

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the Road Transport (General) Act 2005 and the Road Transport (Mass, Loading and Access) Regulation 2005 made under that Act to provide for:

- (a) compliance by vehicle operators and drivers with conditions relating to access to and use of roads to be monitored by intelligent transport systems, and
- (b) the collection, use and disclosure of information obtained by the use of such intelligent transport systems.

The provisions of the Bill generally reflect the proposals contained in the National Transport Commission's national model Bill relating to intelligent access programs.

#### Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

#### Explanatory note page 2

#### Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

#### Explanatory note

Clause 3 is a formal provision that gives effect to the amendments to the Road Transport (General) Act 2005 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Road Transport (Mass, Loading and Access) Regulation 2005 set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

#### Schedule 1 Amendment of Road Transport (General) Act 2005

Schedule 1 [1] inserts proposed section 11A. The proposed section enables regulations to be made in relation to intelligent transport systems that are required or permitted to be used by or under a road transport law or any exemption, authority or condition given or imposed by or under any such law. The regulation-making power covers areas including conditions, the regulation or prohibition of the collection, storage, use and disclosure of information obtained by the use of such a system or for the purposes of a system, the keeping of records, tampering with such systems and the certification and functions of providers and auditors of such systems. Regulations may also be made with respect to evidentiary matters relating to information obtained from such systems and other related matters. An intelligent transport system is a system involving the use of electronic or other technology that has the capacity and capability to monitor, collect, store, display, analyse, transmit or report information relating to vehicles, drivers, operators or other persons involved in road transport.

Schedule 1 [2] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

#### Schedule 2 Amendment of Road Transport (Mass, Loading and Access) Regulation 2005

#### Permit and notice conditions

The Road Transport (Mass, Loading and Access) Regulation 2005 (the Regulation) regulates mass and loading of heavy vehicles and combinations and access conditions to roads for heavy vehicles and combinations. The Regulation sets out mass, loading and dimension requirements, as well as access requirements, but also provides for exemptions from certain requirements on conditions. Exemptions are given under the Regulation in the form of a notice published in the Gazette or a permit issued by the Roads and Traffic Authority (the RTA). The amendments made to the Regulation by the Schedule expressly provide for each notice and permit under

the Regulation, that relates to heavy vehicles, to be able to be made subject to a condition that a vehicle to which it applies, and any driver of the vehicle, participate

Explanatory note page 3

Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

Explanatory note

in a program involving the use of an intelligent transport system to monitor compliance with the notice or permit.

Schedule 2 [2] amends clause 14 to enable the condition to be imposed on a notice applying to Class 1 vehicles.

Schedule 2 [3] amends clause 16 to enable the condition to be imposed on a permit applying to Class 1 vehicles.

Schedule 2 [4] amends clause 22 to enable the condition to be imposed on a notice or permit applying to Class 2 vehicles.

Schedule 2 [5] amends clause 25 to enable the condition to be imposed on a notice applying to Class 3 vehicles.

Schedule 2 [6] amends clause 27 to enable the condition to be imposed on a permit applying to Class 3 vehicles.

Schedule 2 [7] amends clause 36 to enable the condition to be imposed on a permit applying to certain heavy vehicles.

Operation of intelligent access programs

The Schedule also sets out provisions for the operation of intelligent monitoring systems, including systems required under concessions under the Regulation or the Road Transport (General) Act 2005.

Schedule 2 [1] amends the object of the Regulation to reflect the new provisions.

Schedule 2 [8] inserts proposed Part 6A (clauses 72A–72ZF). The proposed Part contains the following provisions:

Division 1 Preliminary

Proposed clause 72A applies the proposed Part to operators and drivers of vehicles, and vehicles, that are subject to permits, notices or exemptions under the Regulation or under the Road Transport (General) Act 2005, to which are attached conditions requiring participation in a program involving the use of an intelligent transport system to monitor compliance with the conditions of the notice, permit or exemption.

Proposed clause 72B defines expressions used in the proposed Part, including concession (a notice, permit or exemption under the Regulation or an exemption under the Road Transport (General) Act 2005), intelligent access condition (a condition requiring participation in a program involving the use of an intelligent transport system to monitor compliance with the conditions of the notice, permit or exemption), intelligent access system (an intelligent transport system that is installed in or in relation to a vehicle for the purposes of an intelligent access condition) and personal information (information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion).

Explanatory note page 4

Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

Explanatory note

Division 2 Intelligent access programs

Proposed clause 72C sets out matters that may be specified in an intelligent access condition, including the kinds of intelligent transport systems, service providers and matters to be monitored. Systems and service providers may not be specified unless certified by Transport Certification Australia Ltd (TCA). Each intelligent transport system must use the spatial data set issued by TCA (the intelligent access map).

Proposed clause 72D confers on TCA functions relating to the management of the certification and auditing of intelligent access systems on behalf of the RTA.

Division 3 Operation of intelligent access systems

Proposed clause 72E requires the operator of a vehicle to notify the RTA immediately of any malfunction in an intelligent access system and also requires the driver of a vehicle to notify the operator of the vehicle of any such malfunction.

Proposed clause 72F makes it an offence to engage in conduct that results in an intelligent access system being altered, installed or used with the intention that the system will fail to collect, store or report intelligent access information or fail to do so correctly, or to be negligent or reckless as to whether the system will fail to do so.

Proposed clause 72G requires a service provider or TCA to report any suspected offence under proposed clause 72F (a tampering offence) to the RTA. The proposed clause also makes it an offence for a service provider or TCA to disclose to any other person any knowledge of or suspicion about a tampering offence.

Proposed clause 72H requires an auditor of an intelligent access system to report any suspected tampering offence to the RTA (if an operator or driver is involved) or TCA (if a service provider is involved). An auditor must also report any other suspected contravention of the proposed Part by a service provider to TCA.

Proposed clause 72I requires a service provider to make a non-compliance report about an operator to the RTA if the service provider detects or knows of a breach of a concession or an electronically generated report indicates apparent tampering.

Proposed clause 72J makes it an offence for an operator of a vehicle to knowingly give false or misleading information, or knowingly omit anything that makes information false or misleading in a material particular, that is relevant to the operation of the vehicle to a service provider with whom the operator has an agreement for the provision of an intelligent access system. The proposed clause also makes it an offence if the operator of a vehicle knowingly gives or omits such information or a thing intending the service provider to enter into such an agreement with the operator.

Proposed clause 72K makes it an offence for a service provider to knowingly give false or misleading information, or knowingly omit anything that makes information false or misleading, in a material particular that is relevant to the operation of the vehicle to the RTA or TCA.

Explanatory note page 5

Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

Explanatory note

Division 4 Collection, storage, use and disclosure of intelligent access information

Proposed clause 72L makes it clear that the provisions of the proposed Division are in addition to any other law.

Proposed clause 72M requires the operator of a vehicle to inform the driver before the driver begins a journey in the vehicle that the vehicle will be monitored by a service provider and of matters relating to the information to be collected.

Proposed clause 72N prohibits an operator from using or disclosing any intelligent access information about a driver that is obtained when the driver is not at work.

Proposed clause 72O contains offences about the collection, storage, use or disclosure of intelligent access information by service providers. A service provider:

(a) must not collect, store, use or disclose any such information otherwise than as required or permitted under the Regulation or any other law, and

(b) must take reasonable steps to ensure that information is necessary for or is directly related to the purpose for which it was collected or a directly related purpose, not excessive for that purpose and is accurate, up-to-date, complete and not misleading, and

(c) must keep non-compliance reports, and related data, for at least 4 years, and

(d) must take reasonable steps to destroy any other information after 1 year.

Proposed clause 72P permits service providers to collect, store and use intelligent access information for compliance purposes. Service providers may disclose the

information for compliance purposes and with the consent of the person concerned. They may disclose information about an operator of a vehicle (other than a non-compliance report) to the operator or to another person with the consent of the operator (if it does not enable another person to be identified).

Proposed clause 72Q contains offences about the collection, storage, use or disclosure of intelligent access information by TCA. TCA:

(a) must not collect, store, use or disclose any such information otherwise than as required or permitted under the Regulation or any other law, and

(b) must take reasonable steps to ensure that information is accurate, up-to-date, complete and not misleading.

Proposed clause 72R permits TCA to collect, store, use and disclose intelligent access information for the performance of its functions and compliance purposes, and, with consent, for research purposes. TCA may disclose the information with the consent of the person concerned. TCA may disclose information about an operator of a vehicle to the operator, an auditor or the RTA. Information about breaches by a service provider may be disclosed only to an auditor or the RTA.

Proposed clause 72S contains offences about the collection, storage, use or disclosure of intelligent access information by auditors. An auditor:

(a) must not collect, store, use or disclose any such information otherwise than as required or permitted under the Regulation or any other law, and

Explanatory note page 6

Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

Explanatory note

(b) must take reasonable steps to ensure that information is necessary for the purpose for which it was collected or a directly related purpose, not excessive for that purpose, accurate, up-to-date, complete and not misleading.

Proposed clause 72T permits an auditor to collect, store, use and disclose intelligent access information for the performance of its functions and to report breaches and tampering offences. An auditor may collect information for the purposes of an intelligent access audit of a service provider. An auditor may disclose information about an operator of a vehicle to the operator, TCA or the RTA or with the consent of the person concerned. Information about breaches or tampering offences may be disclosed only to TCA or the RTA.

Proposed clause 72U prohibits TCA or an auditor from using or disclosing intelligent access information unless reasonable steps are first taken to ensure that it is accurate, up-to-date, complete and not misleading.

Proposed clause 72V requires service providers, TCA and auditors to take reasonable steps to protect intelligent access information collected by them. In addition, TCA and an auditor must destroy any information after 1 year unless it is required as evidence in proceedings.

Proposed clause 72W requires service providers and TCA to prepare and make publicly available a policy on the management of information. It also requires service providers, TCA and auditors to take reasonable steps, at the request of an individual, to provide information about information held in relation to the individual and to give the individual access to personal information held about the individual. This does not apply to information about non-compliance or tampering reports.

Proposed clause 72X requires service providers, TCA and auditors to make records about intelligent access information they use or disclose within 5 business days of the use or disclosure. In addition, a service provider is to keep a record of intelligent access information it collects.

Proposed clause 72Y enables an individual to request a service provider, TCA or an auditor to alter personal information held about the individual and requires appropriate alterations to be made to ensure information is accurate, up-to-date, complete and not misleading. A refusal of such a request is to be reviewed by TCA

(if the decision is made by a service provider or an auditor) or the RTA (if the decision is made by TCA). The reviewing body may direct information to be altered.  
Division 5 General

Proposed clause 72Z provides for the application, to intelligent access information, of a provision of the Workplace Surveillance Act 2005 which limits the purposes for which surveillance records made at work can be used, while also providing for the collection, use, storage and disclosure of that information in accordance with the proposed Part.

Proposed clause 72ZA sets out the records that must be kept by TCA of transactions with the RTA, service providers and auditors. It also requires auditors to keep and retain records of their transactions with service providers and TCA.

Explanatory note page 7

Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

Explanatory note

Proposed clause 72ZB enables auditors to carry out intelligent access audits and requires service providers to give auditors access to relevant records kept under the proposed Part.

Proposed clause 72ZC is an evidentiary provision that sets out matters about which prima facie evidence may be given in any proceedings by way of a certificate issued by the RTA. Those matters include evidence about intelligent access conditions, operators of vehicles, malfunctions and non-compliance reports.

Proposed clause 72ZD is an evidentiary provision that enables prima facie evidence about the intelligent access map, and the certification and appointment of service providers and auditors, to be given in any proceedings by way of a certificate issued by TCA.

Proposed clause 72ZE sets out evidentiary presumptions that are to apply (unless evidence sufficient to raise doubt about them is adduced) in relation to the intelligent access map, the operation of equipment and software in an intelligent access system, the position of a vehicle and the operation of an intelligent access system.

Proposed clause 72ZF makes non-compliance reports and tampering reports admissible in evidence and prima facie evidence of the facts stated in them and establishes a presumption that they contain a correct report of information generated and recorded by the intelligent access system concerned.

Schedule 2 [9] inserts a definition.