

Road Traffic (Vehicles) Bill 2011

Explanatory Memorandum

Overview of Bill

The purpose of this Bill is to:

- (a) Introduce nationally agreed legislation relating to compliance and enforcement of mass, dimension and loading requirements for vehicles, based on provisions contained within the *Road Transport Reform (Compliance & Enforcement) Bill*, approved by the Australian Transport Council.
- (b) Consolidate all of Western Australia's current legislative provisions relating to vehicle licensing matters, vehicle standards and enforcement of mass, dimension and loading requirements into one Act.

Background

The *Road Transport Reform (Compliance & Enforcement) Bill* was developed by the National Transport Commission (NTC) in conjunction with its Legislation Advisory Panel and in consultation with representatives from the Commonwealth, State and Territory road transport agencies, police, the road transport industry, the Transport Workers Union, occupational health and safety organisations and road user organisations. This *Road Transport Reform (Compliance & Enforcement) Bill* is not law, but provides a legislative and policy framework for all jurisdictions.

The *Road Transport Reform (Compliance & Enforcement) Bill* provides nationally consistent framework to improve compliance outcomes for road safety, infrastructure and the environment, while minimising the adverse impacts of road transport on the community and minimising unfair competitive advantage. This is achieved via the introduction of the "chain of responsibility" concept, which is designed to promote positive changes to the on-road behaviour of those involved in the transport industry and to enable accountability to be placed upon all parties influencing compliance.

The Bill also contains a large number of existing provisions that have been transferred from the current *Road Traffic Act 1974* (and regulations) as part of consolidating all of Western Australia's current vehicle legislation into one Act.

Part 1 – Preliminary

Clause 1 Short title

This is the formal clause titling the Bill.

Clause 2 Commencement

This clause provides that clauses (1) and (2) come into operation on the day the Act receives Royal Assent and the remaining parts of the Act come in to operation on a date to be fixed by proclamation. This provision is necessary to allow time for regulations to be gazetted that are necessary to support the Act.

Clause 3 Terms used

Clause 3(1) provides for various definitions used within this Bill, some of which have been transferred from the current *Road Traffic Act 1974, Road Traffic (Vehicle Standards) Regulations 2002 Road Traffic Act 1974* and introduces new definitions from the model Bill.

“base” this definition is introduced by the national Compliance and Enforcement Bill and defines the base of a driver. This is relevant because there is a requirement for persons in charge of a driver’s base to provide certain information. As such it is necessary to clarify what constitutes a driver’s base.

“consignee”, this definition is introduced by the national Compliance and Enforcement Bill and defines the scope and extent to which the term applies.

“consignor” this definition is introduced by the national Compliance and Enforcement Bill and defines the scope and extent to which the term applies.

“dimension requirement” means a dimension limit/requirement prescribed in regulations relating to the width, length or height of a vehicle with or without a load.

“employee” this definition is introduced by the national Compliance and Enforcement Bill and is required to clarify the scope and extent to which the term applies.

“employer” this definition extends the concept of employer to include contractors; this is achieved via the inclusion of Contract for Services in the definition.

“equipment” this definition is introduced by the national Compliance and Enforcement Bill and is required to clarify what constitutes equipment for various administrative and compliance purposes.

“freight container” this definition is introduced by the national Compliance and Enforcement Bill and is required to clarify what constitutes a freight container for various administrative and compliance purposes.

“GCM” this definition has been moved from the *Road Traffic Act 1974* and is required for various administrative and compliance purposes.

“goods” as much of the compliance and enforcement provisions relate to the carriage of goods it is necessary to provide clarity as to what constitutes goods.

“GVM” this definition has been moved from the *Road Traffic Act 1974* and is required for various administrative and compliance purposes.

“heavy vehicle” much of the legislation draws a distinction between light and heavy vehicles this definition was created to provide clear guidance as to what constitutes a heavy vehicle.

“involved person” this definition is introduced by the national Compliance and Enforcement Bill and is required to give clear direction as to which persons are required to provide information in an investigation or inquiry to give effect to the chain of responsibility provisions.

“journey documentation” this definition is introduced by the national Compliance and Enforcement Bill and is required to give clear direction as to what documentation is to be provided or supplied in an investigation or inquiry to give effect to the chain of responsibility provisions.

“light vehicle” much of the legislation draws a distinction between light and heavy vehicles this definition was created to provide clear guidance as to what constitutes a light vehicle.

“load”, this definition is required to provide clarity on what constitutes a load for various administrative and compliance purposes.

“loader” this definition was introduced by the national Compliance and Enforcement Bill and is required to identify what constitutes a loader to give effect to the chain of responsibility provisions.

“loading requirement” means a loading requirement prescribed in regulations relating to the placing or securing of a vehicle’s load.

“mass, dimension or loading requirement” means a mass requirement, dimension requirement or loading requirement.

“mass or dimension requirement” means a mass or dimension limit or requirement prescribed in regulations relating to a vehicle with or without a load.

“mass requirement” means a mass requirement of a vehicle, a vehicles load or a vehicle and its load which will be prescribed in Regulations.

“minor risk breach” this definition is introduced by the national Compliance and Enforcement Bill and gives effect to the new categorisation of breaches.

“night” this defines the period known as night.

“number plate” means an identification tablet or number plate bearing numerals, or letters, or numerals and letters.

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

“packer” this definition is introduced by the national Compliance and Enforcement Bill and is required to identify what constitutes a packer, to give effect to the chain of responsibility provisions.

“passenger” this clarifies what constitutes a passenger in a vehicle.

“prohibition order” this definition was introduced by the national Compliance and Enforcement Bill and means an order issued by a court, upon conviction of breach of a mass, dimension or loading requirement.

“reasonable steps defence” this definition is introduced by the national Compliance and Enforcement Bill and introduces the new statutory defence for a person from prosecution for a breach of a mass, dimension or loading requirement.

“relevant authority” this definition means the organisation that grants vehicle licences in this state or another jurisdiction.

“responsible entity” this definition is introduced by the national Compliance and Enforcement Bill and is used to identify certain classes of persons who are required to keep and provide information in relation to container weight declarations.

“road transport” this definition is introduced by the national Compliance and Enforcement Bill and gives effect to the chain of responsibility provisions.

“severe risk breach” this definition is introduced by the national Compliance and Enforcement Bill and gives effect to the new categorisation of breaches.

“substantial risk breach” this definition was introduced by the national Compliance and Enforcement Bill and gives effect to the new categorisation of breaches.

“supervisory intervention order” this definition is introduced by the national Compliance and Enforcement Bill and means an order issued by a court, upon conviction of breach of a mass, dimension or loading requirement.

“transport documentation” this definition is introduced by the national Compliance and Enforcement Bill and is required to give clear direction as to what constitutes transport documentation for the purposes of investigating a breach under the new chain of responsibility provisions.

Clause 3(2) provides that a term or an abbreviation used in this Bill has the same meaning to that in the *Road Traffic (Administration) Act 2008* unless the contrary intention appears in this Act.

Part 2 – Licensing of vehicles

Clause 4 Vehicle licences

This clause replicates the substance of section 15 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause creates legislative requirement for vehicles to be licensed in WA and the recognition of other jurisdictions vehicle licences/registrations under certain circumstances. The clause further creates offence provisions for vehicles used on a road without the appropriate authorisation.

Clause 5 Applications for grant, renewal, transfer and variation of vehicle licences

This clause replicates the substance of section 17 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause deals with the duties and administrative requirements of the CEO to grant, renew, transfer and vary vehicle licences in WA.

Clause 6 Regulations for the grant, renewal and variation of vehicle licences

This clause replicates the substance of section 18 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause creates the power for regulations to be made to assist in the CEO in administering a vehicle licensing regime

Clause 7 Charges for vehicle licences

This clause replicates the substance of section 19 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause deals with the imposition of fees for vehicle licences and matters relating to the payment of fees at a reduced amount or in excess of the prescribed fees.

Clause 8 Licence obtained by means of dishonoured cheque of no effect

This clause replicates the substance of section 20 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause deals with the consequences where a vehicle licence is granted or renewed by means of dishonoured cheque.

Clause 9 Cancellation, suspension of vehicle licence in certain circumstances

This clause replicates the substance of section 23A *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause empowers the CEO to cancel or suspend a vehicle licence under certain prescribed circumstances.

Clause 10 Transfer of vehicle licences

This clause replicates the substance of section 24 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause places a legal requirement on all persons who sell or dispose a vehicle licensed, in their name to notify the CEO and where required, apply to transfer a vehicle licence by paying the appropriate transfer fees.

Clause 11 Requirement to make declaration on applying for grant or transfer of vehicle licence

This clause replicates the substance of section 24A *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act – this provision provides that where a vehicle does not meet prescribed requirements the vehicle's licence is cancelled by the provision at clause 9(1) (b).

This clause creates a requirement for a person to declare in writing that a vehicle meets the prescribed standards relating the security of the vehicle for licensing purposes. The clause further empowers the CEO to cancel a vehicle licence where the vehicle fails to comply with a prescribed security requirement.

Clause 12 Change of nominated owner

This clause replicates the substance of section 24B *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause provides that a person, who is nominated as a responsible person for a vehicle, may apply to the CEO to cancel that nomination. This occurs when there is more than one owner for the vehicle and the responsible person ceases to be the responsible for that vehicle.

Clause 13 Permits, etc., for unlicensed vehicles

This clause replicates the substance of section 26 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act, which enables the CEO to grant a person a temporary authorisation allowing an unlicensed vehicle to be used on a road.

Clause 14 Register of vehicle licences

This clause replicates the substance of section 27(1) of the *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause creates a requirement on the CEO to keep a register of every vehicle licence granted.

Clause 15 Labels to be affixed to certain vehicles

This clause replicates the substance of section 27 *Road Traffic Act 1974*, which will be repealed with proclamation of this Act.

This clause will require CEO issue a registration labels with certain prescribed vehicle licences, as evidence of the grant of a licence.

Clause 16 Effect of licence suspension order, disqualification

This clause replicates the substance of section 27A *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause provides that where a suspension order is issued to a person under the *Fines Penalties and Infringement Notices Enforcement Act 1994* any vehicle licence held by that person is suspended and is of no effect as long as the fines suspension remains in force. The clause further provides that the imposition of a fines suspension does not extend the period of a vehicle licence or change the expiry date of the licence just because the licence was suspended.

Clause 17 Classification of vehicle licences

This clause replicates the substance of section 28 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause provides for regulations to prescribe different classes of vehicle licences. This already occurs via regulations and is necessary to deal with the variety of vehicle types that require licensing. Regulations further provide for the CEO to impose limitations on the periods for which the licence operates.

Clause 18 Applicable charges in case of amendment

This clause replicates the substance of section 28A *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause provides that whenever fees for vehicle licences are amended or replaced that any previous fees paid for a vehicle licence remain valid. In other words a vehicle licence granted at a previous (old) fee continues to remain valid notwithstanding the fee for the vehicle may have since changed.

Clause 19 Minister may require vehicles to be inspected

This clause replicates the substance of section 29 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause empowers the Minister responsible for the administration of this Act, to issue a notice in the *Government Gazette*, requiring that certain vehicles be inspected for roadworthiness before the grant, renewal or transfer of a licence. Notices issued under this

clause relate to vehicles such as School buses, Taxis and tourist coaches which require annual safety and vehicle standard's inspections.

Part 3 – Overseas motor vehicles when temporarily in Australia

Note: all the provisions under this part have been transferred from Part IV Road Traffic Act 1974, which will be repealed with the proclamation of this Bill.

This Part deals with the licensing requirements for vehicles that are imported into WA temporarily, by persons who are not ordinarily residents of Australia

Clause 20 Terms used

This clause replicates the substance of section 30 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause clarifies what constitutes an “overseas vehicle” and “licence” for the purposes of this Part.

Clause 21 Application of this Part

This clause replicates the substance of section 30 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause sets out the extent to which this part applies to other parts of this Bill and other written laws.

Clause 22 Free vehicle licences for certain overseas vehicles

This clause replicates the substance of section 31 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause enables the CEO to grant an overseas vehicle with a temporary vehicle licence while the vehicle in WA for a maximum period of 12 months.

Clause 23 Vehicle licence for overseas vehicle granted in another jurisdiction has effect in this State

This clause replicates the substance of section 32 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause provides for the recognition of a vehicle license granted in another state or territory of the Commonwealth in respect of an overseas vehicle.

Clause 24 Free extension or renewal of vehicle licences for certain overseas vehicles

This clause replicates the substance of section 33 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause provides for the renewal or extension of an overseas vehicle licence, free of charge by the CEO for a maximum period of 12 months.

Clause 25 Free licence or renewal ceases to have effect in certain cases

This clause replicates the substance of section 36 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause set out the circumstances when licence granted to an overseas ceased to have effect.

Clause 26 Number plates on overseas vehicles

This clause replicates the substance of section 39 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause requires every overseas vehicle to display number plates, either number plates issued by the CEO or number plates issued to the vehicle by an overseas licensing authority.

Clause 27 Regulations

This clause replicates the substance of section 40 *Road Traffic Act 1974*, which will be repealed with the proclamation of this Act.

This clause sets out the various provisions for which regulations can be made under this Part.

Part 4 – Mass, dimension and loading requirements

Note: Provisions under this Part incorporate provisions transferred from Road Traffic (Vehicles Standards) Regulations 2002 and those from the model Bill.

Division 1 – Terms used in this Part

Clause 28 Term used: person connected

This clause identifies those parties in the transport chain who are liable for breaches of mass, dimension, and loading requirements under this Part.

Division 2 – Mass, dimension and loading offences and modification of mass or dimension requirements

Clause 29 Mass, dimension and loading requirements to be complied with

This clause replicates the substance of Part 3 *Road Traffic (Vehicle Standards) Regulations 2002*.

This clause creates offences for a “connected person” to breach a prescribed mass, dimension, or loading requirement.

This clause introduces the concept of reasonable steps defence from the model Compliance and Enforcement Bill, which the person charged has the benefit of.

Clause 30 Penalties for mass, dimension or loading offences

This clause sets out the penalties for offences committed under clause 29.

Clause 31 Offences by consignees

This clause introduces new offence provisions for consignees, who form part of the chain of responsibility.

Subclause (1) creates an offence for a person to consign goods for road transport in breach a prescribed of mass, dimension or loading requirement.

Subclause (2) provides clarification in determining whether the conduct of a consignee intended a breach under subclause (1) (a).

Subclause (3) provides clarification for the purpose of subclause (2) (b) (ii).

Subdivision 2 – Modification of mass or dimension requirements for certain vehicles

This subdivision replicates the substance of Part 4 Road Traffic (Vehicle Standards) Regulations 2002.

Clause 32 Terms used

Creates definitions for the purposes of this subdivision.

Clause 33 Modifications of mass or dimension requirements for prescribed vehicles

Subclause (1) empowers the Commissioner of Main Roads to modify a prescribed mass or dimension requirement for vehicle.

Subclause (2) places limits on the Commissioner of Main Roads, for the purposes of modifying a prescribed mass requirements.

Subclause (3) enables the Commissioner of Main Roads to impose a higher dimension limit than the prescribed limits imposed.

Subclause (4) prohibits the Commissioner of Main Roads from modifying a mass or dimension requirement unless the vehicle is of a prescribed class or the applicant for a modification has been accredited under Division (4).

Subclause (5) enables the Minister to declare that certain vehicles may be granted modifications under subclause (1) without the requirement for accreditation. This is to deal predominately with vehicles entering the state from other jurisdictions that do not have similar legislative requirements in regards to accreditation.

Subclause (6) provides that a modified mass or dimension requirement has effect for the term specified in an order or permit granted by the Commissioner of Main Roads.

Clause 34 Order or permit for modification

Subclause (1) provides that Commissioner of Main Roads may grant a modification under clause 33 by way of a permit or notice issued in the Government Gazette.

Subclause (2) places a requirement on the driver of a vehicle, which has been granted a modification under clause 33, to carry and produce a permit to any police officer on demand.

Clause 35 Application of modified mass or dimension requirement

Subclause (1) sets out the nature of conditions that Commissioner of Main Roads may impose on a permit or order granted under clause 34.

Subclause (2) creates a definition of specified, for the purposes of this subclause (1).

Subclause (3) provides for regulations to prescribe matters that are to apply or not apply to certain orders or permits. This is to cater for certain generic conditions, which apply to specific classes of vehicles. For example, the requirement for certain vehicles to display "Over Sized" vehicle signs to the front and rear when operating on permit or order.

Clause 36 Compliance with orders, permits

Subclause (1) creates various levels of offences for a connected person who fails to comply with the terms imposed on permit or order.

Subclause (2) provides protection to a connected person from being prosecuted under clause 29(1) and under clause 36(1), for a breach stemming for same set of circumstances.

Clause 37 Regulations about modifying mass or dimension requirements

This clause sets out the purposes for which regulations may be created to deal with matters associated with the grant of permits or orders under clause 33.

Division 3 – Access restrictions on certain vehicles that comply with mass or dimension requirements

This division replicates the substance of Part 4 Road Traffic (Vehicle Standards) Regulations 2002.

Clause 38 Terms used

Subclause (1) creates definitions for the purposes of this subdivision.

Clause 39 Restrictions on access of complying restricted access vehicles to certain roads

Subclause (1) creates an offence for a complying restricted access vehicle to be on a road without the approval of the Commissioner of Main Roads. This requirement is designed to protect road infrastructure via the Commissioner of Main Roads role of granting access to WA's road network.

Subclause (2) provides that a person charged with an offence under subclause (1) has the benefit of the reasonable steps defence.

Subclause (3) creates an offence for a person to fail to comply with the terms imposed on permit of order granted under clause 40(1).

Clause 40 Access approvals

Subclause (1) empowers the Commissioner of Main Roads to grant an access approval to a complying restricted access vehicle. This is designed to deal with prescribed classes of vehicles, such as B doubles and road trains.

Subclause (2) prohibits the Commissioner of Main Roads from giving an access approval for a complying restricted access vehicle, unless the vehicle is of a prescribed class or the applicant for a modification has been accredited under Division (4).

Subclause (3) enables the Minister to declare that certain complying restricted access vehicles can be given access approval, without the requirement for accreditation. This is to deal predominately with vehicles entering the state from other jurisdictions that do not have similar legislative requirements in regards to accreditation.

Subclause (4) provides that an access approval has effect for the term specified in an order or permit granted by the Commissioner of Main Roads.

Clause 41 Order or permit for access approval

Subclause (1) provides that Commissioner of Main Roads may grant an access approval under clause 40(1), by way of a permit or notice issued in the Government Gazette.

Subclause (2) places a requirement on the driver of a vehicle, which has been given an access approval, under clause 40(1) to carry and produce any permit to any police officer on demand.

Clause 42 Application of access approvals

Subclause (1) sets out the scope of matters that Commissioner of Main Roads may impose on a permit or order granted under clause 41.

Subclause (2) creates a definition of specified, for the purposes of this subclause (1).

Subclause (3) provides for regulations to prescribe matters that are to apply or not apply to certain orders or permits. This is to cater for certain generic conditions, which apply to specific classes of vehicles. For example, the requirement for certain vehicles to display "Road Train" signs to the front and rear when operating on permit or order.

Clause 43 Regulations about giving access approvals

This clause sets out the purposes for which regulations may be created to deal with matters associated with the grant of permits or orders under clause 41.

Division 4 – Accreditation

This division replicates the substance of Part 4 Road Traffic (Vehicle Standards) Regulations 2002.

Clause 44 Accreditation of persons in relation to certain heavy vehicles

Subclause (1) provides for regulations to be made enabling the Commissioner of Main Roads to accredit persons for the purposes of clauses 33(4) and 40(2).

Subclause (2) provides the eligibility requirements for a person to be accredited.

Subclause (3) provides that the granting of accreditation is not limited to a connected person, as defined under clause 28.

Subclause (4) places a requirement on a person wishing to be accredited to satisfy the Commissioner of Main Roads to that the person has systems in place, mentioned at subparagraphs (a) to (c).

Clause 45 Regulations about accreditation

This clause sets out the purposes for which regulations may be created to deal with matters associated with the grant accreditation.

Clause 46 Effect of suspension or cancellation of accreditation on modification or access approval

Subclause (1) provides that where a modification or access approval has been granted to a person, subject to a requirement of being accredited and the Commissioner of Main Roads subsequently cancels the person's accreditation, every permit or order issued to the person is deemed invalid from the date of issue of the cancellation.

Subclause (2) provides that where a modification or access approval has been granted to a person, subject to a requirement of being accredited and the Commissioner of Main Roads subsequently suspends the person's accreditation, every permit or order issued to the person is deemed invalid from the date of issue of the suspension.

Subclause (3) places a requirement on the Commissioner of Main Roads to issue a notice in the Government Gazette, whenever a modification or access approval is granted via an order, is subsequently suspended or cancelled under subclauses (1) or (2).

Subclause (4) places a requirement on the Commissioner of Main Roads to issue a person a notice in writing, whenever a modification or access approval, granted via a permit, is subsequently suspended or cancelled under subclauses (1) or (2).

Part 5 – Categories of breach of mass, dimension or loading requirements

The following clauses contain provisions that have been imported from the model Bill.

Division 1 – The Categories of breaches

Clause 47 Categories of breach

This clause introduces the new categories of minor, substantial and severe risk breaches.

Division 2 – Mass requirements: categories of breaches

Clause 48 Mass requirements: minor risk breaches

This clause sets out what constitutes a minor risk breach, when assessing a breach of a prescribed mass requirement.

Clause 49 Mass requirements: substantial risk breaches

This clause sets out what constitutes a substantial risk breach, when assessing a breach of a prescribed mass requirement.

Clause 50 Mass requirements: severe risk breaches

This clause sets out what constitutes a severe risk breach, when assessing a breach of a prescribed mass requirement.

Division 3 – Dimension requirements: categories of breach

Clause 51 Terms used

This clause defines terms for the purposes this division.

Clause 52 Dimension requirements: minor risk breaches

This clause sets out what constitutes a minor risk breach, when assessing a breach of a prescribed dimension requirement.

Clause 53 Dimension requirements: substantial risk breaches

Subclause (1) sets out what constitutes a substantial risk breach, when assessing a breach of a prescribed dimension requirement.

Subclause (2) provides that a dimension breach under clause 52(a) that falls within a minor risk category automatically becomes a substantial risk breach under certain prescribed situations. The purpose of this subclause is to recognise the additional danger that dimension breaches pose when committed in circumstances prescribed under subclause 2 (a) & (b).

Subclause (3) provides that a dimension breach under clause 52(c) that falls within a minor risk category automatically becomes as substantial risk breach if the vehicle fails to display warning signs, as may be required by regulations.

Subclause (4) provides that a dimension breach that would otherwise be a minor risk breach automatically becomes as substantial risk breach, if a dangerous projection requirement (see definition a clause 51) was not being complied with at the time of the breach.

Clause 54 Dimension requirements: severe risk breaches

Subclause (1) sets out what constitutes a severe risk breach, when assessing a breach of a prescribed dimension requirement.

Subclause (2) provides that a dimension breach under clause 53 (1) (a) that falls within a substantial risk category automatically becomes a severe risk breach under certain prescribed situations. The purpose of this subclause is to recognise the additional danger that dimension breaches pose when committed in circumstances prescribed under subclause 2 (a) & (b).

Subclause (3) provides that a dimension breach under clause 53(1) (c) that falls within a minor risk category automatically becomes as substantial risk breach if the vehicle fails to display warning signs, as may be required regulations.

Subclause (4) provides that a dimension breach that would otherwise be a substantial risk breach automatically becomes as severe risk breach, if a dangerous projection requirement (see definition a clause 51) was not being complied with at the time of the breach.

Clause 55 Dangerous projections

Subclause (1) provides that a breach of a dangerous projection requirement is taken to be a minor breach of a dimension requirement, if the breach is not committed at night or in hazardous weather conditions. In other words, where there is only a breach of a projection

requirement (vehicle and load is otherwise complying) and the breach occurs other than at night or in hazardous weather conditions the breach falls within a minor breach category.

Subclause (2) provides that a breach of a dangerous projection requirement is taken to be a substantial breach of a dimension requirement if the breach is committed at night or in hazardous weather conditions. In other words, where there is only a breach of a projection requirement (vehicle and load is otherwise complying) and the breach occurs at night or in hazardous weather conditions the breach falls within the substantial breach category.

Division 4 – Loading requirements: categories of breaches

Clause 56 Determining whether breach of a loading requirement gives rise to certain breaches

This clause provides clarity in determining whether a breach of a prescribed loading requirement poses an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity. This subclause recognises the additional danger that loading breaches pose when committed under different circumstances.

Clause 57 When a load's becoming displaced or unsecured is imminent

This clause provides guidance to both courts and police officers in assessing what constitutes the imminent risk of a load becoming displaced or unsecured during the journey or proposed journey. Subclauses (a) to (e) sets out the matters a court or police officer may have regard in making an assessing under this clause.

Clause 58 Loading requirements: minor risk breaches

This sets out what constitutes a minor risk breach, when assessing a breach of a prescribed loading requirement.

Clause 59 Loading requirements: substantial risk breaches

This sets out what constitutes a substantial risk breach, when assessing a breach of a prescribed loading requirement.

Clause 60 Loading requirements: severe risk breaches

This sets out what constitutes a severe risk breach, when assessing a breach of a prescribed loading requirement.

Part 6 – Directions as to MDLR breaches, defect notices and improvement notices

The following clauses contain provisions that have been imported from the model Bill.

Division 1- General

Clause 61 Application of Part in relation to other directions

This clause provides that this Part applies to a person regardless of whether or not the person has been or is subject to a direction under Part 4 of the *Road Traffic (Administration) Act 2008*, which deals with general directions that can be given to drivers of vehicles such as direction to stop, provide name and address etc.

Division 2 Rectification of breaches of mass, dimension or loading requirements

Clause 62 Term used: rectification action

This clause creates a definition of “rectification action”, for the purposes of this division.

Clause 63 Minor risk breaches

Subclause (1) sets out the circumstances under which a police officer may give a direction under subclauses (2) or (3).

Subclause (2) empowers a police officer to direct a driver, co-driver or a responsible person for a vehicle detected committing a minor risk breach of a mass, dimension or loading requirement to rectify any detected breach.

Subclause (3) empowers a police officer to direct a driver, co-driver or a responsible person for a vehicle detected committing a minor risk breach of a mass, dimension or loading requirement to move the vehicle to a suitable location to rectify the breach detected or direct the vehicle not move until such time that the breach has been rectified.

Clause 64 Substantial risk breaches

Subclause (1) sets out the circumstances under which a police officer must give a direction under subclauses (2).

Subclause (2) empowers a police officer to direct a driver, co-driver or a responsible person for a vehicle detected committing a substantial risk breach of a mass, dimension or loading requirement to move the vehicle to a suitable location to rectify the breach detected.

Subclause (3) clarifies the term “location” for the purposes of subclause (2).

Subclause (4) places a requirement on a police officer to give a direction under subclause (5), where the officer does not have reason to believe that the circumstances under subclause (1) apply.

Subclause (5) places a requirement on a police officer to direct a driver, co-driver or a responsible person for a vehicle detected committing a substantial risk breach of a mass, dimension or loading requirement to remain stationary until the detected breach has been rectified.

Clause 65 Severe risk breaches

Subclause (1) sets out the circumstances under which a police officer must give a direction under subclauses (3).

Subclause (2) provides clarification for a police officer in determining what constitutes an “appreciable risk”, for the purposes of subclause (1).

Subclause (3) requires a police officer to direct a driver, co-driver or a responsible person for a vehicle detected committing a severe risk breach of a mass, dimension or loading requirement to move the vehicle to a suitable location to rectify the breach detected.

Subclause (4) places a requirement on a police officer to give a direction under subclause (5), where the officer does not have reason to believe that the circumstances under subclause (1) apply.

Subclause (5) places a requirement on a police officer to direct a driver, co-driver or a responsible person for a vehicle detected committing a severe risk breach of a mass, dimension or loading requirement to remain stationary until the detected breach has been rectified.

Clause 66 Directions etc. to be complied with

This clause creates an offence for a person given a direction under clauses 63(2) or (3), 64(2) or (5), 65(3) or (5), must not without reasonable excuse; fail to comply with the direction given by a police officer.

Clause 67 Authorisation to continue journey if only minor risk breaches

Subclause (1) sets out the circumstances under which subclause (2) applies.

Subclause (2) provides that a police officer may authorise the driver or co-driver of a vehicle to continue its journey if the police officer reasonably believes the continuation would not involve the commission of a substantial risk breach and any direction to take rectification action has been complied with.

Clause 68 Operation of directions in relation to detachable vehicles

This clause provides that a component of a vehicle can be separately driven or moved if the component vehicle is not itself the subject of a breach of a mass, dimension or loading requirement and it is not otherwise unlawful for the component vehicle to be driven or moved.

For example, if a prime mover towing two semi trailers is detected with a breach, and that breach relates only to the second trailer, if the driver disconnects the second trailer he may then proceed with his journey.

Clause 69 Directions and authorisations to be in writing

Subclause (1) places a requirement that any direction given under clauses 63(2) or (3), 64(2) or (5), 65(3) or (5) and an authorisation under clause 67(2) to be issued in writing.

Subclause (2) provides that subclause (1) does not apply if the direction to move a vehicle is in the presence or supervision of a police officer or in prescribed circumstances. For example, regulations may provide for that directions can be given by phone or radio in situations where the breach has been detected by video surveillance.

Division 3- Defect Notices

The following provisions have been moved from the *Road Traffic (Vehicle Standards) Regulations 2002*, which will be deleted with the proclamation of this Bill.

Clause 70 Terms used

This clause creates definitions for the purposes of this division.

Clause 71 Notices in relation to vehicle defects

Subclause (1) empowers a police officer to issue a defect notice for a vehicle where the officer reasonably believes the vehicle does not meet any the prescribed vehicle standards. These are commonly referred to as a "yellow stickers".

Subclause (2) provides that if a police officer issues a defect notice he may also, where appropriate, give reasonable directions to the driver or co-driver of the vehicle to move the vehicle to a safer or more convenient location.

Clause 72 Form and content of defect notices

This clause provides that a defect notice is to be in a form approved by the CEO and must contain certain prescribed information, such as the reason for the issue of the defect notice and time and day the notice takes effect.

Clause 73 Service of defect notices

Subclause (1) places a requirement on a person who issues a defect notice to ensure that a copy of the notice is personally given to the driver of the vehicle and must affix a sticker, in a prescribed form, to the vehicle identifying the vehicle as having a defect. The officer may instead affixed a sticker to the vehicle may affix a copy of the defect notice to the vehicle.

Subclause (2) provides creates an offence for a person to damage or unlawfully remove a notice or sticker affixed to a vehicle that has been issued with a defect notice.

Subclause (3) provides that the provisions under clause (3) do not apply to a person who in the course of repairing a vehicle and must remove a defect notice in order to rectify a defect. For example a defect notice may require a cracked windscreen to be replaced; in order to do this the repairer must remove the sticker from the old windscreen and re affix it to the new windscreen.

Clause 74 Duration of defect notices

Subclause (1) provides that a defect notice takes effect on the date and time stated in the defect notice.

Subclause (2) sets out when a defect notice ceases to have effect.

Subclause (3) defines the term “authorised police officer” for the purposes of subclause (2).

Clause 75 Defect notices and directions to be complied with

Subclause (1) creates an offence for a person to, without reasonable excuse, drive or cause or permits the vehicle to be driven, while the vehicle has affixed to it a defect notice or sticker indicating that the vehicle is subject to defect notice

Subclause (2) provides an exemption from an offence under subclause (1), if the vehicle is being driven solely for the purpose of driving the vehicle to the inspection station to have the defect notice removed.

Subclause (3) creates an offence for a person to, without reasonable excuse fail to comply with a direction given by a police officer under subclause 72(2).

Clause 76 Powers of vehicle examiners

This clause provides that a vehicle examiner has all the powers of a police officer under this division and the *Road Traffic (Administration) Act 2008*, when a vehicle is submitted for examination. Those powers are however limited to directing a driver to move a vehicle or allowing the vehicle examiner to drive a vehicle for the purposes of determining whether a deficiency has been rectified.

Division 4 Improvement notices

This division contains provisions that have been imported from the model Bill.

Clause 77 Terms used

This subclause defines the terms of an “approved officer”, “improvement notice” and “warden” for the purposes of interpretation and application within Division 4.

Clause 78 Improvement notices

Subclause (1) empowers an approved officer to issue an improvement notice to a person who is involved in the commission of a breach of a mass, dimension, or loading requirement in the course of commercial operation. For example, a weighbridge located at a mine site is found to be faulty and as consequence vehicles are being driven on to a road, in breach of the legal mass limits. An approved officer may issue the mine site with an improvement notice requiring them to rectify the fault with the weighbridge.

Subclause (2) empowers an approved officer to issue an improvement notice to a person who is likely to be involved in the commission of a breach of a mass, dimension, or loading requirement. The notice requires the person to take action to avoid a breach from occurring. For example, a police officer detects that a company has issued its staff with a document setting out operating instructions relating the loading of vehicles and the instructions are likely to result in an offence being committed. The officer may issue the company with an improvement notice directing the company amend the document in question, to reduce the likelihood of a breach being committed.

Subclause (3) allows a person to whom an improvement notice is intended to be issued to contact a “consulting officer” as defined in clause (4) to discuss the improvement notice.

This provision provides a person with an avenue to seek a review of the officer’s intention to issue an improvement notice, in order to address any concerns or impacts that may stem from the issue of the notice.

Subclause (5) provides failure to comply with subclause (3) does not affect the validity of the improvement notice.

Clause 79 Form and content of improvement notices

This subclause sets out the matters that must be included in an improvement notice for it to be lawful and specify the method by which the alleged breach or likely contravention can be remedied.

Clause 80 Improvement notice to be complied with

Subclause (1) creates an offence for a person to, without reasonable excuse; fail to comply with an improvement notice issued to them.

Subclause (2) provides a person issued with an improvement notice with a legal defence, if they can prove to a court that the improvement notice was complied with within the specified time even though the method of complying with the notices was not as directed in the notice.

Clause 81 Amendment of improvement notices

Subclause (1) provides that an improvement notice given by an approved officer, who is a warden, may be amended by another approved officer providing that person is also warden.

Subclause (2) provides that an improvement notice given by an approved officer, who is a police officer, may be amended by another approved officer providing that person is also a police officer.

Subclause (3) provides that an amendment to an improvement notice has no effect if the amendment made relates to a contravention other than the contravention that gave rise to the notice being issued in the first place.

Subclause (4) provides an amendment of a notice is only valid if it is given to the person who was given the original improvement notice.

Subclause (5) set outs the matters that must be included in an amended improvement notice for it to lawful.

Clause 82 Cancellation of improvement notices

Subclause (1) provides that the CEO may cancel an improvement notice given by an approved officer.

Subclause (2) provides that an improvement notice given by an approved officer, who is a police officer, may be cancelled by the Commissioner of Police or by an approved officer who is senior in rank to the police officer who gave the notice.

Subclause (3) provides that a notice of cancellation must be given to the person who was given the original improvement notice.

Subclause (4) provides that regulations may prescribe the seniority of rank of a police officer who can cancel an improvement notice. In other words the regulations can limit which police officers can cancel an improvement notice by reference to their rank, for example rank of Inspector or above.

Clause 83 Clearance certificates

Subclause (1) provides that an approved officer may issue a clearance certificate indicating that all or any specified requirements of an improvement notice have been complied with. The purposes of a clearance certificate is to provide confirmation to a person that an improvement notice is no longer in effect

Subclause (2) empowers any approved officer, irrespective of who originally issued the first notice, can issue a clearance certificate.

Subclause (3) provides that an improvement notice ceases to have effect when a clearance certificate is issued stating that all of requirements in the notice have been complied with.

Subclause (4) provides that an improvement notice ceases to have effect when a clearance certificate is issued stating that a specific requirement in the notice has been complied with.

Part 7 – Container weight declarations

This part contains provisions that have been imported from the model Bill, which deals with the matters relating to freight containers.

Division 1 Obligations in relation to container weight declarations

Clause 84 Terms used

Subclause 84 defines the terms of “consigned freight container”, “container weight declaration”, and “complying container weight declaration” for the purposes of interpretation and application of within Division 1.

Clause 85 Form of container weight declaration

This clause sets out various forms that a container weight declaration may take.

Clause 86 Duty of responsible entity

Subclause (1) creates an offence for a responsible entity to offer a freight container for transport without providing the responsible person for the vehicle or the driver with a complying container weight declaration. This is to ensure that the driver or the responsible person or persons for the vehicle are aware of weight of the container to ensure the load does not breach a vehicle’s mass limits prescribed in regulations.

Subclause (2) provides that person charged with an offence under subclause (1) has the benefit of a reasonable steps defence under Part 10 of the Bill.

Clause 87 Duty of responsible person

Subclause (1) places a legal obligation on a responsible person, who arranges for freight container to be transported, to provide the driver of the vehicle with a complying container weight declaration. This is to ensure that the driver of the vehicle is aware of weight of the container to ensure the load does not breach a vehicle’s mass limits prescribed in regulations.

Subclause (2) places a legal obligation on a responsible person, who arranges for freight container to be transported by various parties by road, to ensure that each person who is transporting the freight container is provided with a complying container weight declaration.

Subclause (3) provides that a responsible person is taken to have committed an offence under clause (1) if the driver or co-driver does not have a complying container weight declaration, unless a responsible person can prove that the driver or co-driver were provided with a declaration before commencing the journey.

Subclause (4) provides that person charged with an offence under subclause (1) or (2) have the benefit of a reasonable steps defence under Part 10 of the Bill.

Clause 88 Duty of driver

Subclause (1) creates an offence for person to drive a vehicle transporting a freight container by road, without being provided with complying container weight declaration.

Subclause (2) creates an offence for a driver or co-driver to fail to keep a container weight declaration readily accessible the vehicle at all times during the transport of a freight container.

Subclause (3) provides that people charged with an offence under subclause (1) or (2), have the benefit of a reasonable steps defence under Part 10 of the Bill.

Division 2 Recovery of losses resulting from not providing accurate container weight declarations

Clause 89 Recovery of losses if container weight declaration not provided

Subclause (1) enables a responsible person to recover from a responsible entity for a freight container, the monetary value of any loss incurred by the entitled person as result of not being provided with a container weight declaration. For example, a responsible person incurs penalty costs for the late delivery of the container due to a failure of the responsible entity to provide a container weight declaration before transport. The responsible person may recover any monetary loss in a court of competent jurisdiction.

Subclause (2) (a) to (d) sets out the losses for which a responsible person may recover costs for under subclause (1).

Clause 90 Recovery of losses for provision of inaccurate container weight declaration

Subclause (1) sets out the extent to which the clause applies at subparagraphs (a) to (e).

Subclause (2) enables a person to recover from a responsible entity for a freight container, the monetary value of any loss incurred by the person as result of reliance on false or misleading information contained in a container weight declaration. The person may recover any monetary loss in a court of competent jurisdiction.

Subclause (3) (a) to (d) sets out the losses for which a person may recover costs for under subclause (2).

Clause 91 Recovery of amount by responsible entity

Subclause (1) this clause applies if an order has been made by a court under clause 91 or is being sought against a responsible entity for the payment of the monetary value of any loss incurred by the person.

Subclause (2) provides that a responsible entity has the right to recover costs from any person who provided false or misleading information that attributed to a monetary loss. In other words a responsible entity is liable to pay for a loss, associated with including false or misleading information in a container weight declaration. A responsible entity can, if appropriate, recover those costs from the person, if that person provided them with the false or misleading information that caused the loss to occur in the first place.

Subclause (3) provides a responsible entity with the option of either recovering a loss incurred under subclause (2) in conjunction with a person to which clause 91 applies or by commencing separate legal proceedings.

Clause 92 Assessment of monetary value or attributable amount

Subclause (1) enables a court in determining whether to make an order under this division to take into account any monetary loss incurred under clauses 90, 91 or 92.

Subclause (2) provides that for purposes of making an order under subclause (1), a court may take into account any matter that it considers relevant, including evidence adduced in connection with an offence for breaching a mass limit.

Clause 93 Costs

Subclause (1) enables a court to award costs in relation to any proceedings for the recovery of losses associated with the failure to provide or providing false or misleading container weight declarations.

Subclause (2) enables a court to order the payment of costs or expenses incurred by a person in determining the actual weight of a freight container. This is to deal with situations where a person has not been provided with a container weight declaration or the declaration was inaccurate and the person has had to arrange for the container to be weighed in order that it can be transported lawfully.

Subclause (3) provides that an order under subclause (2) can be made in favour of a party of the proceedings, the CEO or a public authority of this or any other jurisdiction.

Part 8 – Other MDLR offences

The following provisions have been imported from the model Bill, and deal with the matters relating to transport documentation.

Division 1 False or misleading transport documentation offences

Clause 94 Terms used

This clause defines the terms of “in the state” and “road transport” for the purposes of interpretation and application of within Division 1.

Clause 95 Consignors: transport documentation

This clause creates an offence for a consignor of goods to provide false or misleading transport documentation relating to a mass, dimension or loading requirement for goods that are to be transported. The purpose of this clause is to encourage consignors to provide accurate information to transport operators/drivers to reduce the frequency of breaches stemming from the use of inappropriate vehicles.

Clause 96 Packers: transport documentation

This clause creates an offence for a person who has packed goods within Australia for transport, and the goods are then transported in WA with false or misleading transport documentation relating to a mass, dimension or loading requirement. This provision places an obligation on the packer to ensure that transport documentation accurately reflects the nature of the goods that have been packed for transport.

Clause 97 Loaders: transport documentation

This clause creates an offence for a person who loads goods for transport within WA and the goods are accompanied with false or misleading transport documentation relating to a mass, dimension or loading requirement. This provision places an obligation on a person who loads a vehicle to ensure that transport documentation accurately reflects the goods that have been loaded for transport.

Clause 98 Receivers: transport documentation

Subclause (1) defines the term “receiver” for the purposes of the subclause (2) and provides for regulations to be made to exclude a class of person from the definition.

The ability to exclude a class of person from the obligations imposed under subclause (2) is necessary because certain people may have cause to unpack goods after they have arrived in Australia, however they should not be considered as a receiver for the purpose of this clause.

For example, Customs or Quarantine Officials often unpack freight containers imported into WA before they are released from the port. Actions such as these are considered to be outside the policy intended by this clause; hence provision needs to be made to deal with these classes of people as they are detected.

Subclause (2) creates an offence for a person who receives goods that have been packed outside Australia and the goods are accompanied with false or misleading transport documentation relating to a mass, dimension or loading requirement. This provision places an obligation on a person who imports goods into Australia to ensure that transport documentation accurately reflects the goods that are to be transported once they arrive in Australia.

Clause 99 Responsible entity: container weight declaration

This clause creates an offence for a responsible entity as mentioned at clause 87(1) to provide a container weight declaration that contains false or misleading information.

Clause 100 Responsible person for a vehicle: container weight declaration

This clause creates an offence for a responsible person, as mentioned at clause 88(1) or (2) to provide a container weight declaration that contains false or misleading information.

Clause 101 Container weight declaration: certain information not necessarily false or misleading

This clause provides that information contained in a container weight declaration that over states the weight of a freight container is not to be considered as false or misleading information, for the purposes of offences created under this Part.

Clause 102 Reasonable steps defence

This clause provides that person charged with an offence under clauses 95, 96, 97, and 98 (2), 99 or 100 has the benefit of a reasonable steps defence under Part 10 of the Bill.

Division 2- Miscellaneous MDLR offences

Clause 103 Weight of freight container: consignors' duties

Subclause (1) creates an offence for a consignor to consign goods for transport by road using a freight container, when the container's weight exceeds the maximum gross weight of the container or its safety approval plate.

Subclause (2) provides that person charged with an offence under subclause (1) has the benefit of a reasonable steps defence under Part 10 of the Bill.

Clause 104 Weight of freight container: packers' duties

Subclause (1) creates an offence for a person to pack goods in a freight container, intended for road transport, when the container's weight exceeds the maximum gross weight of the container or its safety approval plate.

Subclause (2) provides that person charged with an offence under subclause (1) has the benefit of a reasonable steps defence under Part 10 of the Bill.

Clause 105 Dismissal or other victimisation of employee or contractor assisting with or reporting breaches

Subclause (1) creates the definitions of a “contractor” and “public agency”, for the purposes of this clause.

Subclause (2) creates an offence for an employer to dismiss or victimise an employee or contractor for either, assisting a public agency in an investigation or making a complaint, about a suspected breach of a mass, dimension or loading offence allegedly committed by the employer. This clause is designed to protect and encourage employees who report or assist in providing information stemming from a mass, dimension or loading offence.

Subclause (3) places an obligation on an employer or prospective employer not to refuse to offer employment to a person or prospective contractor on the basis that the person or contractor has previously assisted public agency in an investigation or making a complaint, about a suspected breach of a mass, dimension or loading offence allegedly committed by a previous employer. This clause is designed to protect a person or contractor from discrimination by a prospective employer on the basis that they have previously reported or provided information stemming from a mass, dimension or loading offence.

Subclause (4) provides that if an employer or prospective employer is prosecuted for an offence under subclauses (2) or (3) and the prosecution has proved all the elements of the offence other than the reason for the employer’s actions. The employer then has the obligation to prove that the reasons for their actions did not constitute an offence.

Subclause (5) empowers a court to, in addition to imposing a fine on an employer for an offence under subclauses (2) or (3), make an additional order in the terms specified under subparagraphs (a) or (b).

Subclause (6) provides that an order to pay for compensation under subclause (5) cannot exceed the monetary limit imposed on the court determining the matter.

Subclause (7) provides that an order under subclause (5) is enforceable as if were a judgment of a civil court. In other words although an order under this clause may be made by criminal court, those orders are to be taken as being a civil judgment for the purposes of enforcing the orders made by the court.

Subclause (8) creates an offence for a person to fail to comply with an order made under subclause (5)

Clause 106 coercing, inducing or offering incentive

Subclause (1) provides an explanation of what constitutes to “urge another person to commit an MDLR offence”.

Subclause (2) creates an offence for a person to urge another person to commit a mass, dimension or loading offence. For example, a truck driver informs his employer that the vehicle he has been instructed to drive breaches permissible mass limit. The employer is made aware of this situation however he informs the driver that he would be dismissed unless he drives the vehicle as instructed.

Subclause (3) provides that although a person who urges another person to commit an MDLR offence is liable to prosecution, this subclause does not remove any liability placed on the person who actually commits the MDLR. For example, although an employer may

instruct (urge) his employee to drive a vehicle in breach of an MDLR, the driver is also liable to prosecution notwithstanding he was just following instructions.

Clause 107 Certain false or misleading information not to be provided to involved persons

Subclause (1) creates an offence for an involved person (see definition at clause 3) to provide information to another involved person that is false or misleading in a material particular mentioned at paragraphs (a) to (c).

Subclause (2) provides an involved person with a defence from prosecution, if the person can prove that at the time they gave information to another involved person, that the person was advised that the information was in fact false or misleading.

Subclause (3) provides that information contained in a container weight declaration that over states the weight of a freight container is not to be considered as false or misleading information, for the purposes of offences under this clause.

Part 9 – Liability for MDLR offences committed by other persons

The following provisions have been imported from the model Bill, and deals with offences committed by others people in the transport chain.

Clause 108 Liability of the officers of bodies corporate

Subclause (1) creates a definition of an “officer” for the purposes of this clause.

Subclause (2) provides that if a body corporate is charged with an MDLR offence, every officer of the body corporate is also liable to be prosecuted for the same offence.

Subclause (3) provides that if a body corporate and an officer are both charged with the same MDLR offence, and the body corporate is convicted of the offence, the officer is also deemed to be guilty of the offence, subject to any defence that may be raised.

Subclause (4) provides that if a body corporate commits a MDLR offence and is not charged with the offence, every person who was an officer of the body corporate at the time of the alleged offence was committed is liable to being charged with the offence.

Subclause (5) provides that if an officer is charged with an offence in accordance with subsection (4) and the body corporate is convicted of the offence, the officer is also deemed to have committed the offence, subject to any defence that may be raised.

Subclause (6) provides that if an officer is charged with an offence under this clause has the benefit of a reasonable steps defence under Part 10 of the Bill.

Clause 109 Liability of partners and persons managing partnerships

Subclause (1) creates definitions of “MDLR offence” and “partner” for the purposes this clause.

Subclause (2) provides that if partner in a partnership is charged with an MDLR offence, every partner of that partnership is also liable to be prosecuted for the same offence.

Subclause (3) provides that if a partner in a partnership is charged with an MDLR and is convicted of the offence, every person within the partnership is also deemed to be guilty of the same offence, subject to any defence that may be raised.

Subclause (4) provides that if a partner in a partnership commits a MDLR offence and is not charged with the offence, every person who was a partner of the partnership at the time of the alleged offence was committed is liable to being charged with the offence.

Subclause (5) provides that if a partner is charged with an offence in accordance with subsection (4), which is proven, any other partner is also deemed to have committed the offence, subject to any defence that may be raised.

Subclause (6) provides that if a partner is charged with an offence under this clause has the benefit of a reasonable steps defence under Part 10 of the Bill.

Clause 110 Liability of persons managing unincorporated associations

Subclause (1) creates a definition of “MDLR offence” for the purposes this clause.

Subclause (2) provides that where a person concerned in the management of unincorporated association who is charged with an MDLR offence, every other person concerned in the management of the unincorporated association is also liable to be prosecuted for the same offence.

Subclause (3) provides that where a person concerned in the management of unincorporated association who is convicted of an MDLR offence, every other person within the association is also deemed to be guilty of the same offence, subject to any defence that may be raised.

Subclause (4) provides that if a person concerned in the management of unincorporated association commits a MDLR offence and is not charged with the offence, every person who was concerned with the association at the time of the alleged offence was committed is liable to being charged with the same offence.

Subclause (5) provides that if a person concerned in the management of unincorporated association commits a MDLR offence in accordance with subsection (4), which is proven, any other associated person is also deemed to have committed the offence, subject to any defence that may be raised.

Subclause (6) provides that if a person charged with an offence under this clause has the benefit of a reasonable steps defence under Part 10 of the bill.

Clause 111 Liability of employers

Subclause (1) provides that where a person is charged with an MDLR offence, the person's employer at the time of the offence is also liable to be prosecuted for the same offence.

Subclause (2) provides where a person and their employer are both charged with an MDLR offence, and the employee is convicted of the offence. The employer is deemed to have also committed the offence, subject to any defence that the employer may raise.

Subclause (3) provides that if a person commits a MDLR offence and is not charged with the offence, the person's employer at the time of the alleged offence was committed is liable to being charged with the same offence.

Subclause (4) provides that if an employer is charged with a MDLR offence and it is proven that person's employee committed the offence, the employer is deemed to have also committed the offence, subject to any defence that may be raised.

Subclause (5) provides that an employer charged with an offence under this clause has the benefit of a reasonable steps defence under Part 10 of the Bill.

Clause 112 Liability of offender not affected

This clause provides that although various parties have a legal liability under this proposed part; it does not remove any liability placed on the person who actually commits an MDLR offence. In other words although an employer, partner or an officer of a body corporate may be charged with an MDLR offence, the driver of the vehicle who committed the offence still remains liable for prosecution.

Part 10 – Defences

The following provisions have been imported from the model Bill that introduces new concept of the reasonable steps defence.

Division 1 Reasonable steps defences

Clause 113 Reasonable steps defence

Subclause (1) sets out the matters that a person needs to prove, in order to receive the benefit of a reasonable steps defence

Subclause (2) sets out various matters at paragraphs (a) to (e) that a court may have regard to in determining whether a person mentioned in clause (1) has established a reasonable steps defence.

Division 2 Other defences

Clause 114 Defence for responsible persons

Subclause (1) provides a responsible person with a special defence, if charged with a MDLR offence if the person can prove that at the time of the offence; the vehicle was being used in circumstances mentioned at paragraphs (a), (b) and (c).

Subclause (2) provides that a defence under clause (1), where the offence relates to an alleged defect of the vehicle, only applies if the accused person can prove the existence of circumstances mentioned at paragraphs (a) and (b).

Clause 115 Defence for drivers

This clause provides a driver or co-driver with a defence to a charge of breaching a MDLR offence, subject to the accused person proving that at the time of the alleged offence, all of the circumstances mentioned at paragraphs (a), (b) and (c) applied.

Clause 116 Laws as to criminal responsibility not affected

This clause provides the defences in this part are in addition to those in *The Criminal Code* Chapter V

Part 11 – Court imposed sanctions

The following provisions have been imported from the model Bill.

Division 1- Terms used in this Part

Clause 117 Term used: associate

This clause creates a definition of “associate” for the purposes of this Part.

Division 2- General matters as to sentencing for MDLR offences

Clause 118 Sentencing principles

Subclause (1) provides that a court may impose an order under part 11 in conjunction with any other order that the court is able to make under written law. For example, a court may convict a person for a breach of a mass requirement under Part 4 of this Bill and issue a fine to the person for the offence. In addition to the fine the court may then order that the person also be disqualified from driving under Division 4 of Part 11.

Subclause (2) provides that an order made under part 11 forms part of the sentence. In other words an order imposed under Part 11 is to be considered part of the penalty that has been imposed by the court.

Subclause (3) provides that an order made under part 11 does not affect or override any other provisions contained within the Bill. In other words, a courts power to impose a penalty under another part of the Bill is not affected because the court imposes an order under Part 11.

Clause 119 Default categorisation

Subclause (1) provides that where a court is satisfied that there has been a breach of a mass, dimension or loading requirement, but is not satisfied that the offence is not a substantial or severe breach. The court may treat the breach as a minor breach. For example, a person is charged with breaching a vehicle’s mass limit and the prosecution alleges that the vehicle was found to be 4 tonnes over the legal requirement, which constitutes a substantial breach. Upon hearing evidence in support of the charge the court finds that the vehicle was only 2 tonnes over its permissible weight, which constitutes a minor breach. Although the prosecution has not proved the alleged charge, the court can still convict the person of a minor mass breach offence.

Subclause (2) provides that where a court is satisfied that there has been a substantial breach of a mass dimension or loading requirement but is not satisfied that the offence is a severe breach. The court may treat the breach as substantial breach.

Clause 120 Matters to be considered by courts when sentencing

Subclause (1) prescribes circumstances that a court may have regard to in determining the appropriate level of sanction to impose, when a breach of a mass, dimension or loading requirement has occurred.

Subclause (2) empowers a court to require evidence be produced for the purposes of giving consideration to a matter under subclause (1).

Subclause (3) provides clarification that nothing under clause 120 prevents a court from considering any other matters for the purposes of sentencing.

Subclause (4) provides that a court is not authorised or required to assign a different category of breach to a mass, dimension or loading requirement. In other words, if an alleged breach falls within the minor category, a court is unable to change that category of breach.

Clause 121 Prohibition order has priority

This clause provides that where both prohibition order and a supervisory intervention order have been made against the same person, that the prohibition order takes precedence.

Clause 122 Previous convictions of MDLR offences

This clause sets out what constitutes a previous offence, for the purposes of determining whether a person has previously been convicted of an MDLR offence.

Division 3 Commercial benefits penalty orders

Clause 123 Commercial benefits penalty orders

Subclause (1) enables a prosecutor or the CEO to seek a commercial benefits order, upon a court convicting a person of an MDLR offence.

Subclause (2) sets out what constitutes a commercial benefit order and how it is to be calculated.

Subclause (3) sets out the matters a court can have regard to, in estimating what the gross commercial benefit was or would have been received by the commission of the offence.

Subclause (4) complements subclause (3) by stipulating that a court is to disregard any costs, expenses or liabilities incurred by the person when estimating what the gross commercial benefit was or would have been received by the commission of the offence.

Subclause (5) provides that although a commercial benefits order is an amount up 3 times the estimated gross commercial benefit, a court can also impose a commercial benefits order for any amount less than that amount.

Division 4 Driver and vehicle licence sanctions

Clause 124 Power to affect driver's licence

Subclause (1) creates definitions of "MDLR offence by driver" and "specified" for the purposes of this clause.

Subclause (2) provides that a court may upon convicting a person of a MDLR offence disqualify the person from holding or obtaining a driver's licence and/or a vehicle licence for a period of up to 5 years.

Subclause (3) stipulates that an order made under this clause takes effect immediately or from a later specified date and can be made in relation to a driver's licence despite the class or classes of vehicle licence that was used in the commission of the offence.

Subclause (4) provides that any period of licence disqualification imposed under subclause (2) is to be concurrent with any other period in which the person's driver's licence is suspended or disqualified, unless the court orders that it be cumulative.

Subclause (5) places a requirement on a court to notify the CEO whenever a person is convicted of a MDLR offence. This is to ensure that a person driver's and/or vehicle licence records are amended to reflect the orders made by the court.

Subclause (6) provides that the provisions of this clause in regards to disqualifying a person's driver's and/or vehicle licence does not effect any of the matters mentioned at paragraphs (a), (b) and (c).

Clause 125 Power to affect vehicle licence

Subclause (1) creates definitions of "MDLR offence by vehicle licence holder" and "specified" for the purposes this clause.

Subclause (2) provides that a court may, in addition to convicting a person of a MDLR offence, order the person be disqualified from holding the vehicle licence for the vehicle, for a period of up to 5 years.

Subclause (3) provides that a court can also apply an order made under subclause (2) to an associate of the convicted person. This is to avoid the vehicle being licensed in an associate's name, thus avoiding the effects of the orders imposed by the court.

Subclause (4) provides that where a court considers that another person may be affected by an order made under subclause (2) it may summons the person to court to show cause as to why the order should not be made. This is to cater for situations where a vehicle is jointly owned by more than one person and the other owners may be unfairly affected by having the vehicle licence cancelled or disqualified.

Subclause (5) stipulates that an order made under this clause takes effect immediately or from a later specified date.

Subclause (6) provides that any period of disqualification imposed under subclause (2) is to be concurrent with any other period of disqualification for which a person is also disqualified from holding or obtaining the same vehicle licence, unless the court orders that it be cumulative.

Subclause (7) places a requirement on a court to notify the CEO whenever a person is convicted of a MDLR offence. This is to allow that CEO to give effect to the court's orders.

Subclause (8) provides that the provisions of this clause do not affect the operation of the *Fines Penalties and Infringement Notices Enforcement Act 1994*. In other words if a person is suspended from holding a vehicle licence due to unpaid fines, that suspension if not effected by any orders made under this clause.

Division 5 Supervisory intervention orders

Clause 126 Supervisory intervention orders

Subclause (1) creates a definition of "compliance report" for the purposes this clause.

Subclause (2) empowers a court to issue a supervisory intervention order, against a person found guilty of an MDLR offence.

Subclause (3) sets out the scope of a supervisory intervention order.

Subclause (4) sets out the scope of a compliance report.

Subclause (5) empowers a court to make compliance reports available to the public. The purpose of which is make other members of the transport industry aware of any orders that have been made against persons, whom they may employ or engage in the transport of goods.

Subclause (6) places an obligation on a court to only issue a supervisory intervention order where it is satisfied that the order is capable of improving a person's ability to comply with future mass, dimension or loading requirements.

Subclause (7) enables a court, via a supervisory intervention order, to suspend any penalties or sanctions imposed by the court as long as a person complies with any orders made by the court. In other words a court can issue a penalty to a person and then place it on hold on the condition the person complies with a supervisory intervention order. For example, the court may order that a person implements new training procedures for staff to follow when loading vehicles, to avoid any future MDLR offence being committed.

Subclause (8) provides the CEO or a person issued with a supervisory intervention order, with the ability to apply to a court to have the order revoked or amended.

Clause 127 Supervisory intervention order to be complied with

This clause creates an offence for a person to fail to comply with a supervisory intervention order.

Division 6 Prohibition orders

Clause 128 Prohibition orders

Subclause (1) empowers a court to issue a prohibition order.

Subclause (2) sets out the scope of a prohibition order.

Subclause (3) prohibits a court from making a prohibition order that prohibits a person from holding a vehicle or drivers licence as those powers are provided for under division 4 of the this part.

Subclause (4) provides that a court must not issue a prohibition order unless being satisfied that the conduct and offences committed by the person is such that it is appropriate for an order to be made.

Subclause (5) provides the CEO or a person issued with a prohibition order, with the ability to apply to a court to have the order revoked or amended.

Clause 129 Prohibition order to be complied with

This clause creates an offence for a person to fail to comply with a prohibition order.

Part 12 – Miscellaneous

Note – the provisions under this part have been transferred from sections 82 and 82A of the Road Traffic Act 1974 respectively, which will be repealed with the proclamation of this Bill.

Clause 130 Substitution of vehicle in certain circumstances

Subclause (1) creates a definition of “omnibus” for the purposes this clause.

Subclause (2) provides that subject to the CEO's consent, this clause permits an omnibus licence holder to use a substitute vehicle as an omnibus, whilst the vehicle is being repaired. For example, all Transperth buses must be licenced as omnibuses in order to carry members of the public, this clause allow a licence holder to continue to provide a service to the public when unexpected repairs occur to vehicles licenced as omnibuses.

Subclause (3) provides that the CEO is not to give consent under subclause (2) unless the licence holder pays the prescribed fee to use the substitute vehicle as an omnibus.

Clause 131 Motor vehicle pools and insurance

Subclause (1) provides that although a vehicle may be used in a car-pooling arrangement it does not affect the contract of insurance issued for that that vehicle. In other words this clause provides an exemption for the general requirement that vehicles used to carry passengers for hire or reward must pay a pay a higher insurance fee than those used for other purposes.

Subclause (2) sets out the circumstances that constitute a vehicle being used under a car-pooling arrangement.

Part 13 – Regulations

Note – all the provisions under this part have been transferred from part IX of the Road Traffic Act 1974, which deal with regulations made for the purpose of the “vehicle licensing provisions” of the Act, and which will be repealed with the proclamation of this Bill.

Clause 132 Regulations

Subclause (1) provides for the general regulating power for the Governor to make regulations under this Bill.

Subclause (2) sets out specific matters for which regulations can be made for the purpose of administering the provisions under this Bill.

Subclause (3) enables offences to be created under regulations for dealing with breaches of conditions imposed on the use of vehicles.

Subclause (4) provides that if regulations are made for the purposes of charging fees under the proposed Bill, and reference is made to “a reduction”. That reference is to also means a deferral as provided for under section 45(1)(f) and (2) of the *Interpretation Act 1984*.

Subclause (5) enables regulations to be made in relation to a reduction, waiver, refund or deferral of vehicle licence charges, in certain circumstances. For example, this clause provides for regulations to be made allow a vehicle licence to be issued at a reduced fee for certain classes of people, such as pensioners or charity organisations.

Clause 133 Exemptions from regulations about vehicle standards etc,

This clause enables regulations to be made for the CEO to grant exemptions in relation to vehicle requirements, prescribed under clause 132(2)(b).

Clause 134 Exemptions from regulations in emergencies

This clause enables regulations to be made allowing the Commissioner of Main Roads to exempt a vehicle from a mass, dimension or loading requirement in an emergency area.

Clause 135 Regulations about exemptions

Subclause (1) provides that reference to an exemption under subclause (2) means exemptions prescribed under clauses 133 and 134.

Subclause (2) sets out matters for which regulations can be made for the purpose of dealing with exemptions under clauses 133 and 134.

Clause 136 Schemes for optional number plates

Subclause (1) enables regulations to be made for the purpose of creating schemes under which the CEO issues “optional number plates” and sets out the nature of regulations that can be made. Optional numbers plates currently issued by the CEO include plates such as, personalised plates, sporting plates and custom plates.

Subclause (2) enables regulations to be made to specify the period for which a person has the right to hold an optional plate.

Subclause (3) set outs the terms in which schemes for the issue of optional plates can be operated.

Subclause (4) provides the power to create regulations to charge fees for optional plates in excess of the manufacturing and administration costs associated with the issue of optional plates.

Subclause (5) provides a general regulation power to create regulations that are necessary or convenient for the purpose of administering schemes for the issue of optional plates.

Clause 137 Regulations may refer to published documents

This clause provides that regulations can be made that include reference any text of any published documents and the effect of those regulations.

This may include documents such as nationally agreed vehicle standards such as the Australian Design Standards and other similar publications needed to administer certain functions under the Bill, such as the grant of vehicle licences.

Clause 138 Minister’s declarations that specified regulations do not apply to specific person or vehicles

This clause enables for regulations to be made that empowers the responsible Minister for the Bill to exempt a person or a vehicle from any of the requirements prescribed in regulations made under this Bill.

Part 14 – Transitional provisions

Division 1 Transitional provisions arising from certain amendments made to the *Road Traffic Act 1974* by the *Road Traffic Legislation Amendment Act 2011*

Clause 139 Terms used

This clause creates the definitions of “amending Act”, “commencement day” and “RT Act” for the purposes this part.

Clause 140 Application of the *Interpretation Act 1984*

This clause provides that any matters contained in this division do not affect the provisions of the *Interpretation Act 1984*.

Clause 141 Vehicle licences, applications

Subclause (1) provides the mechanism whereby all vehicle licences granted, renewed or transferred under the *Road Traffic Act 1974* will remain valid with the commencement of this Act.

Subclause (2) provides that any applications made for vehicle licences under section 17(1) of the *Road Traffic Act 1974* will continue to remain valid after the commencement of this Act.

Clause 142 Transfer of vehicle licences

This clause provides the mechanism whereby the various matters and steps associated with the transfer of vehicle licences under section 24 of the *Road Traffic Act 1974* will continue to have effect with the commencement of this Act.

Clause 143 Change of nominated owner

This clause provides that any applications made under section 24B(1) of the *Road Traffic Act 1974* will remain valid after the commencement of this Act.

Clause 144 Permits, etc., for unlicensed vehicles

This clause provides that any permits, number plates or notices issued under section 26 of the *Road Traffic Act 1974* will remain valid after the commencement of this Act.

Clause 145 Register of vehicle licenses

This clause provides that a register of vehicles under section 27(1) of the *Road Traffic Act 1974* which was in effect before the commencement of this is taken to be a register under section 14.

Clause 146 Minister may require vehicles to be inspected

This clause provides that any notice issued under section 29(1) of the *Road Traffic Act 1974* will continue to have effect after the commencement on this Act.

Clause 147 Overseas vehicles temporarily in Australia

Subclause (1) provides that any application made for vehicle licence under section 31 of the *Road Traffic Act 1974* will continue to have effect after the commencement on this Act. Subclause (2) provides that a licence granted for vehicle licence under section 31 of the *Road Traffic Act 1974* will continue to have effect after the commencement on this Act.

Subclause (3) provides that and approval to extend a vehicle licence without the payment of a fee under section 33 of the *Road Traffic Act 1974* will continue to have effect after the commencement on this Act.

Subclause (4) provides that a registration label issued under section 38(1) of the *Road Traffic Act 1974* will continue to have effect after the commencement on this Act.

Subclause (5) provides that a temporary number plates issued under section 39(2) of the *Road Traffic Act 1974* to an overseas vehicle will continue to have effect after the commencement on this Act.

Clause 148 Vehicle examiners and inspections stations

Subclause (1) provides an authority granted to a person to examine and test vehicles under regulation 3A (1) (a) *Road Traffic (Licensing) Regulations 1975* will continue to have effect after the commencement on this Act.

Subclause (2) provides an authority to establish an inspection station under regulation 3A (1) (b) *Road Traffic (Licensing) Regulations 1975* will continue to have effect after the commencement on this Act.

Subclause (3) provides clarification as to the application of subclauses (1) and (2).

Clause 149 Mass requirements for class 3 vehicles used in Harvest Mass Management Scheme

This clause provides that a notice under regulation 33 of the Road Traffic (Vehicle Standards) Regulations 2002, applying to vehicles operating under the Harvest Mass Management Scheme, will be taken to be an order under clause 34(1)(a).

Amendments to the Harvest Mass Management Scheme and future schemes are catered for under clause 35.

The Harvest Mass Management Scheme is operated by Grain Receivers and applies only to grain transported from a paddock to a grain receival facility, and has been developed to assist Transport Operators manage mass variations associated with the natural changes in the density of grain when it is loaded from paddocks.

This clause provides for the continuation of the Commissioner of Main Roads approval that grants persons operating under the scheme with an extra 10% mass allowance to assist in the movement of grains from paddock to receival facilities.

The intention is that this scheme will continue to operate into the future, providing that parties continue to comply with the terms and conditions imposed under the scheme.

Clause 150 Transitional regulations

This clause enables transitional regulations to be made so that any written laws, including regulations made under this Act, which applied before the commencement of this Act can continue to affect after the commencement on this Act.