schubert and reinforce the importance of maintaining the Morgan to Whyalla pipeline in particular to ensure that it does not deteriorate any further. The importance of the Morgan to Whyalla pipeline is very important to not only Port Pirie but also Port Augusta, Whyalla and the Copper Coast; it also now goes across to Kimba. The issue is also that if we allow a great asset like this to deteriorate then, in fact, it will actually create more issues across the whole of the state. Adelaide, in particular, has got its security of water, but, as members here have indicated, and as the member for Goyder pointed out very clearly, the issue is that if there is a burst pipe and then, God forbid, we have a fire, then we will not have the opportunity to be able to fight that fire.

Some years ago, I understand from memory, Port Augusta had a burst water pipe. I will not say in this house what Mayor Joy Baluch's comments were to me with regard to the burst pipeline there, but it did create great issues there with not only the safety of the community but also the firefighting opportunities, and SA Water had to supply thousands of bottles of water, which is not only a cost factor, but it is a very unsavoury way of doing it in a great state like South Australia. I will continue my remarks later.

Debate adjourned.

[Sitting suspended from 13:01 to 14:00]

ANSWERS TO QUESTIONS

The SPEAKER: I direct that the written answers to questions as detailed in the schedule I now table be distributed and printed in *Hansard*.

CHIEF EXECUTIVE DISCRETIONARY FUND

3 The Hon. I.F. EVANS (Davenport) (21 February 2012). With respect to the Chief Executive of each Agency reporting to the Attorney-General, is there a Chief Executive Discretionary Fund, and if so—

(a) what is the fund's allocated budget for 2011-12, 2012-13, 2013-14 and 2015-16, respectively; and

(b) what are the details of all grants provided from the fund for 2007-08, 2008-09, 2009-10 and 2010-11, respectively?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers): I am advised of the following information:

The Attorney-General's Department does not operate a Chief Executive Discretionary Fund.

CHIEF EXECUTIVE DISCRETIONARY FUND

5 The Hon. I.F. EVANS (Davenport) (21 February 2012). With respect to the Chief Executive of each Agency reporting to the Minister for Business Services and Consumers, is there a Chief Executive Discretionary Fund, and if so—

(a) what is the fund's allocated budget for 2011-12, 2012-13, 2013-14 and 2015-16, respectively; and

(b) what are the details of all grants provided from the fund for 2007-08, 2008-09, 2009-10 and 2010-11, respectively?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers): I am advised of the following information:

The Attorney-General's Department does not operate a Chief Executive Discretionary Fund.

CHIEF EXECUTIVE DISCRETIONARY FUND

9 The Hon. I.F. EVANS (Davenport) (21 February 2012). With respect to the Chief Executive of each Agency reporting to the Minister representing the Minister for Tourism, is there a Chief Executive Discretionary Fund, and if so—

(a) what is the fund's allocated budget for 2011-12, 2012-13, 2013-14 and 2015-16, respectively; and

(b) what are the details of all grants provided from the fund for 2007-08, 2008-09, 2009-10 and 2010-11, respectively?

The Hon. L.W.K. BIGNELL (Mawson—Minister for Tourism, Minister for Recreation and Sport): I have been advised:

In compiling this response, the South Australian Tourism Commission (SATC) has used the meaning of a grant and entity as defined by Treasurer's Instruction 15.

The SATC does not currently have a Chief Executive Discretionary Fund.

In 2011-12, 2012-13, 2013-14 and 2015-16 there was/is no budget allocated to a Chief Executive Discretionary Fund.

PARLIAMENTARY PROCEDURE

Mr PISONI: I would like to raise a point of order under 198, concerning the tabling of papers. The Training and Skills Development Act 2008 states that:

(1) The Commission must, on or before 31 March in each year, present to the Minister a report on its operations for the preceding calendar year.

(2) The Minister must, within 6 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

I do not believe that has been done. Today is the last chance for the minister to do so.

The SPEAKER: And today is apparently the day.

Mr PISONI: And it has not happened, sir.

The SPEAKER: It is about to happen, if you will let it happen.

Mr PISONI: It is not listed.

An honourable member: It is not on the green.

The SPEAKER: I am sorry if it is not on the green, but I am assured reliably that it will be tabled this very day. Under 'Presentation of Papers, Notices of Motion, and Ministerial Statements', indeed, on my green has been written in hand, 'Minister for Employment, Higher Education and Skills'.

PAPERS

The following papers were laid on the table:

By the Minister for Employment, Higher Education and Skills (Hon. G. Portolesi)—

Further Education, Employment, Science and Technology, Department of—
Annual Report 2012
Training Advocate, Office of the—Annual Report 2012
Training and Skills Commission—Annual Report 2012

By the Minister for Health and Ageing, on behalf of the Minister for Manufacturing, Innovation and Trade (Hon. T.R. Kenyon)—

Regulations made under the following Act—
Primary Industry Funding Schemes—Olive Industry Fund—Contributions

QUESTION TIME

The SPEAKER: The Premier is absent, and he will be represented by the Deputy Premier. The Minister for Education and Child Development is absent, and she will be represented by the Deputy Premier. The Minister for Manufacturing, Innovation and Trade is absent, and he will be represented by the Minister for Health and Ageing, as just foreshadowed by the Minister for Health and Ageing.

CHILD PROTECTION

Mr PISONI (Unley) (14:03): My question is to the Minister for Police. Will the minister confirm that police advise the Minister for Education or her department when charges are laid against people working with children in the education system?

The Hon. M.F. O'BRIEN: Could the member repeat that question?

Mr PISONI: Will the minister confirm that police advise the Minister for Education or her department when charges are laid against people working with children in the education system?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:04): Mr Speaker, I think more appropriately that would be a matter for the Minister for Education, in whose place I stand today.

Members interjecting:

The Hon. J.R. RAU: The question was one as to what police do in respect of the education minister, or the education department. I would expect that that is a matter which would be best known to the Minister for Education rather than the Minister for Police. In that context, I will take instructions and find out whether there is any particular—

Ms Chapman interjecting:

The SPEAKER: I call the deputy leader to order. It would be a pity if she departed on a day when the benches on both sides are somewhat denuded.

The Hon. J.R. RAU: I will find out whether there is any particular protocol or agreement or statutory obligation and report back to the house.

CHILD PROTECTION

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:05): Supplementary, Mr Speaker: notwithstanding the minister's statement that he would, on behalf of Education, know more about this matter than the police, as he knows nothing about it and has taken it on notice, will the Minister for Police now tell us what his commissioner and/or police force is prepared to—

The SPEAKER: The first thing is that what the deputy leader just did was highly disorderly, and I warn her for the first time. Any member of the ministry may wish to answer that question or not.

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:06): Thank you, Mr Speaker. I think the Deputy Premier has more than adequately answered this question; he has given an undertaking to the house that he will return with a reply.

SOUTHERN EXPRESSWAY

Mr SIBBONS (Mitchell) (14:06): Can the Minister for Transport and Infrastructure update the house on the progress of the Southern Expressway and how announcements by the federal opposition interact with this?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (14:06): I would like to thank the member for Mitchell for his question and his keen interest in the southern suburbs. Today, I was down at the toll-free Southern Expressway inspecting the first series of asphalt being laid under the new carriageway. It is great news for motorists looking forward to the project's completion and for residents living along the corridor.

Reaching the stage of laying the asphalt means we have moved nearly 1.55 million cubic metres of earth, which equates to about 90 per cent of the total excavation. Around 210,000 tonnes of asphalt will be laid over the next 12 months to complete pavements on the 18½-kilometre expressway duplication. Three of the nine bridges have now been extended to span the expressway, with two more set to reopen in the coming months. All pedestrian bridges will also be reopening soon.

I want to thank all the local businesses and residents along the route of the duplication project who have experienced inconvenience during the excavation works. It has been very difficult for them, and I thank them for their patience. We want to do this project as efficiently as possible, but unfortunately a lack of foresight and poor decisions made by members opposite have created delays.

None of the bridges were built with the capacity to allow for a duplicated Southern Expressway below. This means that every single bridge is being deconstructed and rebuilt to accommodate an extended carriageway. The government is committed to not allowing ad hoc infrastructure decisions to dictate how we build infrastructure for South Australians. Unfortunately, the federal opposition, and coincidentally members opposite, feel differently.

An announcement made by Mr Abbott on Saturday provides a Darlington upgrade that could short-change the people of South Australia and the south. The government will be very cautious about committing to a project that fails to link in rail and public transport needs for the area. Estimates by the Department of Planning, Transport and Infrastructure show the completed project would cost $1.8 billion. This means the federal commitment leaves a shortfall of $1.3 billion.

What concerns the government is that either the state government will have to fund the shortfall or members opposite are planning to introduce tolls to cover that cost. Considering members opposite have not agreed to fund its share of that project, one has to assume that they will be introducing tolls by stealth.

Mr WILLIAMS: Point of order, Mr Speaker.

The SPEAKER: A point of order from the member for MacKillop.

Mr WILLIAMS: The minister is clearly debating the answer to this question; he is making assumptions and he is using hypotheticals to make an argument.

The SPEAKER: Well, I ruled yesterday that government ministers, in answering questions, were not responsible to the house for the state opposition's projected or assumed policies, and I stand by that ruling. I also ruled, though, that if the alternative government at federal level made proposals that would have implications for the administration of the state, it was in order for government ministers to comment on those policy announcements or to supply information about those announcements. So, I would say to the Minister for Transport he would be out of order if he predicted what Her Majesty's state opposition is going to do or not going to do, but he would be in order if he gave us information about the announcements by the alternative federal government.

The Hon. A. KOUTSANTONIS: I won't attempt to predict what the loyal opposition will do, because they don't know what they're going to do, because they have no policies.

Mr Williams interjecting:

The Hon. A. KOUTSANTONIS: What was that? I just did?

Mr Williams interjecting:

The Hon. A. KOUTSANTONIS: Sorry. Anyway, this government rules out introduction of toll roads. I note with interest members opposite refuse to.

SOUTHERN EXPRESSWAY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:11): Supplementary to the Minister for Transport. Will the minister now release the whole of the costing document for the interchange and Darlington—

The Hon. P.F. Conlon: What's that supplementary to?

Ms CHAPMAN: That he's just referred to in the figures—which he has partially released publicly.

The Hon. P.F. Conlon: He didn't refer to the document.

Ms CHAPMAN: He did. You're not listening, Patrick.

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (14:11): I find it interesting that the opposition asks for the official costings after they have announced the project.

Members interjecting:

The Hon. A. KOUTSANTONIS: Now they're saying they didn't announce it. So, when the Leader of the Opposition was standing next to Tony Abbott on the side of the road saying the Darlington Interchange was a good idea, he wasn't announcing it. Is that what you're telling us? It was a figment of your imagination, was it? They just ran into each other—they just happened to be there?

Members interjecting:

The SPEAKER: It's a point of order from the deputy leader.

Ms CHAPMAN: Clearly a question of relevance and debate. I have asked a simple question of whether—

The SPEAKER: Yes, thank you, deputy leader, I have it. Would the minister care to help with providing some information?

The Hon. A. KOUTSANTONIS: Mr Speaker, what I will be doing is sharing the costings with the federal shadow minister. Last time I checked, the federal shadow transport minister was seeking to become the federal minister for transport, and if somehow he doesn't represent your views you should say so, because your leader stood on the side of the road with your counterpart federally and endorsed this project. I am happy to share those costs with the people proposing it.

The SPEAKER: I think that's the answer to the question. It may not be satisfactory from your point of view, but it is the answer to the question.

Ms CHAPMAN: I was actually leaping to my feet to defend you as accusations were made against you and your leader, Mr Speaker.

The SPEAKER: Good point.

DEFENCE INDUSTRY

Ms BETTISON (Ramsay) (14:13): My question is to the Minister for Defence Industries. Can the minister inform the house about the first milestone in the delivery of the ship set of parts from BAE Systems Australia's manufacturing facility at Edinburgh Parks?

The Hon. J.J. SNELLING (Playford—Minister for Health and Ageing, Minister for Mental Health and Substance Abuse, Minister for Defence Industries, Minister for Veterans' Affairs) (14:13): I would like to acknowledge the member for Ramsay's interest in the defence industries and, of course, the large number of constituents she has who are employed in the defence industries in the northern suburbs. From Edinburgh Parks, BAE Systems Australia is playing an important role in the manufacture of parts for the global Joint Strike Fighter program, under which more than 3,000 aircraft will be constructed over the next two decades for nine countries, including Australia.

The Joint Strike Fighter program is the backbone of Australia's future air combat capability, and one of the nation's most expensive defence acquisition programs to date. Yesterday, BAE Systems Australia reached an important milestone in its involvement with the Joint Strike Fighter program. The company successfully delivered its first ship set of parts to Marand in Victoria for incorporation in the Joint Strike Fighter vertical tail fin, the single largest manufacturing package awarded to Australian industry on this program. Each of BAE Systems Australia's ship sets is comprised of around 30 complex titanium components of varying sizes.

BAE Systems Australia is the country's largest defence and security company. The company's headquarters are here in South Australia. Locally, it employees 1,400 staff, nearly 25 per cent of its entire Australian workforce. Last year I visited BAE Systems' headquarters in the United Kingdom and discussed defence industries opportunities with their senior executives. With the support of the state government, BAE Systems Australia is establishing a new titanium

machining facility at Edinburgh Parks to meet the rapid manufacturing rates required as the Joint Strike Fighter prime contractor Lockheed Martin ramps up towards full-rate production.

BAE's new facility will be the largest of its kind in Australia, manufacturing the highly specialised five-metre long thin titanium parts for the JSF vertical tail fin, as well as other small specialised components for the aircraft. The facility will house one of the largest titanium computer numerical control machines in the world. There is only one other, located in the United Kingdom. BAE Systems intends to start production on this new facility in January 2014.

As the JSF production rate increases, it is likely other South Australian component manufacturing SMEs will win work to ensure the production rates expected beyond 2018 can be achieved. Soon I will be visiting BAE and other major defence companies in the United Kingdom and Europe with Chris Burns, the chief executive of the Defence Teaming Centre, and Mr Andrew Fletcher, the chief executive of Defence SA, to continue to promote our state's defence credentials to secure advanced manufacturing jobs for all South Australians. I commend BAE Systems Australia on achieving this important milestone.

CHILD PROTECTION

Mr PISONI (Unley) (14:16): My question is to the Attorney-General, not the acting education minister. Is the minister aware of any school-based sexual assault charges currently in the courts system other than the after-school care worker at the centre of the Debelle inquiry?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:17): I thank the honourable member for his question. As far as I am aware, the only matter that is before the courts presently is the individual that the member for Unley has been speaking about for some time now and is central to the Debelle inquiry. I must say though, in providing that information, I need to make it very clear to the house that I do not routinely make inquiries about these matters, and indeed have never specifically made an inquiry as to how many people might be before the courts in any particular classification of offending or alleged offending at any one time. What I am saying is: what has been brought to my attention, so far as I am aware, is this matter; that is it.

CHILD PROTECTION

Mr PISONI (Unley) (14:17): My question is again to the Attorney-General. Does the Attorney-General believe it is in the community's interest for the identity of the alleged offender at the centre of the Debelle inquiry to be disclosed so that other alleged victims or more information may come forward?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:18): I thank the honourable member for that question. The situation as I understand it is that this particular individual is both in custody presently and the subject of other charges. That being the case, and by reason of the nature of those charges, the law says—under section 71A, I believe from recollection, of the Evidence Act—that the default position is that the identity of that individual is not to be published.

However, as a result of amendments that were put through this parliament in the last six to 12 months, anybody who wishes to change that state of affairs may make application to the court and the court may, if it considers it in the public interest to do so, then make an order that the name of the individual may be published.

In particular answer to the honourable member's question: (1) my opinion on the matter is irrelevant because, whatever I think, it is a decision that is to be made by a court, not by me; and (2) anyone who holds to that opinion is entitled by law to approach the court to seek an appropriate order, and it would then be a matter for them to persuade the court it was in the public interest for the court to do so.

CHILD PROTECTION

Mr PISONI (Unley) (14:19): A supplementary, if I may. Will the Attorney-General then make an application to the court for the alleged offender's identity to be disclosed so that other alleged victims and other information can come forward?

The SPEAKER: Yes, that's a supplementary. Attorney-General.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:20): It is not my practice to go around making applications in respect of suppression orders under section 71A or, indeed, any other suppression order that might be made by a court. That is a matter which is between the courts and those people who have a direct interest in the matter, whoever they may be. In some instances—

Mr Pisoni: Let the courts decide. Make an application.

The Hon. J.R. RAU: Hang on. You are asking me the question; I am giving you an answer. In some instances, someone with a direct interest might be a person who has been involved in some of these proceedings, who might consider it's in the public interest to do so. In other instances, it may, for example, be a media outlet that considers it would be in the public interest for these matters to be disclosed. In either of those circumstances, they are entitled to go down there.

It is not, in my view, appropriate for the Attorney-General to be involved in those sorts of matters. The Attorney-General should be removed from those particular activities. There is no interest, in my view, in the Attorney-General doing these things. If others have an interest, they are entitled to make such an application and I would encourage them to do so. Even the member for Unley, if he feels this strongly enough, could wander down to the court, announce himself and make an application.

The Hon. P.F. Conlon: If he gets through security.

The Hon. J.R. RAU: I think they would let him in.

The SPEAKER: I call the member for Elder to order. Member for Unley.

CHILD PROTECTION

Mr PISONI (Unley) (14:21): My question is again to the Attorney-General. What advice has the government sought in relation to the lifting of a blanket suppression order for the identity of the alleged offender at the centre of the Debelle inquiry to be disclosed?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:22): As I think I've already indicated, first of all, I don't consider it to be my role or, indeed, the role of any Attorney to be going around making applications one way or another in respect of suppression orders; point No. 1. Point No. 2: what happens in respect of suppression orders now, as a result of changes made by this parliament in the last six months or so, is pretty clear. There is an opportunity for anybody, including the member for Unley, to go to the court and say, 'Look, I think it's in the public interest for the name of this individual to be released.'

The court would then balance up issues like, for example, whether it would tend to identify a child victim or whether it would in any way prejudice or contaminate a police investigation. There is a whole range of things they might consider and, at the end of that, the court would make the decision.

I have not asked for advice about the matter because the parliament, as recently as the last six months, has made it very clear how you do it, and I, as I've indicated before, have no intention personally of becoming involved in that matter. I would prefer to leave the matter to the courts and the police, because it is the courts and the police that are charged by our community with dealing with questions of justice and questions of publication of details of alleged offenders.

CHILD PROTECTION

Mr PISONI (Unley) (14:23): A supplementary, if I may.

The SPEAKER: If it be a supplementary.

Mr PISONI: Now that there are five alleged victims of the school care worker at the centre of the Debelle inquiry, will you now make an application to lift the suppression order?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:23): I have a sense of deja vu about this.

The SPEAKER: You do.

The Hon. J.R. RAU: Can I say to the member for Unley: if the next three or four questions are exactly the same as the last three, then—

Mr Pisoni: Maybe you didn't know there were five and that's why you're so casual about it.

The Hon. J.R. RAU: Member for Unley, there is nothing casual about this at all.

Mr Pisoni: Only the way the government is handling it.

The SPEAKER: I call the member for Unley to order.

The Hon. J.R. RAU: I repeat, at the moment—just so everyone is clear about this, and this is my understanding of the situation—the individual concerned is imprisoned. That individual is, by reason of being imprisoned, not a present threat to any child, by reason of their imprisonment.

Mr Pisoni: You've already delayed justice by two years by not telling the families.

The SPEAKER: I warn the member for Unley for the first time.

The Hon. J.R. RAU: If the member for Unley or anybody else is of the view that it is in the public interest—

Mr Pisoni: Why won't you do it?

The SPEAKER: I warn the member for Unley for the second time.

The Hon. J.R. RAU: If the member for Unley or anybody else is of the view that it is in the public interest for the name of this person to be published, then they are entitled to go to court and ask for it and, can I remind the member for Unley, as the member for Unley seems to be intent on telling me how many potential victims there are to this, the court, in assessing whether or not the name of this person should be published, would have had a very careful look at whether the publication of this name would do anything possibly to make it even worse for those victims or alleged victims by reason of having publication of the name of that individual made and, thereby, perhaps, draw a link between that victim and that individual, and that is what this law is about.

So, let's be very clear about this. This business about why not publish the names, why not publish the names: if the member for Unley wants the names published, he can go and ask for that, but I caution the member for Unley and anybody else who thinks this is such a frivolous matter that you can just fill in time in question time about it. Just remember, there are child victims involved here and the publication of the name of the offender may—may—tend to identify those child victims, which would considerably aggravate what is already a terrible situation for those child victims. So, member for Unley, if you want to go down there and tell the court it is in the interests of those child victims, in particular, to have this name published, you go right ahead, but I am not going to do it.

ADELAIDE CITY POPULATION GROWTH

Ms BEDFORD (Florey) (14:26): My question is to the Deputy Premier. Can the Deputy Premier please update the house about population growth in the Adelaide city centre?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:27): I thank the honourable member for her question. Earlier this week, the Australian Bureau of Statistics released the latest data on estimated resident population for South Australia. The data shows that the Adelaide City Council is the fastest growing area in South Australia. Adelaide grew by 3.2 per cent in the year to 30 June 2012 and this is the fastest growing, by percentage, in the state.

This shows that there is an increasing demand for inner-city living which, of course, is entirely consistent with the government's vibrant city objectives. It is worth noting that, even with this increase in density, Adelaide only ranks in the mid range of population density, so there is plenty more opportunity for an increase in density within the city.

The government recognises that this is the case and has been working with industry to help meet this demand, taking a number of steps including, but not limited to, the significant planning reforms that have occurred in the last 18 months. This 3.2 per cent growth is a marked increase on the 0.9 per cent growth in 2011, so we can see that there has been, at least over the last recorded year, a substantial increase over the recorded year previously. We have seen significant growth in the city centre over the past decade but the government recognises the need to continue reform to promote and support growth in the city centre.

The city centre has jobs, social infrastructure and the unique benefit of being surrounded by Parklands to provide open space for the residents. The government is very pleased to see that there is now what appears to be a steady move towards city living, and it is to be encouraged and applauded.

NATIONAL INJURY INSURANCE SCHEME

The Hon. I.F. EVANS (Davenport) (14:29): My question is to the Minister for Disabilities. As the state government has agreed to sign up to the full NDIS by 2018, can the minister advise the house if the government has agreed to sign up to the full National Injury Insurance Scheme?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:30): Can I just have the last part of that question again, Mr Speaker?

The Hon. I.F. EVANS: As the government has agreed to sign up to the full NDIS by 2018, can the minister advise the house if the government has agreed to sign up to the full National Injury Insurance Scheme, the NIIS?

The Hon. A. PICCOLO: Mr Speaker, that's not my portfolio area.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:30): If I might be able to assist the honourable member, the position is this: there has been discussion in some detail about the NDIS arrangements. Those arrangements have been, as the member for Davenport says, now resolved between the state and the commonwealth, but the more expensive scheme, as I understand it, is one that has not progressed to that extent. There is presently no formal agreement between the commonwealth and any of the states, as far as I am aware, about that particular matter.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:31): My question is also to the Minister for Disabilities. How did the minister get it wrong when he told the media that the NDIS agreement had not been signed when it had been signed?

The SPEAKER: Well, there's a kind of assumption in that question, but I'll let it pass. Minister.

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:31): I can confirm that the heads of agreement has been signed. The heads of agreement will benefit 33,000 South Australians. It is unfortunate that the opposition has asked no questions about the scheme but has rather focused on a miscommunication between my office and the Premier's office.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:31): Supplementary: is the minister then saying that this error on his part was some kind of miscommunication between the two departments?

The Hon. P.F. CONLON: Point of order: the first question contained—

The SPEAKER: Comment.

The Hon. P.F. CONLON: —assumption; this one contains the argument that it was the error of the member.

Members interjecting:

The Hon. P.F. CONLON: He said it was miscommunication.

The SPEAKER: I will rule against the member for Elder. I'll allow the question to go forward, and I will leave it to the minister. The Minister for Disabilities.

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:32): I will reiterate: I can confirm that the agreement was signed. I can confirm that 33,000 South Australians will benefit from the scheme. I can confirm I have received no

questions from the opposition, and neither have I been asked for a briefing on the scheme by the opposition.

Ms CHAPMAN: Point of order.

The SPEAKER: What is the point of order, member for Bragg?

Ms CHAPMAN: It is clearly a repeat of his previous answer in relation to information which I have not sought.

The SPEAKER: So your question is: was there miscommunication?

Ms CHAPMAN: What was the nature of this miscommunication? That is his explanation for why he got it wrong, so we will need to know what happened.

The SPEAKER: Minister, I'll listen carefully to the answer.

The Hon. A. PICCOLO: Mr Speaker, as I said previously—and perhaps the opposition would like to listen—I did say there was miscommunication. That miscommunication happened in my office, and I accept responsibility as minister.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:33): My question is again for the Minister for Disabilities. Did the South Australian government ever lobby or even make any submission to the commonwealth seeking that the Productivity Commission's recommendation be accepted, that the full cost of the NDIS should be met by the commonwealth?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:34): I'm not sure I understood the question. If I understand the question, discussions regarding the NDIS started before I became minister, so all I am aware of is what has happened since I became minister. I am aware that we have reached an agreement to provide $1.4 billion of support for people with disabilities.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:34): Supplementary: given that the minister identified that he hasn't been responsible during the whole of the negotiations for this, will he at least inquire and bring back an answer to the house as to whether, in fact, there had been a submission to that effect?

The Hon. J.J. SNELLING (Playford—Minister for Health and Ageing, Minister for Mental Health and Substance Abuse, Minister for Defence Industries, Minister for Veterans' Affairs) (14:34): I can take it. The simple issue is that of course there were discussions between the commonwealth and the state about the extent to which the state would pay and the extent to which the commonwealth would pay for what is a massive increase in resources going to people with disability. Quite naturally there were discussions and argy-bargy between all of the states and the commonwealth, and South Australia in particular.

CHINA DELEGATION

The Hon. M.J. WRIGHT (Lee) (14:34): My question is to the Minister for Tourism. Can the minister inform the house on outcomes from his recent trip to China?

The Hon. L.W.K. BIGNELL (Mawson—Minister for Tourism, Minister for Recreation and Sport) (14:35): I thank the member for his question. I have recently returned from a trip to Hong Kong, Guangzhou, Shanghai and Beijing where we had a number of meetings and forums, lunches and dinners with tourism operators and airlines.

We signed two MOUs while I was over there; one, which the Premier touched upon on Tuesday, was to give eight koalas to Ocean Park Zoo in Hong Kong, where they will build a $5 million South Australian exhibit. The other MOU was with UnionPay, which is China's credit card. They have 700 million individual cardholders, with 3.5 billion credit cards. At the moment, the only way Chinese visitors to Australia can use those credit cards is if hotel accommodation or a restaurant or a shop has an NAB terminal.

By the end of June, the Commonwealth Bank will be on board as well, but we really need to push Westpac and ANZ to allow merchants to be able to offer these facilities, because there is a Chinese proverb that says, 'Spend frugally at home but spend generously when you are away.'

Chinese people want to come here and spend their money, but at the moment they are limited in how much they can spend. They are allowed to bring the equivalent of $5,000 out of China to spend, but they are really limited and they want to spend big when they are here.

Places like Penfolds, for example, which is probably one of the best-known brand names from South Australia in China, and other wineries around South Australia cannot accept UnionPay. I will be writing to all the tourism operators to advise them that, if they are with NAB or the Commonwealth, by the end of June they should be advertising and putting the stickers up to promote the fact that UnionPay is available to Chinese tourists who are here.

Of course, we are trying to increase Chinese tourism numbers from 17,000 last year to 56,000 by 2020. That is a trebling of those figures; it is an increase in our economic activity from $110 million to $450 million. We are also trying to attract direct airline services from China, so we have spoken with China Eastern and China Southern, as well as to the existing airlines who have been so loyal to South Australia—Malaysia, Cathay and Singapore Airlines—so we had those discussions while we were over there.

I encourage anyone from either side of the chamber that, if you are going to China, we have some excellent contacts over there—and it is all about relationships. We would be happy to have representatives from Eyre Peninsula, from Clare, from the Barossa, from the Riverland, from the Limestone Coast, from the Murraylands—from all around South Australia. If you are heading over to China, please contact our office and we can set you up with some contacts to help grow those relationships because it is very important that, as China grows towards 100 million Chinese tourists leaving China each year to travel somewhere overseas, we get our fair share of that market.

CHINA DELEGATION

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:38): A supplementary question to the Minister for Tourism.

The SPEAKER: Yes, if supplementary it be.

Ms CHAPMAN: Given the minister's advice to the house in respect of the tourism opportunities in China, when in China did the minister negotiate any discount on our $1 million a year payment for the pandas in exchange for the eight koalas?

The Hon. L.W.K. BIGNELL (Mawson—Minister for Tourism, Minister for Recreation and Sport) (14:38): No, the Minister for Health's mother was my economics teacher at school and she taught me all about supply and demand.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:38): My question is again to the Minister for Disabilities. What is the expected annual cost to South Australia of running the National Disability Insurance Agency?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:39): I thank the honourable member for her question. I am advised that when the scheme is fully rolled out it will cost us around about $724 million a year. Between now and then, the program will be scaled up from the current $325 million to that point once we are agreed on the actual rollout schedule.

NATIONAL DISABILITY INSURANCE SCHEME

The Hon. I.F. EVANS (Davenport) (14:40): Can the Minister for Disabilities confirm that the $724 million figure is not $738 million as reported in the media? If it is either of those two figures, can he also confirm that it is $724 million or $738 million in cash and in kind? How much is cash and how much is in-kind services?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:40): I thank the honourable member for the question. I can confirm that a portion will be in cash and a portion will be in kind.

Mr Pengilly: How much?

The Hon. A. PICCOLO: Thank you.

Mr Pengilly: You're the minister.

The SPEAKER: I call the member for Finniss to order.

The Hon. A. PICCOLO: Well, you certainly never will be. Those sorts of details are being worked out in terms of what can be considered to be in kind. I can't confirm the exact amounts but—

Mr Pengilly: You ought to resign.

The SPEAKER: The member for Finniss is warned a first time. Just as well he is looking his best today.

The Hon. A. PICCOLO: But the essence of the question: yes, there is both an in-kind component of what we provide through disability services and also a new cash amount.

NATIONAL DISABILITY INSURANCE SCHEME

The Hon. I.F. EVANS (Davenport) (14:41): A further supplementary to the same minister: if the amount in cash and in kind is yet to be worked out, as the minister has just told the house, how is the budget impact to be calculated if you do not know how much is being provided for by way of cash payment and how much is being provided by way of in-kind services?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:41): The answer to that I think takes us into territory which will be canvassed very thoroughly in the context of the budget papers.

The Hon. I.F. Evans interjecting:

The Hon. J.R. RAU: No, the question that was asked there was about the particular budgetary implications rather than what we have signed up for with the commonwealth. In a very short space of time the Treasurer will be presenting this house with the government's budget.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:42): My question is again to the Minister for Disabilities. Will the minister explain whether South Australia's contribution to the NDIS will be capped? If so, what is the cap whether in cash or in kind, and at what rate will the cap be indexed?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:42): I thank the member for the question. I don't have the exact detail; however, what I can say is that the figure for the amount we are investing, both the state and the commonwealth, is based on modelling prepared by the Productivity Commission and we have then applied that to the number of people we believe in the state, so we have worked out a global amount. The other detail I don't have at hand but I am happy to get it for you.

NATIONAL DISABILITY INSURANCE SCHEME

Mr GARDNER (Morialta) (14:43): The minister just explained that it was prepared by the Productivity Commission, the rate at which it was going. Has the minister actually read the Productivity Commission report?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:43): Not from cover to cover, no.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:43): My question is to the Minister for Disabilities. How many disability advocacy and representative organisations currently receiving funding support from the state government will lose that funding to pay South Australia's contribution to the NDIS?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:44): The question is: how many groups will lose funding? The national scheme proposed, as you would be aware, it is based on the self-funding model, and who gets extra money

and who gets less money will be determined by the people who have disabilities, their carers and their families, as they should. The whole model empowers people with disabilities, their carers and their families to spend the money on what they wish. I would not be able to predict which families go where.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:44): A supplementary, Mr Speaker.

The SPEAKER: A supplementary—

Ms CHAPMAN: It is largely to assist the minister because it seems as though his—

The SPEAKER: No, we won't have an impromptu speech. I would like a question.

Ms CHAPMAN: My question then is: is it your understanding then that there will be no organisations that will lose their funding on the basis that as you said it will provide for direct—

The Hon. A. Koutsantonis interjecting:

Ms CHAPMAN: Mr Speaker, could you please contain this?

The SPEAKER: When you have completed your question, I will deal condign punishment to the member for West Torrens.

Ms CHAPMAN: Thank you. So is the minister then confirming that there will be no advocacy or representative groups who will lose their positions, notwithstanding that you have just indicated there will be direct funding to people for their self-assessment?

The SPEAKER: Before the minister answers, I call the member for West Torrens to order and I warn him a first time. The Minister for Disabilities.

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:45): I thank the honourable member for the question. I have nothing to add to my previous answer.

MINDA INCORPORATED

The Hon. S.W. KEY (Ashford) (14:45): My question is directed at the Minister for Disabilities. Could you advise the house on how Minda Incorporated is working in partnership with the government to improve the lives of people with a disability?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:46): As members would be aware, Minda Incorporated is one—

Mr Williams interjecting:

The SPEAKER: The member for MacKillop is called to order. Minister for Disabilities.

The Hon. A. PICCOLO: Thank you, Mr Speaker. I would like to thank the honourable member for her question and also her advocacy for people with disabilities in her electorate. Minda Incorporated was actually established in 1898 and it is one of our oldest residential care and education facilities for people with intellectual disability. From its humble beginnings, Minda is now positioned at the forefront of South Australia's disability sector, with many other not-for-profit organisations, offering services to support over 1,500 South Australians with an intellectual disability.

Minda accommodates over 220 adults at its Brighton campus, with another 241 individuals accommodated in community-based living. The remaining numbers of individuals are supported through other services, including respite care, day option programs, aged care, employment opportunities, sport and leisure, and also arts-based activities. For those members who are not aware, Minda is actually an Aboriginal word for 'place of shelter', which is quite appropriate. A large part of the great work that Minda does in our community is very close to this translation.

Several weeks ago I, with the member for Hindmarsh, Steve Georganas, was fortunate enough to be invited by Minda to open one of their new community homes in the western suburb of Mile End for people with an intellectual disability and autism. This newly refurbished home will accommodate up to four young men and will provide them with increased independence and

lifestyle choices. In addition, it will provide an ideal setting to further develop the skills of these young men and help them to continue to grow as individuals.

The Weatherill government has committed $593,500 annually to this specific community home to increase accommodation places for people with disabilities in South Australia. This highlights the government's ongoing partnership with community organisations such as Minda to not only improve the quality of life for people with intellectual disabilities, but also broaden and diversify their actual lifestyle experiences. The government's total annual funding for Minda Incorporated is over $39 million per annum. This has increased approximately $15.6 million since Labor came to office in 2002.

I would like to take this opportunity to thank Minda Incorporated's president, Mr Tony Harrison (who is a former assistant police commissioner), and Minda's CEO, Ms Catherine Miller, for the opportunity to open this home and to see the benefits of their work firsthand. Finally, I would like to commend the whole Minda organisation—staff, families, carers and volunteers—for their enduring dedication and devotion to people with intellectual disability in this state.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:49): My question is to the Minister for Disabilities. What advice has the minister received as to how many people with a disability currently receiving funding and support from the state government will lose that funding and support as a result of the transition to NDIS, and what measures is the government putting in place to assist them in that transition?

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:49): I thank the member for her question. I have received no advice to indicate that anybody who is actually on the current state scheme would lose funding. But, as the member would be aware, there are criteria under the new scheme for people to meet. Given that our state has much broader criteria, we are still confident that all persons would qualify.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:50): Supplementary, sir. Is the minister aware whether any modelling has been done at all to assess whether the people in question may or may not be covered? If not, how are you confident that they will still be covered?

Members interjecting:

The SPEAKER: Minister for Disabilities.

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:50): Mr Speaker, people will meet the criteria for funding based on their disabilities; it is a clinical and medical response, it is not actually modelling as such. So, the people who actually meet our current scheme—I can see no reason why they would not meet the new scheme.

TELECOMMUNICATIONS TASKFORCE

Dr CLOSE (Port Adelaide) (14:50): Can the Minister for Finance inform the house of the steps undertaken to date by the Telecommunications Taskforce to reduce government spending on telecommunications?

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:51): I thank the member for Port Adelaide for this particular question. The house may recall that I spoke before Christmas last year on the government's intention to reduce costs associated with the government's use of telecommunications services. In response to comments by the Auditor-General, I established the Telecommunications Taskforce, which is chaired by the Chief Information Officer, comprising executive members of other agencies and reporting directly to me.

After rigorous assessment of the government's ability to make changes to its use of fixed telephone lines, mobile phone devices and data plans, I can advise the house that a savings target of $1 million per year for correcting data plan usage practices has already been identified. Work is currently underway to quantify further potential savings with fixed telephone lines and mobile phone devices.

The savings of $1 million will be reached by making the following changes: replacing outdated plans with new, low-cost plans; moving services which incurred large excess usage charges to plans with more appropriate data allocation—and I would suggest that members in the chamber, if they are on data plans, also look at their own plans to establish whether they are adequate; and moving plans which have consistent low usage of data allocation to a lower-cost plan.

An internal communications plan has also been developed to encourage public sector employees to monitor their costs as they conduct their government business. The plan was launched by email in March to all public sector employees, and it is our intention to do more of this. A webpage promoting the initiative received more than 7,400 hits, along with 70 suggestions and feedback comments. This is engaging public sector employees in doing things better more economically, and lifting productivity.

The feedback of experienced public servants is being not only encouraged but welcomed, and this approach is already showing early signs of making a difference. Telecommunications is proving to be an area of government operations where new and better initiatives can make the cost of conducting government business cheaper and easier.

We have had such success with finding savings that the initiative will be incorporated into the government's Public Sector Renewal Program as a project. These savings complement our earlier savings initiatives, including a 12 per cent reduction in travel expenditure, which has already seen savings in the region of $2.4 million. I will continue to oversee the work of this taskforce and will advise the house of further achievable savings in this area later in the year.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:54): My question is to the Minister for Disabilities. Under the NDIS and NIIS, will SA still be responsible for managing risk for the treatment of medical injury caused by fault in our public hospitals?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:54): Mr Speaker, I think it was made clear before that the NIIS matter is still something that is in the discussion stage; it is nowhere near—nowhere near—in a stage where there has been finalisation of any agreement between the commonwealth and any of the states. So, it is impossible for that question to be answered, because it is predicated on an understanding of two schemes, one of which does not yet exist.

AUSTRALIAN TOURISM EXCHANGE

Mrs GERAGHTY (Torrens) (14:55): My question is to the Minister for Tourism. Can the minister inform the house about the Australian Tourism Exchange?

The Hon. L.W.K. BIGNELL (Mawson—Minister for Tourism, Minister for Recreation and Sport) (14:55): Last weekend, the Australian Tourism Exchange was held in Sydney and we had just over 25 South Australian tourism operators attend at the Sydney convention centre. It was a very good display, and the new South Australian logo was prominent in the large convention hall. It was good to be walking around the hall and seeing that, while some of the states had people sitting there without people coming out and asking them questions, it was almost impossible for us to talk to the South Australian tourism operators because they were flat out talking to tourism operators from around the world who were trying to buy product and bring tourists down from all parts of the world, whether it was North America, Europe or throughout Asia.

We had, of course, operators there from Kangaroo Island, we had two of the shark cage dive operators from Eyre Peninsula, we had Hassie from over near the Nullarbor—real characters who do so much to sell South Australia and its great physical attractions. At the dinner on Monday night, where we hosted tourism operators from throughout Europe and North America, we served up kingfish, prawns, lamb—all the sort of food that South Australia is famous for. We had Skillogalee wines there from Clare, Chapel Hill wines from down in McLaren Vale, and we had Bird in Hand wines as well from the Adelaide Hills.

It was terrific to be able to give people a taste of the great food and wine that South Australia is renowned for throughout the world. When I was in China—and I mentioned this to the member for Chaffey yesterday—I ran into someone who bought yabbies at $5 each in Hong Kong. I think, having had a few of the member for Chaffey's yabbies, we might have to get a little bit of an export business going up to Hong Kong and China. The food and wine we produce in this state is

exceptional, and people love the fact that it's so fresh and it comes from a pristine environment. It links perfectly with tourism because people want to go to the source of where these great food products and wine come from.

Mr Venning: The Barossa.

The Hon. L.W.K. BIGNELL: Yes, the Barossa is very good. In fact, when I was in Hong Kong I went to the Barossa Wine School, and that is doing very well. It's been established up in Hong Kong, and at the end of this year, they are actually going to bring the graduates from the Barossa Wine School down to the Barossa—another example of how it all links in. We saw this at the Australian Tourism Exchange on the weekend, that wonderful connection between the food and tourism. At the happy hour on Saturday afternoon, South Australia had the busiest booth. People from all around just descended on the South Australian booth; it might have had something to do with the fresh Coffin Bay oysters that were being served up.

The results of this Australian Tourism Exchange of course we won't know for some time, but it has given operators another chance to continue to build those relationships with tourism operators from around the world. Senator Don Farrell, who is the Minister Assisting the Minister for Tourism, and Gary Gray, the new federal tourism minister, were also there. We had our ministerial council meeting on Friday and then we did a walk around the exhibition and convention centre on Saturday.

As I say, we have a very enthusiastic minister in Senator Don Farrell for tourism here in South Australia. He had some very productive meetings with China Southern, the airline I met with in China. We are looking forward to a very good relationship with Senator Farrell as we forge ahead to grow tourism here in South Australia.

Members interjecting:

The SPEAKER: I warn the deputy leader for the second time and I call the member for Morialta for that obstructive interjection.

Mr PENGILLY: Sir, as—

The SPEAKER: Is this a point of order?

Mr PENGILLY: No, sir, I have a supplementary to the minister.

The SPEAKER: A supplementary; very well, member for Finniss.

AUSTRALIAN TOURISM EXCHANGE

Mr PENGILLY (Finniss) (14:59): Minister, how many trips interstate have you made this week in relation to the Australian Tourism Exchange?

The Hon. L.W.K. BIGNELL (Mawson—Minister for Tourism, Minister for Recreation and Sport) (14:59): I made the trip on Friday for the ministerial council and came back on Monday for cabinet. I went back on Monday afternoon to host the dinner for the tourism operators all around the world. I came back for China. I did go to Sydney again last night to meet with the head of the Tour de France, who had invited me to attend a dinner to celebrate this year's 100th edition of the Tour de France. I am sure everyone on both sides of the house will agree that these are very important partnerships to have.

I was the only minister from any government in Australia to be invited along there and to fly the South Australian flag, and we want to continue that relationship. In fact, I invited the head of the Tour de France to come to the Tour Down Under again next year. He was here a couple of years ago and it is vitally important that we continue that relationship. They now sell the TV rights for the Tour Down Under and we are reaching millions and millions of viewers right around the world, and it is the sort of deal that we could not do without the help of the head of the Tour de France.

GOVERNMENT BOARDS AND COMMITTEES

The Hon. I.F. EVANS (Davenport) (15:00): My question is to the Minister for Finance. Following the statement yesterday by the Minister for Forests that the chair of the forest advisory board is being paid $200 for a half-day sitting fee and then a $50,000 a year retention and attraction allowance as chairman of the board, can the minister advise how many other members of government committees are receiving retention and attraction allowances, and are those retention and attraction allowances reported as board fees or are they reported as 'paid to consultants'?

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:01): I thank the member for the question. I will take that on notice and return to the house with an answer.

NATIONAL DISABILITY INSURANCE SCHEME

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:01): My question again is to the Minister for Disabilities. Will the residents—

The Hon. A. Koutsantonis: I have held two press conferences in two days and you haven't asked me a question.

The SPEAKER: The transport minister is warned for the second and final time. If he is not careful he will be ejected for the rest of question time.

Ms CHAPMAN: Will South Australian residents affected by dust diseases such as mesothelioma be covered by the NDIS, NIIS or the state insurances? Given the Attorney-General's previous answer that there were still discussions in relation to the NIIS, if there is no resolution of this matter, what is the government's position as to who should be paying it?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:02): In answer to that question, I think it has already been made clear that, because the deputy leader is asking a question that includes an element which is an unknown—

Ms Chapman: I am asking what you have asked for.

The Hon. J.R. RAU: I do not want to labour the point, but Donald Rumsfeld once said, 'There's the known knowns, the known unknowns and the unknown unknowns,' and the honourable member keeps inserting an unknown unknown into the known knowns and the known unknowns, which makes it impossible for anyone to know the answer.

There being a disturbance in the gallery:

The SPEAKER: The minister.

The Hon. L.W.K. BIGNELL: A point of order: we have someone up in that gallery using flash photography.

The SPEAKER: Yes, would the security please obtain that camera and bring it to me.

The Hon. I.F. EVANS: Point of order: if that is the Speaker's intention, can you also ask security to secure the camera of the gentleman up here who was taking photos from that gallery for all of question time?

The SPEAKER: That does not violate my ruling against flash photography. The deputy leader.

Ms CHAPMAN: Point of order, Mr Speaker: I know that you are very, very wise and clever, but even you would not have been able to see the person positioned in *The Advertiser* box or whether it was flashing, and I would ask that you at least make an inquiry—

The SPEAKER: When it is brought to me I will see whether it is flash photography or not.

Ms CHAPMAN: Thank you. My question is to the Minister for Disabilities.

Members interjecting:

Ms CHAPMAN: I have the call.

The SPEAKER: I gave you the call but you utilised the call as a point of order rather than a question. The motion now is that the house note grievances. I call the member for Unley.

GRIEVANCE DEBATE

CHILD PROTECTION

Mr PISONI (Unley) (15:04): What a day of 'don't knows' by this government. It could not be described in a more clear way than the heading of the press release that I have in my hand: 'Rankine continues Weatherill's Labor legacy of child protection bungling.' Here we have a situation where the fourth education minister in less than four years (the member for Wright) has added to

the litany of Labor government child protection bungles, emulating her predecessor (the member for Hartley) and, of course, the Premier himself, by getting critical details wrong on the floor of the parliament. Minister Rankine was asked about indecent assault charges.

The SPEAKER: Member for Unley, would you be seated, please. I will not have the surnames or Christian names of members used. It is explicitly contrary to our standing orders. You have been cautioned before. You are on two warnings. If you do it again, you will be required to leave.

Mr PISONI: Could you please clarify whether the reading of press releases, for example, or other media items into the *Hansard*—

The SPEAKER: You can read your own press release—that is fine—but, if you, in the course of doing so, use a member's Christian name or surname, you will be out of order.

Mr PISONI: So, are you ruling then that, when members use any media—

The SPEAKER: No, when you read out your own news release.

Mr PISONI: That is the ruling?

The SPEAKER: Yes.

Mr PISONI: The Minister for Education (the member for Wright) was asked about new indecent assault charges filed yesterday against another school care worker at the western suburbs school that is at the centre of the Debelle inquiry. I asked the question of the minister whether she could advise the house if she was made aware of the new indecent assault charges filed yesterday. The member for Wright's answer to the parliament was:

> I can tell the member for Unley that my understanding is that this is about the first victim that was identified by the police, and the police do not regularly advise me about charges that they are laying.

We asked the police minister if they could clarify whether that was the case today and, of course, he did not know. Then the Attorney-General (the member for Enfield) thought he would save the day and gave the same answer as well, that he did not know because he was only acting in the position as the education minister.

The facts are that there are two new victims and five in total of this hideous creature, who is at the centre of the Debelle inquiry. It is just unfathomable that another minister, in addition to the Premier, could address this parliament and then, again, get the details wrong. Remember the Premier, of course, told the house that his office was not informed of the rape of the eight year old when he was the education minister.

Then, of course, the member for Hartley told this house that parents were not informed about the rape of the eight year old. Even after the conviction of this man and the naming of this man in local media, parents could not be told because that was police advice but, of course, she had to come into the house and explain that she got that wrong because the police had put out a press release—

The Hon. C.C. Fox interjecting:

The SPEAKER: I call the Minister for Transport Services to order.

Mr PISONI: —debunking the claims made by the member for Hartley (the education minister at the time) saying that they actually advised that the minister should consult with the Department for Education to formulate a method of advising the school community of what had occurred. Even more importantly, Gary Burns (the police commissioner) came out and said that, by not telling parents, it may very well have hindered the investigations into the paedophile. It was another unimaginable bungle by the then minister (the member for Hartley) when she told the parliament that a mother of a—

The Hon. C.C. Fox interjecting:

The SPEAKER: I warn the Minister for Transport Services for the first time.

Mr PISONI: In another incident, a mother of a rape victim in a school was advised that she was not getting any support from the department and, when the minister said that the department was meeting with her right now, she was, in fact, sitting in the gallery and was not aware of any meeting that had been planned for her. These are embarrassing gaffes that have continued under

the current education minister. Just to make it clear to the house, and those who don't read *Hansard* every day, last night the minister came into the chamber and she said:

> Today the member for Unley asked me when I was made aware of the new charges laid against the out of school hours care worker who had previously been found guilty of offences against a child and is currently imprisoned for these offences.

She made a total balls-up of the answer and then came back and said:

> The DPP tonight advised me that today's court proceedings involved new charges being laid that were not related to that first victim.

That is how she clarified her situation—waiting until everybody had gone home, all the media had gone home, the last news service had completed and the news rooms were closed, and snuck in and made this correction simply to manage her own situation.

The SPEAKER: Before we go any further, I would explain to the member for Unley, regarding my earlier ruling, that the prohibition of standing orders and the long-term usage of parliaments in the English speaking world that one not refer to members or ministers by their Christian name, or their surname, or their nickname, could easily be defeated by the member drafting a press release using the minister's Christian name, surname, or even a nickname, and then reading the press release and saying one was merely quoting.

I also notice that the member for Unley referred to the timing of the minister coming into the house to make a statement. I think there was a point of order taken earlier by the opposition that it was out of order for the government to comment on the timing of the Leader of the Opposition coming in here to make a retraction explanation and personal explanation. I think we can treat it as in order now that members can refer to the timing of members making personal explanations or retractions.

Mr PISONI: You seem to be very thorough, sir, when the debate is about the education minister.

The SPEAKER: Thank you very much for that, member for Unley. The member for Mitchell.

NATIONAL ASBESTOS MANAGEMENT REVIEW

Mr SIBBONS (Mitchell) (15:12): I rise today to speak about the National Asbestos Management Review and to speak in favour of the recommendations which resulted from that process. I am sure that all of us here today are aware just how cruel a killer asbestos can be. It only takes one fibre to set in motion a terrible and, in most cases, fatal disease: mesothelioma is incurable and invariably fatal. Other asbestos-related diseases, including asbestosis and lung cancer, also have very high mortality rates.

These diseases cause terrible suffering for those who endure them and those close to them. The fact that asbestos had a wide variety of uses in Australia for much of the second half of last century means that most of our population has come into contact with it in one form or another. From insulation and floor coverings to its many uses as part of fibro sheeting, including roofing and fencing, asbestos was a pervasive material in housing and other construction in Australia until the mid-1980s. Also common in water pipes, fire blankets and car parts, such as clutches, gaskets and brake linings, asbestos-containing materials were only banned in this country from the end of 2003.

Sadly, the typical lag of 20 to 40 years between exposure and the onset of symptoms of disease can make detection, prevention and risk management for asbestos-related health risks very difficult. It is estimated that the peak of the epidemic of asbestos-related disease in Australia will not occur until the mid-2020s, and Australia has one of the highest rates of it in the world. This is despite measures taken to date in asbestos management and despite efforts to limit the exposure of the general population.

Having worked in the field of occupational health and safety for many years, asbestos management is a topic of grave concern to me; it is vital that we get it right. To date, the management of asbestos has been fragmented among all levels of government. The way it is regulated across these bodies varies widely and there are differing levels of success. It has become clear through this experience that Australia needs to take a national approach to putting an end to this scourge.

To this end, the Australian government established the Asbestos Management Review in 2010, appointing Mr Geoff Fary as chairman. Mr Fary was asked to make recommendations for the

development of a national strategic plan to improve asbestos management and awareness. As the Asbestos Management Review, reported in June 2012, states that the aim of such a national plan should be 'to prevent exposure to asbestos fibres in order to eliminate asbestos-related disease in Australia.'

The review concluded that the priority areas for such a national plan should be improved asbestos identification, management, transport, storage and disposal, awareness, education and information sharing. On top of these priority areas, the review recommended that the federal government support and legislate for the establishment of a new national agency to oversee the implementation, review, refinement and further development of the national plan. Among other things, an agency should:

> ...have the expertise and authority to coordinate activities across all tiers of government, affecting multiple portfolios such as health, safety, environment and education.

It is proposed that the agency's governing board would include an independent chairperson and a medical expert, as well as having representation from all Australian governments, including local government and national peak bodies. A further recommendation is to provide sufficient funding for collaborative national research in preventing and curing asbestos-related disease, particularly mesothelioma.

It is important and sobering to note that, while Australia has a ban on the production and trade in asbestos and products which contain it, there are also countries which still allow the mining, production and use of asbestos. The report also addresses Australia's international obligations to continuing to lead a global campaign for the worldwide asbestos ban.

In the wake of the review, I am pleased to note that the Office of Asbestos Safety has been established with the task of developing a national strategic plan by 1 July this year. I welcome this development and look forward to the release of the plan which will be based on the review's recommendations.

YORKEYS CROSSING

Mr VAN HOLST PELLEKAAN (Stuart) (15:17): This house knows very well my views on Yorkeys Crossing, and the fact that it is a very important local, statewide and interstate piece of infrastructure that is in sad need of upgrade. I take this opportunity to advise the house that a at roundabout 11 o'clock on Tuesday 23 April a road train broke down on the bridge across the gulf. This is exactly the sort of risk that I have spoken about many times. It has happened before, and I am sure it will happen again. Fortunately nobody was hurt, fortunately it wasn't at a heavy traffic time of the day, and fortunately the police were able to come and divert all of the traffic, heading between Sydney and Perth, Adelaide and Darwin, and all around Port Augusta, using that bridge—all of that traffic through the one lane that was left free and open.

The problem is that if there was a child who got bitten by a snake on the west side of Port Augusta and the ambulance could not get from the east side of Port Augusta to the west side to pick that child up and then take it back to the east side to the hospital, it would have been a disaster. If an older person had had a heart attack or any sort of serious medical emergency, it would have been a complete disaster, even on that day at 11 o'clock in the morning when it was probably just about the freest time possible to try to get an ambulance, a fire truck, or some other emergency services vehicle across the bridge through the police escort over to the other side, pick up the other person and get them back to the hospital. We need to have Yorkeys Crossing upgraded. It is absolutely vital that that happens.

Back in late 2010 or 2011—I do not remember when exactly—a petition from Port Augusta residents with 3,084 signatures was presented to this house on exactly this issue. We see petitions come here every week. It is pretty rare to see one with more than 1,000 signatures on it. This was more than 3,000 signatures for exactly this issue. It is a risk that we cannot continue to take. The people of Port Augusta understand that tens of millions of dollars are not necessarily available instantly, but I urge the government: this must be put into a transport infrastructure plan.

You have to be able to tell the people of Port Augusta and, for that matter, the freight companies in Perth and Sydney and Darwin and Adelaide that it will be done in one year or two years, or five years perhaps, just so people know that the issue is being addressed, just so people know that it is something that will get fixed.

The government's response to just continually say, 'No, it's not a high priority; no, we've looked at the cost-benefit analysis and it doesn't stack up; no, we've got other things to spend our

money on like $40 million on a footbridge from the Adelaide Oval to the Adelaide Casino' is just not cutting it. It is completely unacceptable. This piece of infrastructure which serves Port Augusta, serves our state and is part of National Highway 1 is not getting the upgrade and attention that it deserves.

In addition to this problem is the weather issue. Right now, it only takes 6 mm of rain for the existing dirt road that is Yorkeys Crossing to be put out of action. If, heaven forbid, the bridge is out of action because of a breakdown on it or some other reason that we cannot get across the bridge and it happens to be raining, then it won't even be a matter of trying to get the police to help the ambulance across the bridge to pick somebody up and take them back. It will be a genuine catastrophe because the dirt road around the outside of town that is Yorkeys Crossing cannot be used when it rains.

This is a very serious issue, Mr Deputy Speaker. I call on the government to take this seriously. This is not just a Port Augusta problem. This is a statewide problem. It would not be too hard to try and find some federal funding to support the state government on this matter. I have had costings done; I have shared them with the transport department. I think the government seriously over-estimates what would be required to simply bitumenise and give a really good all-weather road straightaway. It is in the low tens of millions of dollars to do that. The ultimate solution, down the track, is another bridge, two lanes each direction. That is a hundreds of millions of dollars solution and we can wait for that.

Until we get there, we need to have Yorkeys Crossing upgraded to an all-weather standard, so that the risk of that small girl who might get bitten by a snake or that elderly man who might have his heart attack is diminished as much as possible so that, if absolutely necessary, there is a really good, a really quick, a really safe all-weather road that these emergency vehicles can travel on Yorkeys Crossing to bypass the traffic problems that we have in this town. This is not an isolated incident; there have been two other times where trucks have had acid spills on the road just off the bridge, and, if that got into the gulf, that raises a whole other set of serious questions.

UMOONA TJUTAGKU HEALTH SERVICE

The Hon. L.R. BREUER (Giles) (15:22): I want to concur with the member for Stuart on that Yorkeys Crossing. It is a vital part of the outback. You have traffic coming through from Perth, from the Eyre Peninsula, from the north—from Coober Pedy, Roxby Downs, etc., and from Whyalla. If something does go wrong with the bridge, and it could easily happen—somebody just said to me does it happen very often and I said no, but it is probably just sheer luck that it does not.

I do not agree with you that we should be taking money from the footbridge or any of the programs that are happening in Adelaide, particularly, but everybody in South Australia wants their roads fixed but I do think we have to prioritise. I certainly think that that is a priority for us, because if something goes wrong we are in serious trouble from our part of the state. However, people in Adelaide do forget that.

I want to talk today about the Umoona Tjutagku Health Service at Coober Pedy which is a community controlled health service for Aboriginal people in the Coober Pedy area and the Oodnadatta area. It provides primary healthcare services to Aboriginal people. It also auspices the Dunjiba substance misuse program in Oodnadatta.

This service was established in 2005 and over the years it has expanded steadily to provide a comprehensive range of medical services, dental services and even social services for the community at Umoona and Coober Pedy. It does other things, such as contributing to community events that happen in the area and conducts ongoing research for the ongoing needs of the community. It is an amazing service, run by Priscilla Larkins, who has been there for some time and has done a very good job. I also want to make mention of someone called George Lasletts who does a lot of the drug and alcohol work, and there are many others involved in the Umoona Tjutagku Health Service.

I am particularly mentioning it today because on Monday I am going to the grand opening of the drug and alcohol day centre, which has been planned for some time. This is an upgrade of a service that has been operating there and it will provide a really good service. I have seen the plans; I haven't actually seen the building as yet, except in the distance. I know that it will be a wonderful advantage for the Aboriginal community in Coober Pedy. On Monday it is to be opened by the Hon. Warren Snowdon and it is a significant milestone in Coober Pedy's history, so I will be very pleased to be there.

On 27 March this year I went to the opening of the Pichi Richi Trade Training Centre in Quorn which was opened by Senator Alex Gallacher. This is a $1.6 million development. It will be used to strengthen access to training for rural and regional students who will be able to do certificate II and III level training in a number of fields where there are shortages in the automotive area, electrical engineering, building and construction areas, commercial cookery, and in the agricultural industry. It will involve the schools at Port Augusta, Quorn, Hawker, Booleroo Centre, Leigh Creek and Orroroo, so it has a very wide footprint. In each of these campuses they will specialise in one of these specific trade or training areas.

It is a wonderful service and it is part of the Pichi Richi Centre which has been working there for many years with the schools in that area. The Pichi Richi Railway Preservation Society for over 10 years has developed and continued to foster very strong partnerships with the students from schools in their local community, and I have been very pleased to see the work that has been done over the years.

Of course, the Pichi Richi Railway Preservation Society is a group of mostly retired people, many retired engineers and people who have had an association with the rail industry, people who have trade backgrounds, and basically a lot of the time they are just boys who have never grown up really even though they are in their later years. I think we all have a bit of a fascination with trains, and certainly this organisation has done that. It is an amazing place to visit. Go and have a ride on the train up there one day if you ever get the opportunity.

They also put their efforts and I suppose some of their money where their mouth is and work with these schools. They have done incredible work with the young people in the area and will continue to do so. The partnership has been a wonderful one to work with the society and the communities. I think they will continue to do this with their new trade training centre. It was an excellent project and I was very pleased to be part of that ceremony and have a ride on the train to the centre and back again.

Time expired.

ANZAC DAY

Mr PENGILLY (Finniss) (15:28): I would like to spend a few minutes talking about ANZAC Day, as the member for Florey did the other day. I know she is a great supporter of the veterans community and I have attended things with her in the past. I would still like to be in that capacity actually but there you go. I would like to talk about what took place in my electorate in the lead-up to ANZAC Day and on ANZAC Day in Victor Harbor.

The ANZAC Day service is a dawn service; however, that is preceded on the Sunday before by, normally speaking, a march and a service and then an RSL lunch down at Hotel Victor at Victor Harbor. This year, fortunately, it was raining. I say 'fortunately' because it was the best possible thing that could happen in my country. We had a wonderful rain, so the service was held inside the RSL clubrooms which are the old Victor Harbor council offices and library.

I commend the Victor Harbor RSL, in particular, for their efforts, including President Mr David Miller, for the way he brings about this day. It is profoundly respectful and, although the numbers of World War II veterans are diminishing slowly, they still come and many of the widows come and, of course, their families. The service was not all that long and afterwards we laid some wreaths inside the building but we went down to the Hotel Victor for lunch. We had about 100 people down there for that lunch. Mr Bill Denny was there, never one to miss a lunch. It was a good occasion.

The guest speaker was Mr David Miller who is a national serviceman and Vietnam veteran. He talked of the impact the Vietnam War had on him and on others as well. He spoke from the heart, and I found it very interesting. It was probably nothing I had not heard before, but it was the first time that I heard Dave actually get it off his chest, so to speak. I asked him, 'How long have you been preparing this speech?' He said, 'Well, I started getting ready in 2008,' so it took him a while to get there.

It was a significant day. Unfortunately, on ANZAC Day I cannot go to everything, but I make it my business to be on Kangaroo Island on ANZAC Day while my mother is still on this earth. The dawn service at Kingscote, with the water lapping gently around the shorelines, had a profound effect on everybody, I think. There were hundreds of people there, and it was very capably organised by another Vietnam veteran, Mr David Mancer MM, who actually served with Dave Miller; these people do not go away.

After that service, they have a breakfast. I then went off to Parndarna, to the heart of the war settler land scheme country, where the Parndarna community from numbers years ago of around six, seven, or eight have built up to 150 this year. Wreaths were laid by three of the returned servicemen from the Second World War: Mr Des Johnson, Mr Dean Stanton and Mr Ken McWhinnie. Mr McWhinnie, incidentally, is the sole surviving soldier settler still on his property. He is well into his 80s and he still goes surfing. It was a good occasion out there. One of the old diggers had a few words to me afterwards about some pension handouts, which he thought they were deserving of, but I am not going to get too involved in that.

I returned to Kingscote for the main march and service. We had good numbers, and I think all members of parliament, regardless of where they come from, observe every year an increase in numbers, particularly of the younger people who are in attendance. Once again Mr Mancer organised all that. I took the salute with the mayor of Kangaroo Island in the main street and then went down to the service at the cross of remembrance.

It is a significant day. In my view, it is the most important day in Australia by far, far in advance of Australia Day. I just wish sometimes that people would call it a commemoration and not a celebration. It irks me that there are those who call it a celebration; it has never been a celebration. Indeed, it is a commemoration and should always be so. I think that is something that we need to broaden people's education on, but it is very good that we continue to see this growth in numbers and people recognising the importance of the sacrifice that Australians have made.

DIABETES

Ms BEDFORD (Florey) (15:32): On 2 April, an article in *The Advertiser* by Jordanna Schriever, with the heading 'Young too fat to breathe', talked about doctors having to remove tonsils because some young South Australian children are having trouble breathing. It noted obesity rather than tonsillitis was partly the reason for increased tonsillectomies, where 10 per cent of the children are obese and the operation is to improve breathing and assist with sleep problems.

It also noted that overweight parents were more likely to accept rather than address the weight problems of their children. Poor sleep caused by disordered breathing impacts on energy levels during the day, preventing the running around necessary to burn fat. The article states:

> Overweight kids as young as 10 are also developing 'late onset' diabetes that normally afflicts the middle-aged and 36kg 'waddling' toddlers are also being treated for obesity.

As we know, May is juvenile diabetes month and we are encouraged to participate in activities to raise awareness. I know that I will be eating as many jelly babies as possible to assist, although the jelly baby is really only for attacks of hypo rather than hyper.

Some statistics on diabetes that might be interesting are that one in 20 pregnancies is affected by diabetes, that is, 44,000 women between 2005 and 2007, and that was this state; 4 per cent of Australians, that is, 898,000 Australians have diabetes, which is up by 1.5 per cent from the 1989 figure; Indigenous people outnumber white people or non-Indigenous people 3:1; 222,544 people began using insulin between 2000 and 2009; and $990 million, which is almost 2 per cent of the health budget, was spent on treating diabetes in 2004-05.

When you know that obesity can lead to juvenile diabetes, it is a real worry that toddlers as young as 18 months are being treated for obesity, with some two year olds weighing 36 kilograms, that is three times the recommended body weight, and some seven to eight year olds having hip operations because their weight has caused their hips to give way. This leads us to recognise the importance of diet and eating fresh food wherever we can, reducing the intake of sugary, refined and processed foods.

I note earlier in the year New York tried to put some sort of bill or regulation through to reduce the upsizing of food serves in fast-food outlets, which was eventually lost. This highlights the urgent public health message that we need to get out.

Our health is our greatest gift, and aside from the despair poor health brings with it, rising health costs is something we should all do everything we can to prevent against. It reminds me of a reference examined by the Social Development Committee some years ago, when we examined obesity and one of the conclusions we came to was that sugar is right up there with alcohol and tobacco as something that causes preventable disease.

Good diet from an early age, and even for pregnant mums to give their young and yet-to-be-born babies the best start in life is essential. Quick snacks are invariably the sorts of foods we

can usually do without. Another article in *The Advertiser*, this one by Grant Jones on 3 April, headlined 'Chocolates beat pies for treats', talked about pies in convenience shops becoming the latest victims of 'cautious economic times'.

While the demise of the corner shop is a subject in and of itself to be lamented, and the quality of pies quite another subject altogether, it is the notion that a chocolate bar is now part of a lunch that is the worry for us all. The article mentions that, according to a BIS Shrapnel report:

> Confectionery sales in convenience stores and petrol station shops have climbed 19 per cent since 2010, while sales of baked goods have fallen 9 per cent...

In particular, it speaks about buying confectionery at service stations, which we all know look more like lolly shops these days, with all sorts of specials on chocolates, lollies, ice creams, drinks, and even biscuits. Staff are instructed and expected to prompt sales. In winter, we are all familiar with the wall of chocolate biscuits lined up at the checkout, although they seem not to have found a way to do that on the self-serve checkouts at the moment.

The recent spate of cooking shows needs to be used to encourage quick, healthy options, and in my own small way, with speeches on the benefits of broccoli and wholegrain bread, it is going to be leading by example that helps us to promote healthy eating. Of course, calisthenics comes into the activity side of the equation.

Increased activity levels also help. This leads to my challenge, which is (along with eating only a small amount of jelly babies this month) to ask everybody in this building to take the stairs whenever you can. In Florey in particular, I would like to commend the Mall Walkers at Tea Tree Plaza. They are up every Tuesday and Thursday, I think it is now, and they are certainly doing their bit to keep people active and healthy. Even on the cold mornings coming up now, I urge members to consider a brisk walk in the fresh morning air; there is nothing like it to clear your mind and get the day started in the best possible way.

MAGISTRATES (MISCELLANEOUS) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:37): Obtained leave and introduced a bill for an act to amend the Magistrates Act 1983; and to make related amendments to the Coroners Act 2003; the Evidence Act 1929; the Fair Work Act 1994; and the Remuneration Act 1990. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:39): I move:

> That this bill be now read a second time.

This is a bill to amend the Magistrates Act 1983 and various other associated amendments. The bill modernises the magistrates act in a number of ways and introduces changes designed to improve public confidence in and understanding of the judicial system. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

In modernising the Act, the Bill firstly removes the term 'stipendiary' wherever it appears with 'magistrate'. The title of 'stipendiary magistrate' merely indicates that the magistrate is a paid magistrate. It is an antiquated term, not understood by many in the public nor used any longer in other jurisdictions. The Bill abolishes the administrative positions of 'Supervising Magistrate' and 'Assisting Supervising Magistrate'. These positions were originally intended to provide for the day to day management of a magistrates court. Given the jurisdictional shifts and consequent changes in workload, the positions are now superfluous.

Instead, the direction and delegation provisions within the Act are sufficient to provide the Chief Magistrate with a flexible approach in respect of the delegation of administrative tasks for the appropriate management of the Magistrates Court. Also, consistent with the *District Court Act 1991*, the Bill places responsibility for the administration of the magistracy solely on the Chief Magistrate, removing the qualification 'subject to the control and direction of the Chief Justice' from section 7 and, reflecting current practice, modifies section 5 to require the Attorney-General to consult with the Chief Magistrate (in addition to the current requirement to consult the Chief Justice) on all new appointments to the magistracy.

In line with government policy of attracting the best candidate to leadership positions within the judiciary, the Bill also amends the eligibility requirements of the Chief and Deputy Chief Magistrates. Currently, the Act requires that a person already be a magistrate to be eligible for appointment as Chief or Deputy Chief Magistrate. The Bill removes this requirement and inserts that a person have at least 7 years practice as a legal practitioner,

enabling a person outside of the magistracy to be appointed to the positions, effectively widening the pool of candidates and expertise.

Finally, the Bill amends provisions relating to the removal of magistrates, including the grounds for removal of a magistrate. Current procedure for removal of a magistrate involves an investigation and then judicial inquiry in order to determine whether proper cause exists for removal. Currently, section 11(8) provides that proper cause for removal exists if:

(a) the magistrate is mentally or physically incapable of carrying out satisfactorily the duties of his office; or

(b) the magistrate is convicted of an indictable offence; or

(c) the magistrate is incompetent, or guilty of neglect of duty; or

(d) the magistrate is guilty of unlawful or improper conduct in the performance of the duties of his office.

Improper conduct that occurs outside the performance of duties as a magistrate can raise questions about the suitability of a magistrate to continue in public office and undermine authority as a magistrate. Importantly, it can affect the public's confidence in how a magistrate will perform the duties of the position.

The Bill amends section 11(8) of the Magistrates Act to include 'conduct that renders the magistrate unfit to hold office as a magistrate, regardless of whether that conduct relates to the functions of the office.' This amendment will allow for the removal of a magistrate for improper conduct of a serious nature outside the duties of office without the need for a conviction for an indictable offence.

Further to this, the Bill also incorporates a new provision which allows the Attorney-General, with the approval of the Chief Justice, to require a magistrate being investigated pursuant to section 11, to undergo one or more medical examinations for the purpose of assisting in determining whether proper cause exists for removing the magistrate from office. In the event a magistrate fails to comply with the request, a statement as to the refusal may be included in any report prepared in relation to the investigation and, in turn, taken into consideration when determining whether proper cause exists.

This amendment is a necessary and appropriate measure, addressing potential performance management concerns, particularly in light of the recent increase in the retirement age. The amendment does not alter the investigation and removal process currently established in the Magistrates Act. Such a request to undergo medical examination will form part of the inquiry process already established under section 11. However, it does provide an appropriate measure to be utilised in a situation where confidence in a magistrate's capability to perform the duties is being questioned.

I commend this Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Magistrates Act 1983*

4—Amendment of section 3—Interpretation

The amendments in this clause relate to the definitions that apply under the Act. Specifically, the amendments in this clause substitute the definition of stipendiary magistrate with magistrate and substitute references to stipendiary magistrate with magistrate in the definitions generally. This is consistent with substituting all outdated references to stipendiary magistrate with references to magistrate in the Act.

5—Repeal of section 4

This clause repeals section 4 of the Act. Section 4 of the Act provides for transitional arrangements in relation to the position of a magistrate which are no longer required.

6—Amendment of section 5—Appointment of magistrates

This clause deletes subsection (2), which provides for the appointment of stipendiary magistrates.

Amendments to subsection (4)(b) provide that the Chief Magistrate must be consulted by the Attorney-General before a recommendation for the appointment of a magistrate is made, whether or not the appointment is to be on a part-time basis.

7—Substitution of section 6

6—Magistracy

The substituted section 6 provides for the appointment of a Chief Magistrate and a Deputy Magistrate by the Governor on the recommendation of the Attorney-General and removes the capacity to appoint Supervising Magistrates and Assistant Supervising Magistrates.

Proposed subsection (2) provides that a person is not eligible for appointment as the Chief Magistrate or Deputy Chief Magistrate unless he or she is a legal practitioner of at least 7 years standing.

The proposed section departs from the existing section by no longer making reference to stipendiary magistrate and, consequently, removing the eligibility requirement that a person be a stipendiary magistrate before an appointment as the Chief Magistrate or Deputy Chief Magistrate can be made. Rather, the Deputy Chief Magistrate will be taken to have been appointed as a magistrate if he or she does not already hold that position. (A similar provision will apply in relation to the Chief Magistrate on the commencement of section 19B of the *Statutes Amendment (Courts Efficiency Reforms) Act 2012*).

8—Amendment of section 7—Administration of magistracy

Subclause (1) removes the requirement in subsection (1) of the principal Act that the Chief Magistrate's responsibility for the administration of the magistracy be subject to the control and direction of the Chief Justice.

Subclause (2) substitutes subsection (3) of the principal Act to make changes consistent with the Statute Law Revision process undertaken for the purpose of the measure.

9—Substitution of section 8

8—Magistrates responsible to Chief Magistrate

Proposed section 8 departs from the existing section 8 by removing the reference to a stipendiary magistrate or an acting magistrate from subsection (1) and by not replicating existing subsection (2).

10—Substitution of section 9

9—Tenure of office

Most of the amendments contained in new section 9 are of a statute law revision nature but departs from the existing section by raising the retirement age of a magistrate to 70 years (from 65).

11—Amendment of section 10—Suspension from office

This amendment is consequential on the removal of references to stipendiary magistrate.

12—Substitution of section 11

This clause inserts an additional ground for the removal of a magistrate from office. Proposed paragraph (e) provides that proper cause for removing a magistrate from office exists if the magistrate is guilty of conduct that renders the magistrate unfit to hold office as a magistrate, regardless of whether that conduct relates to the functions of the office.

11—Removal of magistrate from office

New section 11 provides that an investigation to determine whether proper cause exists for removing a magistrate from office—

- may be conducted by the Attorney-General on the Attorney-General's own motion; and
- must be conducted by the Attorney-General at the request of the Chief Justice (made after consultation with the Chief Magistrate).

The new section sets out the procedure for any such investigation, including the ability to require a magistrate to undergo medical examinations for the purpose.

As in the current section, the Attorney-General must apply to the Full Court for a determination of whether the magistrate should be removed from office if a magistrate is convicted of an indictable offence or it appears from the findings of a judicial inquiry under this section that proper cause exists for removing a magistrate from office and, if the Full Court determines that a magistrate should be removed from office, the Governor may do so.

The section provides for an additional proper cause for removing a magistrate from office if the magistrate is guilty of conduct that renders the magistrate unfit to hold office as a magistrate, regardless of whether that conduct relates to the functions of the office.

13—Amendment of section 13—Remuneration of magistrates

This amendment is consequential on the removal of the positions of Supervising Magistrates, Assistant Supervising Magistrates and the Senior Magistrates.

Further consequential amendments are made by this clause to remove a reference to stipendiary from section 13.

14—Amendment of section 14—Superannuation

15—Amendment of section 15—Recreation leave

16—Amendment of section 16—Sick leave

17—Amendment of section 17—Long service leave

18—Amendment of section 18—Special leave

19—Amendment of section 18A—Concurrent appointments and outside employment etc

20—Amendment of section 19—Determination of rights on transition from other employment

The amendments proposed by these clauses will remove references to 'stipendiary' from the sections and make other changes consistent with the statute law revision process undertaken in respect of the principal Act.

21—Substitution of section 20

20—Payment of monetary equivalent of leave to personal representative etc

Proposed section 20 is substantively the same as the existing section 20 in the principal Act. The changes made reflect the removal of references to 'stipendiary' and other changes consistent with the statute law revision process.

22—Amendment of section 21—Industrial awards not to affect magistrates

This clause removes a reference to 'stipendiary' from section 21 of the principal Act.

Schedule 1—Related amendments

Schedule 2 makes related amendments to other Acts relating to the amendments proposed to the *Magistrates Act 1983*.

Schedule 2—Statute law revision amendments of *Magistrates Act 1983*

Schedule 2 makes amendments to the principal Act to convert various outdated references and to make other technical changes to accommodate current drafting practices.

Debate adjourned on motion of Mr Pengilly.

HOUSING AND URBAN DEVELOPMENT (ADMINISTRATIVE ARRANGEMENTS) (URBAN RENEWAL) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:40): Obtained leave and introduced a bill for an act to amend the Housing and Urban Development (Administrative Arrangements) Act 1995; and to make related amendments to the Development Act 1993. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:40): I move:

That this bill be now read a second time.

Since 2008, the government has been progressively reforming the state's planning system to make it more competitive, efficient and responsive to community concerns, environmental and economic needs. The broad reform direction outlined in the 30-Year Plan for Greater Adelaide, released in 2010, is for Adelaide to focus increasingly on urban renewal, becoming a more liveable, affordable, sustainable and competitive city over time.

Recently, significant progress in realising this vision was achieved through our successful reforms to the planning framework for the city, which have been broadly welcomed by industry and the community. All members would be aware of the significant costs associated with traditional urban expansion. In this regard, Adelaide has reached a crucial turning point, and the time has come to rule a line under continuing urban sprawl. We cannot allow our city to continue spreading northward and southward without check while underutilising our inner city suburbs.

In short, this model is neither economically nor environmentally sustainable for Adelaide to continue with this model of growth. That is why three years ago we set out our vision for a new urban form in the 30-Year Plan for Greater Adelaide. The plan seeks to rebalance the focus from urban expansion to one of limited expansion, coupled with a greater focus on urban renewal. To achieve this requires the need for ongoing reform if the vision is to be delivered. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Fundamentally, our current planning system is geared towards a greenfield development model as the easiest way to accommodate likely population growth. Redevelopment of infill locations through urban renewal is not readily accommodated within the system as it stands.

While rezoning of infill locations to provide for urban renewal opportunities will significantly change our urban form over time, redevelopment is a process that takes many years to unfold. Alone, rezoning will not be sufficient to engineer the kind of urban renewal required to create the vibrant, liveable city the 30-Year Plan envisages.

The government also readily acknowledges that it is critical for urban renewal to be informed by strong community engagement and a focus on high quality design, both of which are poorly provided for in the current legislative framework for rezoning.

The 30-Year Plan identifies the need for new statutory mechanisms to support the roll-out of urban renewal projects, such as the Bowden urban village being undertaken by the Urban Renewal Authority. The establishment of the Urban Renewal Authority is one example of how changing the way the planning system operates can position the State to realise the vision outlined in the 30-Year Plan. However, legislatively the authority is poorly equipped to undertake this task.

To be successful long-term urban renewal will require:

- a mix of measures combining market-led change with more direct government intervention to achieve long-term infill growth;
- a focus on community engagement and high quality design;
- statutory powers and processes to support precinct-wide urban renewal projects;
- placement of the provisions that establish Urban Renewal Authority at the level of an Act, rather than in regulations.

To ensure these aims can be achieved, this Bill proposes a new urban renewal planning process. A special precinct development process will be established, operating as an alternative to the normal rezoning process, to enable urban renewal to be kickstarted on a precinct-wide basis at selected locations. The process is particularly design to enable complex urban renewal projects, such as Port Adelaide, to be addressed in ways which are outside the ambit of the current rezoning framework.

Major urban renewal projects typically unfold over a horizon of 10-20 years. It is not possible or desirable to plan every aspect of a development of this nature upfront; rather, final design details should crystallise in stages as required. The Mawson Lakes development is a good example of a project which has unfolded applying these principles. This Bill, drawing on the lessons learnt through such projects, seeks to put a statutory framework around such practices.

The proposed precinct development process closely mirrors similar mechanisms for supporting urban renewal adopted in other jurisdictions such as the redevelopment schemes of the Perth Metropolitan Redevelopment Authority, the Victorian Urban Renewal Authority and the Queensland equivalent. In line with these interstate exemplars, the process will ensure strong community engagement and design input in the planning of new urban renewal precincts while also providing flexibility to support long investment horizons.

While the proposed precinct development process is intended to be principally available to assist the Urban Renewal Authority in its task, there is no reason to prevent councils from being able to apply to use it subject to appropriate oversight. The Bill provides for councils of joint venture-style statutory corporations including councils or other representatives to undertake urban renewal projects. This will be of great assistance to councils undertaking urban regeneration programs such as Marion, Onkaparinga, Tea Tree Gully and Salisbury among others. In complex situations, with multiple land owners, such as the Port, it will ensure that all relevant interests can be included in the governance arrangements for an urban renewal project.

Councils and statutory corporations will be subject to the same oversight as the Urban Renewal Authority in undertaking any role under the Bill. That is, final approval of precinct master plans will be by the Governor on the recommendation of the Minister.

The process outlined in this Bill has been designed to be scalable, working for large sites such as Bowden or Tonsley, while also able to apply to smaller scale renewal opportunities that may arise from time to time and are most likely to be undertaken by councils or private sector developers. Indeed, the availability of a precinct development mechanism will provide a strong incentive to developers to optimise infill land assembly, helping to accelerate the pace of urban renewal over time.

Importantly, the Bill does not limit the precinct powers—including powers to coordinate infrastructure roll-out—to infill projects alone. Where appropriate the powers to coordinate infrastructure through the precinct planning process will also be available for urban growth projects that the Urban Renewal Authority or councils may undertake from time to time.

In addition to the functions of the Urban Renewal Authority being set out in the Bill, the Bill sets out in detail the precinct planning process that will be required for all areas declared as urban precincts. This process involves a declaration by the Minister that a specified area is an urban precinct. That declaration will specify the spatial extent of the precinct and the broad objectives, design criteria and development parameters to inform the precinct planning process.

Detailed planning and design of the precinct will be undertaken by the precinct proponent in accordance with the requirements of the Ministerial declaration and any advice from the Development Policy Advisory Committee and the Development Assessment Commission where appropriate. This stage of the process will include community engagement and design review.

The draft precinct plan that is to be prepared must include:

- policies and principles for achieving the objectives specified by the Minister in establishing the precinct;
- a master plan, setting out the spatial structure of the precinct and integration with surrounding areas;
- design guidelines for buildings and the public realm including the mix of land uses and the scale of intended development;
- an implementation framework, including details on existing and required infrastructure works.

Assessment of master plans will be undertaken against the original Ministerial declaration, with the final approval to be reserved for the Governor on the joint recommendation of the Urban Renewal Minister and the Planning Minister. The Planning Minister will have the power to adjust the underlying development plan to accommodate a precinct plan once approved.

Detailed implementation plans will then be able to be approved by the Urban Renewal Minister and must be broadly consistent with the master plan. The implementation plan will also contain detailed policies relating to land use and design which will override the underlying development plan. There may be one or more implementation plans for a precinct. This will enable developments to be staged appropriately and for the underlying development plan to continue to apply until a stage of the development becomes active.

Once approved, a precinct authority will be authorised to undertake development and associated infrastructure works in the precinct in accordance with the precinct master plan and each implementation plan. Importantly, the precinct authority will be able to certify development as complying with the precinct plan, providing a streamlined pathway for construction while also ensuring a crucial linkage back with the system of development assessment under the Development Act.

Where a proposed development falls outside of the expectations of the precinct plan and cannot therefore be certified, the Urban Renewal Minister will have the power to request the Planning Minister to refer the matter to the Development Assessment Commission for assessment.

Once a precinct development has been completed, the Urban Renewal Minister may revoke a precinct declaration and the Planning Minister will have the power to transition the precinct to business-as-usual zoning subject to normal development assessment processes.

Importantly, the Bill will enable a precinct authority to exercise such powers as the Governor may, by regulation, confer on the authority to deliver the precinct master plan. This may include infrastructure powers, powers relating to public land and powers over rates and charges. For example, a precinct authority may be granted a power to close or open a road on a similar basis to a road authority. The powers also extend to granting appropriate concessions, by regulation, to land-based taxation and to the invalidation of council by-laws that are inconsistent with a precinct plan.

The ability to grant these powers will provide optimal flexibility in the delivery of a precinct plan, while also ensuring adequate parliamentary oversight. Importantly, this will enable councils and the government to bring together the appropriate suite of necessary powers tailored for the particular needs of each urban renewal project.

While the Expert Panel on Planning Reform will continue its comprehensive review of the planning system, this Bill will provide a kick start to an important reform of our planning and development system. The Expert Panel has reviewed and supports this Bill.

The Local Government Association has been briefed on the Bill and the Government understands they have indicated that are broadly supportive of its aims and objectives, subject to consideration of the detail. The department has also briefed the board of the Urban Renewal Authority on the content of the Bill who have indicated they believe the changes proposed in the Bill will give the authority a clear mandate to undertake its functions effectively.

It is the Government's intention that this Bill lie on the table in this chamber to enable feedback from local government and other stakeholders. We will not seek to further debate until key stakeholders have had an opportunity to provide that feedback. The Government would like to make it clear that it is willing to consider appropriate amendments that will satisfy stakeholders and briefings will be made available to members who seek them at any stage about the Bill.

The Government believes this Bill will be a key tool in ensuring that urban renewal projects can be developed in a way that is comprehensive and consultative. The Government believes this Bill will enable the development of attractive, functional and interesting urban areas that help achieve the urban renewal objectives set out in the 30-Year Plan for Greater Adelaide.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Housing and Urban Development (Administrative Arrangements) Act 1995*

4—Amendment of long title

The long title is amended to reflect new Parts 2A and 2B.

5—Amendment of section 1—Short title

The short title of the Act is changed to reflect new Parts 2A and 2B.

6—Amendment of section 3—Interpretation

Definitions are inserted for the purposes of the measure.

7—Amendment of section 5—Functions

New Part 2A continues the URA in existence as a statutory corporation under the Act. Provisions relating to the Board of the URA, its functions, powers and other relevant matters are also inserted into the Act.

8—Insertion of Parts 2A and 2B

This clause inserts Parts 2A and 2B.

Part 2A—Urban Renewal Authority

7A—Urban Renewal Authority

7B—Board of management

7C—Functions of URA

7D—Specific power of URA

7E—Application of provisions of *Public Corporations Act 1993* to URA

7F—Associated matters

New Part 2A continues the URA in existence as a statutory corporation under the Act. Provisions relating to the Board of the URA, its functions, powers and other relevant matters are also inserted into the Act

Part 2B—Urban Renewal

7G—Preliminary

Definitions are inserted for the purposes of Part 2B.

7H—Establishment of precincts

Proposed section 7H provides for the establishment of precincts (as defined by the Act) by the Minister for the purposes set out in subsection (1), such as renewal or redevelopment of distinct areas. The Minister is to specify objectives for a precinct and may appoint the URA, another statutory corporation or a council to be the precinct authority.

7I—Precinct plans

The precinct authority is responsible for precinct plans under proposed section 7I. There will be a precinct master plan (adopted by the Governor) and precinct implementation plans (adopted by the Minister) for a precinct. Relevant publication, consultation and other procedures are provided for. The precinct authority may establish (and must at the direction of the Minister) panels to assist in the planning process, such as a design review panel.

7J—Certain matters to apply for the purposes of the *Development Act 1993*

A relevant authority within the meaning of the *Development Act 1993* must accept that a proposed development in a precinct is *complying* development under section 35 of the *Development Act 1993* to the extent that the development is certified by the precinct authority as being *complying* development under proposed section 7I(4)(b), and a proposed division of land in a precinct satisfies the conditions specified in section 33(1)(c) or (d) of the *Development Act 1993* to the extent that such satisfaction is certified by the precinct authority. Subsection (3) provides that any requirement imposed by a council or the Development Assessment Commission under section 50 of the *Development Act 1993* must be consistent with any provision made by the precinct authority under proposed section 7I(4)(c).

7K—Precinct authority may be authorised to exercise specified powers

Proposed section 7K is modelled on certain equivalent provisions in section 16 of the *Economic Development Act 1993*. It allows the Governor to authorise a precinct authority by regulation to exercise certain statutory powers in relation to a matter that is directly relevant to the management, development or enhancement of a precinct established under Part 2B. Relevant procedures and Parliamentary oversight is provided for.

7L—Governor may grant concession or make variation in relation to taxes etc on land within precinct

The Governor may, by regulation, grant a concession or make a variation to taxes, rates or charges (imposed by or under an Act) which apply to land within a precinct.

7M—Council by-laws to be consistent with precinct plan

If a by-law made by a council under the *Local Government Act 1999* or the *Local Government Act 1934* relating to a precinct is inconsistent with a precinct plan, the precinct plan prevails to the extent of the inconsistency.

9—Amendment of section 23—Transfer of property etc

The proposed amendment allows the Minister, with the concurrence of the Treasurer, on the revocation of a precinct plan under Part 2B, to transfer an asset, right or liability of a statutory corporation or an agent or instrumentality of the Crown to a person or body that is not an agent or instrumentality of the Crown (for example, a council), with the agreement of the person or body

Schedule 1—Related amendments and transitional provision

Part 1—Amendment of *Development Act 1993*

1—Amendment of section 29—Certain amendments may be made without formal procedures

The proposed amendment to section 29 would allow the Minister to amend a Development Plan in order to give effect to the adoption of, or an amendment to, a precinct plan under the *Urban Renewal Act 1995*, or in order to make such provision as the Minister thinks fit relating to planning or development within a precinct on the revocation of a precinct plan.

2—Amendment of section 34—Determination of relevant authority

This amendment would allow the Development Assessment Commission to act as the relevant authority in relation to a proposed development in a precinct which, in the opinion of the Minister responsible for the *Urban Renewal Act 1995* may have a significant impact on an aspect of a precinct.

Part 2—Transitional provision

3—Transitional provision

This clause inserts a transitional provision for the purposes of the measure.

Debate adjourned on motion of Mr Pengilly.

SUPPLY BILL 2013

Adjourned debate on second reading.

(Continued from 1 May 2013.)

Mr PENGILLY (Finniss) (15:43): I just wanted to spend a few minutes talking about the Supply Bill 2013. It is a necessity of this place that we have to go through this every year, and indeed so it should be. It is important that members, particularly on this side, make a few points in relation to their electorates. I earnestly look forward to, in 12 months time, the members on the other side sitting on this side and keeping us in enthralled for some 20 minutes and 10 minutes themselves as they whinge and whine about what may well be the first Liberal budget in a number of years, if we are successful in getting elected.

However, I digress. I would like to pick up on a few points from my electorate. One of the basics that Australians desire and expect is to have a good education and to have their education needs catered for. They also desire and expect to have a reasonable health system and to have those expectations catered for, which includes, of course, the Medicare system, but also the private health sector, depending on one's choice and where they go with that. The other thing they like to have is a roof over their head, with switches they can turn on power and turn off power with and taps they can get water out of.

It is becoming increasingly clear to me in my electorate that the cost of living is absolutely slaughtering ordinary residents and families of this state. It is a disgrace that this government needs to sit down and have a long hard look at, quite frankly. I find it demeaning that good families have to come through the doors of my office pleading for assistance with things. These families have worked long and hard, brought up children or have children at school, and they simply cannot cope with the cost of living.

What is happening now is that people, whether they live in the city or in the country, in some cases are buying candles to see at night because they cannot afford electricity, and it is your lot's fault. Do not try and turn it back on us. I remember premier Rann of blessed memory talking about electricity and how they were going to keep the costs of electricity down.

The Hon. S.W. Key: You privatised ETSA.

Mr PENGILLY: Sir, I beg protection.

The DEPUTY SPEAKER: You can handle it.

Mr PENGILLY: Sure, I can. Former premier Rann and former treasurer Foley—

Members interjecting:

Mr PENGILLY: Finally, they have recognised the member for Light's brilliance and made him a minister, and what a stuff-up he made of that today. However, once again I digress.

Members interjecting:

The DEPUTY SPEAKER: Order!

Mr PENGILLY: I find it bizarre, to say the least, that former premier Mike Rann and former treasurer Kevin Foley, who were going to do so much to bring down the cost of living for South Australians and the cost of electricity, have both been shown the door and gone but that prices are still going through the roof. Indeed, the cost of water is going through the roof, electricity is going through the roof and ordinary South Australians are suffering.

It does not surprise me in the slightest that the polls indicate the level of feeling against the current state Labor government or the federal Labor government. It is a sad indictment on these governments, on what is supposed to be a government for the people, that these things have fallen into the state they have now. It is a disgrace in what supposedly is a wealthy country that families, individuals and pensioners are all scraping the bottom of the barrel just to survive. I think it is absolutely appalling.

Let me go on further in relation to health. It is interesting that in the last day or so the state health minister has made some comments about the Patient Assistance Transport Scheme (PATS). That is a system whereby people over 100 kilometres out of Adelaide get some level of monetary reward for being able to get to Adelaide for appointments, bearing in mind that a lot of the services they need are in Adelaide. There has been no real change to the system for years. I notice that minister Snelling has said that there is going to be no increase. However, I have had lately—

The DEPUTY SPEAKER: I remind the member that the Speaker has already made it quite clear today that we do not refer—

Mr PENGILLY: Minister for Health. Sorry, sir, I apologise. It is awkward in the extreme for some country people to be able to get to Adelaide and back in one day, and I do not care whether they are in my electorate or in the electorates of the members for Flinders, Giles or wherever. The system dictates, generally speaking, that you have to travel to the city and back again in one day. People are finding that their PATS claims are being rejected simply because logistically they cannot do it.

I will give you an example: only yesterday, one person went into my electorate office in Kingscote and said that they had to be in Adelaide at 9 o'clock in the morning for an appointment, so they had to go up the night before and have overnight accommodation, which they can get at one of the hospitals, have the treatment and go back that next day. They were told that PATS would not accept that. I find that blatantly ridiculous. That is a failing of the system and something that needs looking at.

Likewise, with the fishing industry, the northern zone rock lobster fishing industry at the moment is in turmoil over the impact of these sanctuary zones within marine parks. It is interesting to note that Ferguson Fisheries, who the government like to laud about their wonderful products—and they do produce wonderful products—are looking at actually having to close their Adelaide factory because they simply will not be able to source the amount of product necessary to put through the factory. This is after they have spent probably hundreds of thousands of dollars, tens of thousands at the very least, of their own money talking up this product, marketing it overseas and getting all these markets.

In the future, they are not going to be able to produce simply because the sanctuary zones are going to lock down the prime areas for rock lobster, such as Cape du Couedic and other areas around the island and through the northern zone, including off the Fleurieu Peninsula. This is just totally ridiculous. The former minister (the member for Colton) has sailed off into the sunset and this has been picked up by another minister.

The bizarre side of this is that the government do not want to put it into place until October 2014, after the next state election. However, what they are doing at the moment is this so-

called voluntary buyback system which is just total chaos. It does not involve widespread consultation: it is consultation for the select few and there are businesses that just do not want to have a bar of it. They want to walk right away from it.

I think it is a crime. What this government has perpetrated on those fishing families is absolutely criminal. It is an outrageous disgrace. If they had any courage of their convictions whatsoever at a time when Australia's economic future is in severe peril, they would rethink that strategy pretty quickly on this whole sanctuary zones debacle.

I am hoping that, once again, if we are fortunate enough to get elected to government next March, we may well be able to do something about that, however I fear for those families who have been pressured at the moment into buybacks. I might add that it will be interesting to see in the forthcoming state budget just how much money is actually allocated for these buybacks. I suggest it is probably not very much at all.

Another issue of importance to me is the law and order debate in my electorate and the provision of police resources. The police have been under a lot of pressure down on the Fleurieu, particularly during the night. The police do a great job and they try their hardest to deal with every occurrence, but the reality is that there are limited patrols out at night and, when events take place some 50 kilometres away on the other side of the Fleurieu and the police are attending to a job on the other side, it is very difficult to get there.

So, that is a fear. I have had more elderly residents, particularly in Victor Harbor, who have been concerned about their safety and security. SAPOL know my thoughts on this, but it is simply not satisfactory to continue to pour resources into the metropolitan area where the vast majority of the South Australian population live and crucify the bush with lack of police resources. I see no reason why the police should suffer stress and feel as though they are having to do far too much in the bush, just because of the dictates of the metropolitan area. It is concerning.

I am pleased, however, to comment on the addition of one extra police officer to be put on Kangaroo Island—coming from Ceduna, I understand, from the member for Flinders' electorate—to take up the slack when someone is on leave or time off or whatever. That will assist greatly over there, but the rest of my electorate—the Fleurieu part—is concerned.

I know that Mayor Graham Philp, from Victor Harbor, himself a former sergeant of police in and around Victor Harbor, has written to the minister and also to the police commissioner about his concerns and I support his concerns. His council is most worried about it. They are worried about the drug problem around Victor Harbor and the entire South Coast, for that matter. These are things that need dealing with and, of course, it goes on and on.

I do not know what is going to be delivered in the budget on 6 June. I really would not have a clue what is coming. It is something that we will wait for with bated breath on this side, I would suggest, to find out just where we are going as a state. I consider it an absolute requirement of this government to govern properly and to take hold of the reins of the finances of this state because, quite clearly, they are completely out of control. Adelaide's electricity prices rose by 25 per cent in the 12 months to September last year, the largest increase of all states.

Where is this government going to go to try and rein in its spending? As the member for Davenport and the leader have said on numerous occasions, their spending is profligate, it just goes everywhere, and they seem to have no budget controls put in place to do something about it, which is a major concern. The very fact that we are now reaching $2.2 million a day in interest for the state debt is a frightening prospect, and where is it all going to end up?

I noticed today that I received an invitation to the opening of the desalination plant. I think this is the second or third opening; I am not sure. After the amount of money that was spent down there—just bearing in mind, that it was the Liberal Party who promoted the idea of a desalination plant in the first place, and then the government came on board after former premier Rann decided it was such a good idea—the plant is now mothballed. Fortunately the drought broke, and I do not think anyone in this place would have any argument with that, but the desalination plant, for all intents and purposes, is mothballed. We are having yet another opening down there on Thursday 23 May, so heavens knows what that will be about: all bells and whistles, I guess.

I express my concerns about where the state is heading at the moment. Since the Roxby Downs expansion was canned, I think the government has gone into a state of shock. We have had a succession of job losses over the last few weeks. The Roxby Downs expansion cancellation

has certainly rocked this government and, to some extent has rocked the state. However, we should not have put all our eggs in one basket.

The number of jobs that have been lost in this state in the last few weeks is frightening. They just do not seem to stop. Even yesterday we had more job losses announced at Saab and places like that, and it does not seem to be impacting on this government at all. They just do not seem to worry about it. So, with those few words, I support the Supply Bill, but I have grave reservations about where South Australia is heading financially.

Mr TRELOAR (Flinders) (15:58): I, too, rise to speak on the Supply Bill 2013 in the state's parliament, and indicate our support for the bill. My understanding is that this Supply Bill 2013 is necessary to provide $3.2 billion through until when the Appropriation Bill is brought down. It really is quite usual practice, although the amounts of money required are becoming not insignificant.

Mr Deputy Speaker, you have heard a lot from this side of the house about the dire straits of the state's economy. I have to concur with that, and I will reiterate many of their concerns and highlight a few that relate particularly to my electorate of Flinders. We are approaching the highest debt in the state's history. It is approaching that, and it is likely to exceed that debt, way back in the early 1990s, when the now infamous State Bank collapse occurred and, of course, as we know, it was a long road back from there.

We seem to be in a very similar situation right now. I am not sure what it is about Labor governments, but this is a habit they seem to have, whether it be at a state or federal level. The spending continues, the debt continues to grow, and ultimately people realise that they have had enough, that it is time for a change, and we need to resurrect this state, its economy and its fortunes. It is clear that, as a result of that, it is time for a change, that state Labor governments cannot be trusted.

We have lost our AAA credit rating. Once upon a time that was a sacred cow. It was portrayed as a sacred cow by the state's then treasurer. Unfortunately, when it came time to dispense with it, it was discarded quite quickly, and we now have a AA credit rating. What is going to happen, I wonder, when interest rates rise, as they ultimately will? They are at a relatively and historically low level at the moment. I wonder what is going to happen to the immense state debt if and when interest rates begin to rise.

At the moment, debt is increasing at around $4 million per day, every day, and it is predicted to do so for the next eight years; it is predicted to peak at around $14 billion. What this means is that South Australians—you and me, mums and dads, individuals everywhere—will be paying $2.2 million a day in interest on that debt—not a pretty picture. Unfortunately, the government has failed to identify any revenue streams whereby this debt can be paid down.

Admittedly, there has been some bad news over the last few years. The Olympic Dam expansion has been postponed, mothballed, if you like. Obviously that deposit of ore is not going to go anywhere, so it will be there for some time in the future, but it was disappointing for both BHP and the state. That is not the only bad news that has occurred. Of course, the Deepak Fertilisers plant has been cancelled, Arafura's rare earth processing plant at Whyalla has been cancelled, and the biggest blunder of all, I think, from this government was the fact that they claimed Holden's future had been secured. Given the job cuts that have occurred there over the last few months, it is unlikely that that is so.

I think that what has happened is that South Australia has become a very difficult and expensive place to do business. That has been reflected in the way businesses are viewing South Australia, in the way they are conducting themselves, and in the way they are not confident about either instigating or expanding existing businesses. A lot of these insecurities and costs are a direct result of government policy. There is no doubt about that. We are coming up to 11 years of Labor government now. It has been more than a decade, and some of these really dreadful government policies are beginning to bite.

The member for Finniss spoke just before me. He highlighted something that has not been considered so much in this debate, and that is how difficult it is for ordinary South Australians: for mums and dads, for people with families, for workers, small business operators, and those on fixed incomes who have no opportunity to really make any inroads into the growing costs they are confronted with.

Utility costs have exploded in this state, Mr Treasurer. Water bills have exploded by 249 per cent during the last decade. Electricity bills have increased by 150 per cent. We continue

to have the nation's highest taxes. When you count the three main taxes—payroll tax, stamp duty, and land tax—they are the highest in this state than anywhere in Australia. They are critical inhibitors of business and the way we do business and the way families can really make headway.

The result of all this is that we are seeing full-time unemployment in the northern suburbs at 42 per cent and in the southern suburbs at 29 per cent. These are high numbers; they are not insignificant numbers, as has been indicated by the Premier at one point, but they are certainly not insignificant for those who are unemployed and looking for work, want to work and are not able to find it.

The list of government projects has been listed time and time again, often with some pride by the government. I know that yesterday the member for Mitchell listed a significant number of the state's projects and indicated the cost. Just quickly adding them up, it seems to come to about $5 billion by my reckoning. Of course, this is all borrowed money and continues to add to the growing debt.

As I indicated, I have been reiterating and reminding the house and the people of South Australia of the state of the economy generally, but I would like to talk briefly about some of the issues that relate directly back to my seat of Flinders on the Eyre Peninsula and talk about the spending priorities, as I see it, because essentially they have not changed for the decade that this government has been in power.

Much in the news this last week has been the patient assisted transport scheme and the state Treasurer has indicated that he is going to undertake a review of this reimbursement scheme. It is not before time, I must say. There has been a lot of lobbying, a lot of discussion, a lot of correspondence from this side of the house to various health ministers and treasurers over the years. Unfortunately, it has had to wait this long. Also unfortunately, the Treasurer has indicated there will be no increase in funding into the scheme which, of course, is a big part of the problem.

The PAT Scheme is a scheme that provides reimbursement for country people who have to travel to the city or to a specialist in a regional centre for specialist medical treatment, so it is absolutely imperative that country people have the opportunity and some equity in their health care and this allows for some rebate or reimbursement.

Although valued—and we are very grateful for what we do get—the per kilometre reimbursement rate sits at about 16¢ per kilometre which, of course, if you want to draw an analogy, the ATO is recommending 74¢ a kilometre for their travel for taxation purposes. The 16¢ a kilometre rate is a long way short of that.

As country people, we are reimbursed up to $30 a night for accommodation in the city. I have not had to book a room for a while, but the last time I did, I could not find anything that was anything close to $30 a night. In fact, regularly you are up around $80, $90 or $100 a night for a room in Adelaide and that is after you have spent the first night. So this continues to be an issue.

The other thing I would say is that there is barely a family in the country that probably has not used this scheme and been appreciative of it, but I would implore the government that it is time to do more and give some equity to country people in their health opportunities.

I will give credit where credit is due and I will note that the government has had significant spends on three regional hospitals that service the Eyre Peninsula: Whyalla has had a significant upgrade, as has Ceduna. I have visited the Ceduna Hospital—

The Hon. J.D. Hill: It is a beautiful hospital.

Mr TRELOAR: It is a beautiful hospital, yes, and I congratulate the government; it works well and the community is very grateful. The government is also about to spend $39 million upgrading the Port Lincoln Hospital, so we are very grateful for that. Of course, there remains the issue of the smaller country hospitals in country towns, but I will leave that discussion for another day.

An honourable member interjecting:

Mr TRELOAR: I have the opportunity to speak, member, so I will do that. The other thing that I have spoken of is the fact that the spending on the road infrastructure around the state has lagged sadly. My understanding is that there is a $200 million road funding backlog that has been identified by the RAA and the member for Kavel is suggesting that it is well beyond that now. As the member for Giles quite rightly pointed out, everybody wants their road fixed up and not everybody can have that, but a number of the highways in my electorate are badly in need of some

money spent on them to make them wider, safer and more appropriate for the high loads of freight that they are now carrying.

It would seem that this government unfortunately has applied a handbrake to the state's economy. It is in a difficult situation. Debt is growing, business is slow, the retail sector is crying out for their difficulties. One of the things that they keep talking about is the regulation and red tape that they need to deal with. Once again, we can trace these directly back to government policy. Green tape is another term we are beginning to hear. As a former agricultural producer—and, in fact, I am still involved in the agricultural industry—I understand the importance of a sustainably productive landscape. My firm belief is that the best people to manage that are the landowners and the licence holders themselves. The fact is that they are so caught up in the red tape and regulations that go with their business that they cannot operate properly.

A good example of how bizarre the situation is that we have reached is that a friend of mine pointed out to me in the Port Lincoln Airport the other day that there are more people involved in security at the Port Lincoln Airport than there are in agricultural research on Eyre Peninsula. This, I think, highlights the nature of the way we do business now. I am not demeaning by any means the work of the security people at the Port Lincoln Airport but I would suggest that the risk factors there are generally quite low and, given that Eyre Peninsula provides 30 per cent of the state's grain production, then it should be given appropriate consideration.

The member for Finniss has spoken about marine parks and the voluntary buyback of lobster licences that is going on at the moment,. If I can go back to my theme of a productive landscape, I know full well that many of the sanctuary zones that have been identified and declared off the Far West Coast are actually productive fishing ground. I cannot for the life of me see the sense in this. For the fishers on the West Coast this is not about habitat protection. The habitat is intact. The fishing has been managed sustainably and many fishermen have told me that the oceans are as productive and as prolific as they have seen them at any time in the last decade in all of their career. I know the government tends to say that marine parks and sanctuary zones are not about fishing management, but the reality is that it is about fishing management because that is where the impact is going to be.

Unfortunately on the West Coast and in this state the impact will be felt greatest by the rock lobster fishermen and the abalone fishermen who really have managed very productive and profitable fisheries over the past few years. It has not been without its difficulties, challenges and rewards either, but credit must go to these fishermen who have managed in a difficult situation to harvest the ocean in a sustainable way and make a good living. As a result of the government sanctuary zones, we are now going to see a significant impact on that fishery and on individual businesses but also a significant impact on coastal communities and the flow-on effect that these industries have through jobs and families. Of course, in small towns, it impacts on schools, hospitals, the local shop and everything else. I don't think people realise just what they are doing because they are making decisions that are significantly affecting other people's lives in a detrimental way.

It has been suggested from some of those opposite that we do not have any plans or any policies. I can tell you that—and I know our leader has said this—one of our aims, one of our intentions, one of our policies will be to reduce government involvement in day-to-day life, reduce government involvement in the lives of people where it is impinging upon the way people do business and where it is impacting on the way their families operate to meet their daily commitments.

Our intention is to provide an environment where business can prosper. Rather than shutting this state down as we have done continually over this last decade, we are going to open this state up for business. We are going to make it the best place in the world, as the member for Giles said, not just to live but also to do business. I look forward to the opportunity to take part in a government that can do that.

Bill read a second time.

The Hon. A. PICCOLO (Light—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (16:15): I move:

That the house note grievances.

Debate adjourned on motion of Hon. A. Piccolo.

STATUTES AMENDMENT (HEAVY VEHICLE NATIONAL LAW) BILL

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (16:16): Introduced a bill for an act to amend the Motor Vehicles Act 1959, the Road Traffic Act 1961 and the Second-hand Vehicle Dealers Act 1995. Read a first time.

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (16:17): 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 (eg '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' (ie 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 Mr Gardner.

HEAVY VEHICLE NATIONAL LAW (SOUTH AUSTRALIA) BILL

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (16:17): Introduced a bill for an act to make provision for a national scheme for facilitating and regulating the use of heavy vehicles on roads; and for other purposes. Read a first time.

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (16:18): 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 Mr Gardner.

SUPPLY BILL 2013

Adjourned debate on motion to note grievances (resumed on motion).

Mr GOLDSWORTHY (Kavel) (16:19): I am again pleased to rise in the house to make a contribution in relation to the grievance section attached to the legislation referred to as the Supply Bill 2013. In concluding my remarks yesterday afternoon when I spoke to the Supply Bill proper, I was speaking in relation to the provision of infrastructure and services, particularly in and around the township of Mount Barker. I want to continue some of those remarks and comments in relation to that particular matter.

As I said yesterday afternoon, the government only a fortnight ago, via the front page of the local newspaper, announced that a new park-and-ride facility is to be constructed in Mount Barker on Dumas Street, and everybody in the township of Mount Barker would know where that is. It is where the Mount Barker Primary School is located. There are two primary schools in Mount Barker, but Mount Barker Primary School on Dumas Street is the larger of the two.

The proposed site, as I understand, is land which is owned by the state government—it is crown land. As I said yesterday afternoon, this really shows to me and to quite a number of local residents that the government has not learned anything from its previous mistakes. We saw the fallout, all the issues and all the debate, and all the concerns raised about the government and how they went about rezoning that vast tract of land around the perimeter of the existing township of Mount Barker—that 1,310 hectares of land.

That was an announce-and-defend proposition. The government pretty much ignored each and every concern that was raised. The local council came up with an alternate proposal; they ignored that, and the then minister for planning and urban development, or whatever the title of the portfolio was at that time, (Hon. Paul Holloway) pushed ahead and put his rubber stamp on that DPA. We saw that vast tract of productive agricultural land rezoned from agricultural to residential with one stroke of a pen.

We have been through that process, that decision has been made; you cannot wind back the clock, even though some people within the community and some people involved in the minor parties within this parliament are calling for a reversal of that decision. Most recently, they were calling for a freeze on development. But, there is some confusion in relation to placing a freeze on the development because there is a difference of opinion between the local council and the Greens MLC in the other place (Hon. Mark Parnell) on the actual land that should be frozen from future development.

The council has said all the land that has not been granted development approval should be frozen, but the Hon. Mark Parnell and the Greens are calling for the whole area of land to be frozen. So, we have some confusion out there on what land should actually be frozen and what should not. I have made some public comments, on behalf of the Liberal opposition, that we do not support that freeze at all.

One of the reasons for this—and I have previously communicated this far and wide—is that you have to think very, very seriously about what the ramifications are when you freeze someone's assets. That is basically what some sections of the community are calling for. This is quite a significant decision and proposal to make and to put forward when you are looking to freeze an entity or an individual's assets. I have communicated this to those people who have raised concerns in relation to that matter.

Back to the actual point concerning the construction of this proposed park-and-ride in Dumas Street, even though we have been calling for infrastructure and services, and we certainly do need an increase in infrastructure and services in the Mount Barker district, to me and to others, this is again an announce and defend proposition. You can say we are going through the community consultation process now. There was a residents' meeting yesterday. I understand some DPTI officers met with the local primary school, which is pretty much adjacent to this proposed site, and some other consultation is taking place.

It is my understanding from the information that is provided—I know we are not allowed to display material here in the house, but I have had a two-sheeter emailed—that construction is due to commence mid-year, to be completed in mid-October. If you are going to construct a park-and-ride facility and it is to be completed in mid-October, which is only five months away—I have been advised that works on this site are proposed to be commenced in May, this month. So, again, the government is playing catch up in relation to its community consultation and engagement process.

I know that there was a meeting held with a group of concerned residents. I understand that there was a meeting held with representatives from the local primary school, which is only, as I said, adjacent—pretty much opposite to this proposed site. Now, to have a large number of buses and commuters, and the resultant traffic flow on what is really a residential street in Mount Barker, hauling all that increased traffic flow right into the centre of the town to me does not make a lot of sense.

Some of the concerns that I know that have been raised by the local residents include child safety. Obviously primary school children—littlies, reception children, five years old and through to year 7, 12 and 13-year-old primary school children—will be travelling to and from the Dumas Street school site. Traffic congestion—as I said, you are hauling a large volume of traffic into the centre of the town, where I think we should be looking at decentralising some of this infrastructure so you do not have this congestion occurring in the middle of the township.

There is noise from obviously the large diesel buses coming and going which will have an effect on the local amenity. There is obviously the Auchendarroch Wallis Cinema tavern complex, the local community library, the TAFE and then there is an open tract of land on that side of Dumas Street, but the rest of it is the primary school and residential. So, the boundary of this park-and-ride is very close to existing residential areas.

So, it is the amenity, the light pollution, air pollution and fumes. There is a buffer for the residents, 24-hour operation, particularly on Friday and Saturday nights and there are issues of hoons and vandals. They have also raised why the site cannot be located not right out of town, because I understand that you have got to have the flow of buses passing the site, but I would like to know why Anembo Park close by, which is basically a sporting facility, cannot be looked at as a proposed site, because that is requiring some upgrades, as well.

Mrs REDMOND (Heysen) (16:29): I am delighted to have the opportunity to resume the comments that I was making yesterday when the time limit so rudely interrupted me, because I had not quite finished what I wanted to say about this government. In particular, the main area that I will

address that was still outstanding is WorkCover, because no-one could have made more of a mess of WorkCover than this government has over the last 11 years.

There had been a massive unfunded liability which, when the Liberals were last in, they had managed to pull back down to I think about $59 million at its lowest. In the time that I have been in here the good old government has managed to blow it out once again to $1.8 billion. $1.4 billion or $1,400 million is the immediate WorkCover liability, but then in addition to that there is another $400 million of liability for the Public Service areas which are independent of the WorkCover Corporation but which are the responsibility of the various government corporations and so on.

We have this massive unfunded liability that is going to continue to help cripple us but, worse than that, we have in this state the worst performing WorkCover system in the nation. It is the worst performing not just because of the unfunded liability but because we have by far the highest levy rates. The levy rates for people in this state are approximately double what they are for the equivalent occupations in the other states.

One might wonder why you would want to start a business in South Australia when you have the highest taxes and charges across all sectors. In particular, we have a very low payroll tax threshold so that you have to start paying payroll tax for your employees at a much lower payroll total, but then when you do have your employees each and every one of them has to have WorkCover. Fair enough, but WorkCover in this state costs double in terms of the levy.

What is the reason for that? Is it because our workers get such a good benefit or a superior outcome out of it? Certainly it is not of benefit to the employers because, in this state, in addition to having the highest of the levy rates, we have the worst return-to-work rate of any state. We have the lowest return-to-work rate and the highest levies. It is clear that this a matter for the management of the WorkCover board, and I will come back to the WorkCover board shortly.

It is clear that there is mismanagement by the WorkCover board, because the great big companies that are able to exempt themselves from operating under that legislation—they are known as exempts in the industry—have the capacity to run their own WorkCover system, effectively, but they are bound by exactly the same legislation.

The same legislation—the Workers Rehabilitation and Compensation Act 1986—applies to them just as it does to the WorkCover board, yet the companies that are the exempts, again, like the rest of Australia, manage to have an average levy rate that is less than half what people have to pay if their employees are under WorkCover. One might ask why we even have this system.

Indeed, I have contemplated whether the state would be better off if we simply abolished the whole thing and said, 'Actually, if you're going to employ someone you have to go to a reputable insurance company—one of the five major underwriters around the world—and get yourself an insurance policy and show us that you have insured against accident or injury to your workers.' That would be a much better system.

It is clear that it is the board that is the problem. Some members would remember that a few years ago the government recognised that they had a problem. I think at that stage we probably only had about half a billion dollars of unfunded liability, but the government recognised that they had a problem and they decided that the only way to fix that problem was to lower the expectations of the workers.

So, they put through some legislation in this parliament, and every single member of the government voted in favour of lowering the entitlements of the workers. So much for caring about the workers; they lowered the entitlements.

The Liberal Party, by the way, had managed to get the unfunded liability down as low as it did without impacting at all on workers' entitlements, but this government said, 'No, we can save the system, we can fix it all up, we can get the unfunded liability down if only we can diminish the workers' entitlements, and that will fix the system.' We diminished the workers' entitlements and the unfunded liability continued to blow out, the rate continued to blow out and the return-to-work rate continued to be the poorest in the nation, so it did not work.

I have a very firm view about why it did not work, and one of the parts of that view is because I think they have an incompetent board. I believe that, for a start, one member of the board, who has a particular relationship to a member of this place, happens to be the person who gets the biggest buck for the rehabilitation provision. Having worked in the area of WorkCover, I can tell you that rehabilitation is the goose that laid the golden egg. In my experience, people who

had significant injuries in the workplace, who wanted to get rehabilitated, rehabilitated themselves to the maximum extent that was possible and they did everything they could to get themselves back.

I saw people who had absolutely horrific injuries who, nevertheless, did return to work, but the people who did not want to return to work often used their injury at work as an excuse not to, and they found every reason under the sun not to get better. Those people stayed on the system by virtue of rehabilitation providers. If only I had thought to become a rehabilitation provider, I too could have been a multimillionaire.

Mr Goldsworthy: You would be a lot better off than you are now.

Mrs REDMOND: Yes, I could be a multimillionaire because people who provide rehabilitation services absolutely do nothing, in my experience, to improve the outcomes for injured workers. As I said, people who are injured at work, who genuinely want to get back to work, do to the maximum extent that they can. Obviously, there are some injuries where you are never going to be able to return to your former employment, and there are some injuries where you are really just never going to return to any employment whatsoever, but those who wanted to get better did.

I saw some awful injuries, such as people who had their eye literally blown out by molten metal in industrial accidents. I saw people who had had terrible accidents, and yet I saw other people who had what I would consider relatively minor accidents—the sort of thing that, if they did it on the football field on one Saturday, they would nevertheless be back on the football field the next Saturday playing for their team—yet they would linger and try not to go back to work. They would only be able to return to work for two hours a day, or two hours a week sometimes, all because rehabilitation providers were providing an assessment.

That is the goose that laid the golden egg and, as I say, there is one particular person, who is on the board—apparently this government never recognises a conflict of interest if it slaps them in the face—who I think is still the partner, certainly was the partner, of one of the members of this place.

The Hon. S.W. Key: But she's not on the board anymore.

Mrs REDMOND: She is not on the board anymore. The member for Ashford tells me she is not on the board anymore.

Mr Goldsworthy: She was though.

Mrs REDMOND: She was for a long time on the board and, strangely enough, her firm got more money for rehabilitation provision than any other firm that was providing rehabilitation services. I find that quite curious, that someone who is on the board happens to run—her name is Sandra De Poi, by the way—

The Hon. J.D. Hill: Slander people in here, just attack people's reputation without any evidence whatsoever, other than supposition. That's what you are doing; it's a disgrace.

Mrs REDMOND: This isn't without any evidence: this is with very clear evidence that this person ran a rehabilitation service and received more money from WorkCover, year upon year for the provision of rehabilitation services, than any other person who was providing rehabilitation services, which, as I say, by and large were never, ever influential in terms of the outcomes for workers. So, in my view, that has been the biggest fundamental problem with the whole of the WorkCover system—not just Sandra De Poi's company, which happened to get most of the money, but any of the rehabilitation providers.

I would guarantee that, if you actually did an analysis, you would find that you spent far more money paying rehabilitation providers than you ever retrieved by getting people to return to work by virtue of having had that rehabilitation provided. That was the last topic I wanted to cover in my comments yesterday because it is a particular bugbear of mine that we should have the world's most efficient WorkCover system after more than 30 years, but instead of that we have the least efficient system.

Mr GARDNER (Morialta) (16:39): The government Supply Bill debate is underway and we have this process where, at the end of the Supply Bill, people get the opportunity to grieve for 10 minutes about anything remotely related to supply or anything else. One of the things that state, federal and local government does in Australia is support citizenship ceremonies which are, of course, one of the great pleasures and privileges of this job, and I am sure that that is felt by many members.

I had an unusual experience last week in that I am sure that I have never had the opportunity to speak at a citizenship ceremony before on the eve of Anzac Day. Members who have been here longer may have had more opportunities than I in this area, but I felt very privileged and blessed to be able to speak on that occasion because, for the 35 or so new Australians who took the citizenship pledge on 24 April this year at the Campbelltown City Council, it was a fantastic opportunity to reflect on what is such an important day across the Australian community.

I was pleased to attend the citizenship ceremony with the member for Hartley and talk a bit about Anzac Day. At the beginning of the ceremony, the Mayor of Campbelltown took what I thought was an entirely appropriate minute's silence and, in my comments, I was very pleased to be able to talk about what Anzac Day dawn services meant in Australia, and how important they were. In my speeches at citizenship ceremonies, I always say that we are looking forward to the contributions that our new citizens are going to make, particularly given the outstanding and incredible contributions so many new citizens have made to Australia for so long, whether it was 20,000 years, 200 years or, indeed, in the last year or two, our new citizens have built this country in every way.

With the new citizens whom I spoke to last week, I took the opportunity to discuss these dawn services and encourage them not only to make their contributions to our society in whatever way is suitable to their skills, talents, abilities and interests, but also the way in which they would be welcomed if they were interested in attending services. I took a poll of the people who were there in support as to who had attended a dawn service, and it was a majority of those in attendance. I think that goes to the fact of the popularity of the dawn services and how important, particularly young Australians, now find those as a connection to their antecedents.

The Magill RSL's dawn service last week, for example, had approaching 2,000 attendees which is significantly more than the first Magill RSL service I attended many years ago. We have seen them grow. Occasionally it is down due to weather and correlations with Easter but it continues to grow. I understand that the Norton Summit service, which I would have loved to get to this year, but I could not, has grown to well over 200 as well. The Magill RSL was backed up by a fantastic breakfast at the clubrooms as it so often is, with Marg Murley and her crack team on the stove providing an excellent service for the hundreds of returned servicemen and members of the community who came along and who wanted to share a beer or a cup of coffee with some diggers.

I was especially pleased to see in the crowd some of the people whom, the night before, I had seen take the oath of allegiance and citizenship in Australia. At the citizenship ceremony, I also took the opportunity to remind, and perhaps for the first time, inform people, of the words that I am sure members of parliament would have seen before if anyone has visited Gallipoli. On the entrance to Anzac Cove, there is an absolutely magnificent memorial with a quote from the first president of modern Turkey, Atatürk, which says:

> Those heroes that shed their blood and lost their lives...
>
> You are now lying in the soil of a friendly country. Therefore rest in peace. There is no difference between the Johnnies and the Mehmets to us where they lie side by side here in this country of ours...
>
> You, the mothers, who sent their sons from faraway countries, wipe away your tears; your sons are now lying in our bosom and are in peace, after having lost their lives on this land they have become our sons as well.

It is a message of inclusivity in the first instance, and in the second instance it is about the way that we move on. It was particularly apt on the eve of ANZAC Day, because it is important for people to understand that, on ANZAC Day, while we commemorate the landings at Gallipoli, we commemorate that very defining moment in our nation's history. It was a military moment not of a victory and success and glory in the ways of battles of old that might have been commemorated by societies and communities of old, but it was in fact the sacrifice that was made by those thousands of diggers and soldiers from England, France and New Zealand in particular, who lost their lives.

That sacrifice, that way that they gave everything for their countries and for their mates, was extraordinary, and it says a lot about who we are, but it also says a lot about the futility of war. We commemorate it in a way that we seek not to glorify war, but in a way that we seek peace. I think that message was important. It is important that, although ANZAC Day does commemorate a military event in the Australian's history, when Australians landed on the shores of Gallipoli Australia's population numbered some 5 million or 6 million people and we now have passed the 23 million mark.

Clearly, so many people living in Australia do not have ancestors who fought at Gallipoli, and yet ANZAC Day is for all of us because it says something about what we are as a nation, the importance of sacrifice and supporting each other and, in fact, the importance of seeking peace whenever we can. So, I think it was with that message in mind that a number of the new citizens came to the ANZAC Day dawn service at Magill at the Gums, who I saw and who participated in a wonderful dawn service. I think that that is the message: it is always worth reminding ourselves of that importance. It was a privilege for me to be there, and I am pleased to have the opportunity to record it in the house this afternoon.

The Hon. I.F. EVANS (Davenport) (16:47): I just want to use my grieve to talk about some electorate issues that I hope the government might take up in the budget, given that we are awarding it this $3.2 billion of supply through this particular bill. The issue that is most commented on in the Mitcham Hills, most of which my electorate covers, is the issue of traffic. Prior to the change of government in 2002, some work was done at the Blythewood Road and Old Belair Road intersection, and there was other money set aside for the James Road and Old Belair Road intersection.

On the change of government the Blythewood Road and Old Belair Road junction was completed, but the James Road and Old Belair Road junction had not commenced, and the government in a very mean-spirited way took the money away from that particular junction and spent it elsewhere. So, 11 years later, having the department and the government of the day back in 2000-01 recognise there was a major issue with the traffic coming down through the Mitcham Hills, the state government has essentially spent nothing.

There has been a little bit of line marking and surface lines marked out on the main road at Blackwood, which has helped in a minor way, but the fundamental problem still remains, and it gets worse every day because of the significant increase in development in the Blackwood Park development, which will go from zero homes to eventually 1,200 homes when it is complete, and it is probably two thirds of the way through if not more.

Of course, all the allotments outside Blackwood Park and south of Blackwood (Aberfoyle Park, Happy Valley, etc.) are using the main road of Blackwood, Old Belair Road, or James Road, or Belair Road as their main thoroughfare into town. If you were going down Belair Road and Old Belair Road, then essentially the main corridor you would use coming from the south would be the Blackwood Main Road. The Blackwood Main Road has a five-way roundabout: five different roads hit the Blackwood roundabout.

In the late 1990s, early 2000s, there were traffic measurements done and, to my memory, the amount of traffic going down the single lane of Old Belair Road at peak hour was more than traffic going down any single lane of South Road at peak hour. As I say, that was back more than 13 years ago, and since then 1,200 houses have come into Blackwood Park.

The traffic in the Mitcham Hills is now at a point where the Blackwood roundabout is blocked due to road traffic on a consistent basis, both morning and night; it is not uncommon, and it would be nearly 50 per cent of the time of the week. So, 50 per cent of the day—either morning peak or afternoon peak—the Blackwood roundabout blocks. The reason it blocks is that the government has redone the line so that, coming up Shepherds Hill Road—and there used to be two lanes going around the roundabout—the government has now made the left-hand lane a left-hand turn only. All the traffic that now wants to go straight on and turn right at the Blackwood roundabout coming off Shepherds Hill Road now has one lane, not two, to do so.

At the same time, of course, the railway line is on Main Road about 300 metres south of the roundabout. The trains have increased both in number and in length, and we are now have trains that can actually block two of the three railway crossings at the same time—the trains are that long. It means that, when the trains go through the Blackwood crossing 300 metres from the Blackwood roundabout, if you are exiting the roundabout, and heading down towards the railway crossing, the road traffic backs up from the railway crossing right through the roundabout, that the Main Road traffic travelling from the city blocks, and that the traffic coming up Shepherds Hill Road blocks because it cannot go down that particular avenue.

I have raised this a number of times with every public servant who has dared to poke their head up at a public meeting in Blackwood over the 11 years. I will not name them, but some of them have even done me the courtesy of jumping in my car and had me drive them around and show them the problem live, as it was occurring so that they clearly understood what I was speaking about.

I am not laying the blame at the Public Service level; I think they understand the issue. I have spoken to the head of the department about it a number of times, and I have spoken to a number of ministers about it a number of times. I have given evidence to the Natural Resources Committee's investigation into natural disasters and fire about this issue. The reason I did that was that my local CFS advised me that, if there was fire through the Mitcham Hills, they believed there will be north of 5,000 cars on that road trying to escape and it simply does not have the capacity to carry that traffic.

The Natural Resources Committee recommended that there be a significant investment in the road infrastructure in that area two or three years ago. The government, for its own reasons, has decided not to do that. I just say that my view is that the only way the traffic problem in that area is going to be resolved long term is by having a road management plan, not from Belair to Blackwood, as is the current road management plan (which is actually not the problem area, and that is possibly why it covers that area—because it is easy to deal with) from Cross Road up Fullarton Road, and from Cross Road up Belair Road, then up Belair Road, up Old Belair Road, up James Road, and right through to Black Road. That is a long piece of territory, but it needs to be that long because within that 10-kilometre stretch a number of major issues link into a major traffic problem within the Mitcham Hills.

My concern, apart from the day-to-day commuter delay which is significant particularly during the school weeks where the traffic increases significantly, is the bushfire concern. While I do not encourage people to get in their car and try to outrun a bushfire (I think that is the worst possible response to that issue and I always make those comments in my electorate), I know that some people will try to do it. There are three railway crossings, but two of them are on the main entry and exits into the town. There seems to me to be a total lack of planning as to what is going to happen in regard to a bushfire, thousands of cars and freight trains that go through that area.

I have done my best to raise this issue. I will continue to raise it. I hope one day to be in a government so that we might be able to more properly address the issue, but I think the government is gambling on nature's goodwill that something will not happen while they are in government, whether that is one more year, four more years or eight more years. I think that is the wrong strategy and I invite the government to go back and look at the natural resources report. Read the evidence from the experts, don't read the evidence from the local member but read the evidence from the experts, and ask yourself how you are going to address a press conference if the number comes up for that particular area. I hope, through passing the Supply Bill, someone in the political level of government might listen and have the courage to spend money in a seat they may not hold.

Motion carried.

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (16:57): I move:

That this bill be now read a third time.

Bill read a third time and passed.

[Sitting extended beyond 17:00 on motion of Hon. M.F. O'Brien]

NATIONAL TAX REFORM (STATE PROVISIONS) (ADMINISTRATIVE PENALTIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 April 2013.)

The Hon. I.F. EVANS (Davenport) (16:59): This is the National Tax Reform (State Provisions) (Administrative Penalties) Amendment Bill—one of the minister's favourites, I know. This is just a very technical and administrative bill. The minister's second reading speech sets out the reasons for the bill. Essentially it amends the National Tax Reform (State Provisions) Act. The amendment gives effect to South Australia's commitment under a national agreement to extend the commonwealth's interest and penalties regime to some notional GST liabilities of government entities—something I know, Mr Speaker, that you have been following with great interest over the years. There has been uncertainty about whether the state and local governments were liable to

pay penalty and interest charges in relation to their notional GST liabilities where necessary. This amendment makes it clear that the interest and penalty charges will apply to state and local government GST obligations where necessary.

While this amendment will allow the Australian Tax Office to charge South Australian government entities interest and penalties on outstanding notional GST payments, this measure is not expected to have a material impact on the state's finances as South Australian government entities are already compliant with the GST law.

A uniform interest and penalty regime will provide competitive neutrality and provide clarity and certainty to government, taxpayers, the Australian Tax Office, and indeed you, Mr Deputy Speaker. These amendments are consistent with those passed by the Parliament of Victoria and for those reasons Her Majesty's loyal opposition intends to support the bill without amendment and without question.

The DEPUTY SPEAKER: Splendid. Are there any other speakers?

Bill read a second time.

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (17:05): I move:

That this bill be now read a third time.

Bill read a third time and passed.

ADJOURNMENT DEBATE

SOUTH AUSTRALIAN FARMERS FEDERATION

Mr VENNING (Schubert) (17:05): This week, we saw the end of the South Australian Farmers Federation, and I think the house ought to at least note the occasion with some comment. What has happened has happened, and hopefully we are going to see a rebirth of farmer representation.

For the last three or four years, sir, as you would know, farmers have not been adequately represented since they have been going through this tumultuous time of upheaval within the South Australian Farmers Federation. It is sad, because there has been a long history of strong farmer representation in South Australia, from the old Wheat and Wool Growers, then United Farmers and Stockowners (UF&S), and then by the South Australian Farmers Federation over many years.

We have now come to a point in time where they have restructured their representation through past premier Rob Kerin, and we now see the new body, Primary Producers of South Australia, which is entirely different to what we used to have. This is only a small body of around seven people, six of whom are individually representing various commodity groups: grain, livestock, dairy, horticulture, winegrape and pork producers.

Each group has a representative on the central body, and it is headed by an independent chair. At the moment, the interim independent chair is, of course, the Hon. Rob Kerin, and I think he is a very suitable choice. Mr Kerin guided the old South Australian Farmers Federation through this process, and we now see this body.

It was strongly supported at a meeting last Monday, with 70 votes to one, in support. There were two, but one wasn't financial. So it was 70 to 1. It was not me; I was financial. I did support it, but I have to say, on the record, that I have some reservations—I really do.

Over the years—and some of you would have been there—at the annual general meeting of the South Australian Farmers Federation, we used to have 100 to 120 people attending, and there would have been a row of MPs sitting in the front row. That has not happened for four or five years, and that has been the demise of the farmers federation. They tried to shrink it down; they tried to exclude the membership.

Of course, the big issue was when the grain section got involved with this single-desk issue, and this house was involved with that too. Can I say that the member for MacKillop can hold his head high, because he was one of only five MPs in this place who stood the line. It is sad to think that this whole thing started on this issue alone. It was when you decided to tell the farmers that they were not allowed to market together, that you were going to deregulate the process and allow the traders to take control of the market.

Well, when people say to me, 'Farmers left SAFF,' that is wrong: SAFF left the farmers. They did. Eighty per cent of the farmers were opposed to what they did, particularly the old grain section. Membership just crashed overnight. It went from around 7,000 members back to less than 1,000 in a matter of a couple of years—myself included; my membership lapsed, and it was the same for both my brothers.

It was a pretty sad day when this issue—I have no real beef about the problem of deregulation. Yes, I needed to be dragged, kicking and screaming, into the modern age. Some of the younger MPs will tell me I am a troglodyte on some of these issues, or call me an agrarian socialist—yes, I am sometimes quite proud of that tag—but it should have been done differently. We probably needed to modify the way were doing things.

During the debate at the time (it is in *Hansard* and I can remember what the member for MacKillop said), we probably did need to change, but we were not going to have it shoved down our throats like that. I did lobby every member in this place, and I lobbied the upper house and had it delayed. A cartoon in the local stock journal had a crack at me: Ivan the Great holding up this monstrous ball called deregulation. It is up on the wall in my office, and very proud of it I am, too.

It happened that this issue of the single desk really was the cause of the demise of the South Australian Farmers Federation. That is history now, we cannot unscramble this egg, it has happened. Every decision we have made in these issues has been wrong—from the very first issue of putting together the Australian Barley Board with SACBH to form AusBulk, and then ABB Limited—

The Hon. L.R. Breuer: A couple of other people want to talk.

Mr VENNING: Okay. I am very concerned that we now have a multinational company. Let's go back a little bit. We had South Australian Cooperative Bulk Handling, which was a large company owned by the growers who controlled and built all the silos and the grain ports, and we all got money out of that, and we controlled that. The other boards were marketing boards: ABB, marketing barley, and AWB, marketing wheat. It worked well, but we, like fools, decided to put together the ABB, a marketer, with SACBH, the handler—wrong move. We are now paying a huge price for that because the marketer actually controls the handling and the ports here in South Australia. It was a very dumb move. Yes, we all supported it.

AusBulk was formed, and that was taken over. We were mutualised, put in a public company, and it was taken over by Viterra, a Canadian company. I do not understand why we did not have an Australian company take it over. So, we had Viterra, the Canadian company, which was workable. My brother was a director on that company, going to Vancouver for board meetings. They closed down all the facilities here and all the offices in Adelaide, which is sad, too. Of course, along comes Glencore, one of the biggest companies in the world, and now owns the whole process. That is what happened, that is all history, finished.

We now have this new organisation, Primary Producers South Australia. I am concerned that not enough people are involved at this level who will carry the day. If you have a problem with some of the decisions that have been made, you have to work through your grower commodity group, and we have many grower commodity groups anyway. The meeting we had last Monday will be the last one we have like that, where a group of people can come together and actually ask questions of the body corporate, so to speak, because they are number one in that.

Finally, I just want to say that I wish Primary Producers SA all the best, and I hope it works well for the sake of the farmers, and I also wish Grain Producers SA, which is the grain section of that, all the best as well. All I can say is that I am pleased that none of those people who caused all this angst are appearing on these bodies, nor should they, because some will be forever condemned, and I have said that before. I think we have to be positive. I am prepared to try to make this work and let bygones be bygones, but I just wanted to put the record straight on where we have come from.

I want to pay tribute to Peter White, who took a fair bit of flack in this place and held the line as the last full-time chairman of SAFF, and to Roger Farley, who was the interim chairman and has basically handed those reigns over. History will show that we have taken a pretty rocky path over all this. Let's hope now that with the new Primary Producers SA we can see a return to strong rural representation in South Australia—I will be there to make sure I do all I can while I am still here and also afterwards—and no doubt the member for MacKillop and the other members on this side will be there to make sure it does.

HISTORY FESTIVAL

Mrs GERAGHTY (Torrens) (17:14): The month of May in South Australia is History Month, so I thought I would recognise this event by picking out a time in the past to examine what was going on in the house. I chose 1903, and it seems appropriate because the premier of the day was John Greeley Jenkins, who was one of the members for Torrens, and he also served as a whip. He was not, however, a member of the Labor Party, but I guess no-one is perfect.

Under the multimember electoral system of the day, Torrens had five members: two from the Labor Party, two from the Conservative Australia National League, and Jenkins, who was an Independent (Liberal). The seat of Torrens did not quite look like it does today. I do not know about having rival members in the same seat, though I know they do in some states, but if you are sharing out the workload it could be interesting and challenging.

Looking at the house debates of 110 years ago, I was struck as much by the continuities over time as the differences over time. These are some of the issues that premier Jenkins touched on during his Address in Reply in July 1903: how to benefit from the natural resources of the Northern Territory, which at that time South Australia still controlled; building railways, including a rail link to Darwin; securing South Australia's share of the River Murray; and accommodation in Parliament House, which I think is quite appropriate for us today.

The comments on the River Murray were particularly enlightening and something we can all relate to. As we know, the states of New South Wales, Victoria and South Australia have a long history of jostling over the River Murray. Until 1903, the Eastern States took the stance that they alone controlled the upper river. Jenkins noted in his speech that the former premier of New South Wales, Henry Parkes, would not concede 'one iota that South Australia had any rights whatever as far as the Murray water was concerned.' However, in 1902, during the long drought from the mid 1890s to 1903, an interstate royal commission inquired into the distribution of the Murray's waters and the equity of its distribution between the states.

The commission recommended some restrictions on the amount of water extracted by the Eastern States that would allow specified amounts to flow to South Australia. These recommendations were considered at a premiers' conference in 1903, and premier Jenkins reported to the parliament on a small concession South Australia had wrung from the Eastern States at the conference. South Australia, he said, had 'obtained admissions as to South Australia's rights that had never been conceded before by either of the other states.' Now the Eastern States had finally acknowledged that South Australia was entitled to a share of the Murray's waters, although the agreement reached on this was for a five-year period and not in perpetuity.

I note that premier Jenkins was not a member of the Labor Party, but one of the other members for Torrens was the great Labor leader Tom Price. In his 1903 Address in Reply he had something to say about accommodation in Parliament House. Again, this is something we can relate to, although in a different way I might say. Tom argued that the government was wasting money by not properly utilising Parliament House, that the building was half empty. His proposal was to move the Legislative Council to the dining room. He should have moved it elsewhere but—

The Hon. L.R. Breuer: Down the road would have been alright.

Mrs GERAGHTY: Yes, right out of the building altogether. His proposal was to move the Legislative Council to the dining room, move the dining room to the 'big unused smoking room upstairs', the library could be moved to the long corridors, and Hansard was taking up enough space for 50 Hansards. The extra space could then be made available to other areas of government like the railway department. The ultimate saving though would be made—and this is the bit I really like—if they were to abolish the Legislative Council, because two houses of parliament were no longer needed now that so much of the government was in the hands of the federal parliament. Unsurprisingly, premier Jenkins disagreed with him. It is quite interesting to have the opportunity to read some of these things. I encourage members to attend some of the History Month events; they are quite interesting.

PATIENT ASSISTANCE TRANSPORT SCHEME

Mr WILLIAMS (MacKillop) (17:20): I very rarely contribute to an adjournment debate, but I unfortunately missed out on the opportunity to grieve in the supply debate earlier, so there are a couple of issues I just wanted to put on the record that have been exercising some of my time in my local electorate over the last little period. I was delighted, the other day, when the government

announced that it was going to do a review into the PAT Scheme. The reality is that my office fields a lot of constituent inquiries regarding PATS, and I just want to put on the record an experience that one of my constituents had quite recently.

They were in hospital in Mount Gambier and needed an operation. The decision was taken that the operation would occur at the Royal Adelaide Hospital. The patient was flown to Adelaide for the operation, had the operation, had a ticket to fly back to Mount Gambier and then had probably an hour's drive from Mount Gambier back to their farming property, which is isolated from any of the local towns. As luck would have it, the day that the gentleman was released from the Royal Adelaide Hospital and was due to fly home was the same day that his father's funeral was held here in Adelaide.

My constituent, I think quite rightly, attended his father's funeral and then delayed his trip back to Mount Gambier until the following day. As it turned out, those wonderful bureaucrats who manage our PAT Scheme acted to the letter of the law and refused to reimburse him for the flight back to Mount Gambier. So, here is a constituent who, for medical reasons, had an operation here in Adelaide and qualified for reimbursement for the cost of the flights.

I just think it is crazy that the government of the day would expect that that man should have flown back to Mount Gambier on his subsidised flight under the PAT Scheme and then, if he wanted to attend his father's funeral, immediately hopped on another aeroplane and come back to Adelaide, attended the funeral and then turned around and flown back again to Mount Gambier. It seems nonsensical to me that that is the way the scheme is being administered by the current government, and I will be having further discussions with the minister about that particular issue.

Another issue has been exercising some of my time. I have a mother who believes her 10-year-old child is suffering from autism. At the moment, there is no official diagnosis but, because there is no service available in the South-East, the mother, at her own cost, is required to make appointments and bring the child to Adelaide for mental assessment. In the meantime, the child is receiving some limited support at the local school, which is an isolated area school.

I have approached the department heads in Mount Gambier, seeking some further support for this particular child, who does have a considerable behavioural problem, which is not only impacting on that child and that child's future and will, if not addressed, most likely be a burden on the taxpayer for the rest of that person's life, but it is also impacting on the rest of the school community, particularly those in the same year level as this particular 10-year-old child.

Notwithstanding that I got great sympathy from the regional directorate—I spoke to a number of staff members there—notwithstanding that they recognised the problems and issues that I highlighted, and notwithstanding that they were quite sympathetic, the reality is that their resourcing was such that they were unable to assist in any way. Again, sir, it is just a matter of a government which has wrong priorities and is unable to provide proper resourcing, particularly in a regional area, to meet what I believe is an absolute need.

Another issue that was brought to my attention late last year involves another school in my electorate, where a constituent whose property bounds the school pointed out that the fence between her property and the school was literally falling down. I visited the school, Newbury Park School in Millicent, which was opened in 1962 and, from my assessment, the fence right around the school yard has gone beyond its useful life and is literally falling down.

Parts of the fence have been propped up to stop it from falling over. A lot of the fence has that orange bunting we see around the street when there is a dangerous situation through roadworks or whatever, so along large parts of the fence there is an attempt to isolate the children from the fence with this orange bunting. Parts of the fence have notices placed there—I presume by the principal of the school—warning of the danger and advising the student population not to play in the vicinity of the fence because it could literally fall down at any time.

I have been informed that the department has been aware of this situation for an extensive time, and it seems that there is a combination of factors: the bureaucracy is moving incredibly slowly, and that is probably exacerbated by the fact that there are very limited, if any, resources available within the department to carry out this basic capital program to replace the fence around the school. That is what it needs.

I wrote to the minister some time ago. I am yet to receive a response. I am not arguing that that is a failing on the minister's part. It probably has not been six weeks since I wrote, but I wanted to bring this matter to the attention of the parliament because I do not think members should have

to badger ministers to have this sort of work done. It is something which should be done out of hand. I will conclude my remarks there. They were three of the issues which have been over my desk in recent weeks, and I wanted to highlight some of the problems that local members are having.

At 17:27 the house adjourned until Tuesday 14 May 2013 at 11:00.