



New South Wales

Road Transport Bill 2013

Explanatory note

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

The *Road Transport Legislation (Repeal and Amendment) Bill 2013* and *Road Transport (Statutory Rules) Bill 2013* are cognate with this Bill.

Overview of Bill

The object of this Bill is to consolidate in one Act most of the provisions of the existing Acts dealing with road transport in New South Wales.

Summary of the operation of this Bill and cognate Bills

Background

Before 1999, the road transport legislation of New South Wales was primarily located in the former *Traffic Act 1909*. In the 1990s, the National Transport Commission began to develop a series of modules for national model road transport legislation. Each module dealt with a different and discrete topic such as heavy vehicle charges, driver licensing, vehicle operations and compliance and enforcement.

The only module that remains to be completed is the proposed *Heavy Vehicle National Law*, which the States and Territories intend to adopt once the final version of the Law is settled and enacted by the Queensland Parliament in its capacity as the lead jurisdiction for the National Law. This is expected to occur sometime in 2013.

In order to expedite the incorporation of the national model road transport legislation into New South Wales law, the modules developed by the National Transport Commission were progressively adopted in New South Wales by enacting a new Act to give effect to a module as it was completed. As part of this process, the *Traffic Act 1909* was initially amended to repeal provisions that were incorporated into each new Act. The *Traffic Act 1909* was eventually repealed in its entirety in December 1999.

As a result, there are currently 4 separate road transport Acts dealing with different aspects of the road transport law of New South Wales. These Acts are:

- (a) the *Road Transport (Driver Licensing) Act 1998* (which provides for the licensing of drivers and the regulation of interstate and foreign drivers), and
- (b) the *Road Transport (Vehicle Registration) Act 1997* (which provides for the registration of vehicles and the management of written-off vehicles), and
- (c) the *Road Transport (Safety and Traffic Management) Act 1999* (which provides for rules and other requirements concerning the safe use of roads by road users and vehicles, including provisions regulating drivers who are under the influence of alcohol or other drugs), and
- (d) the *Road Transport (General) Act 2005* (which provides for compliance and enforcement provisions in connection with road transport legislation generally and also deals with the management of heavy vehicles, their mass, dimensions and loads and their drivers).

This Bill

This Bill re-enacts in one Act (with some modifications) the provisions of the *Road Transport (Driver Licensing) Act 1998*, *Road Transport (Vehicle Registration) Act 1997* and *Road Transport (Safety and Traffic Management) Act 1999* and the compliance and enforcement provisions of the *Road Transport (General) Act 2005* applicable to the road transport legislation generally.

This Bill also provides for the existing *Road Rules 2008*, *Road Transport (Driver Licensing) Regulation 2008* and *Road Transport (Vehicle Registration) Regulation 2007* to continue in force as Rules or Regulations made under the proposed Act.

The cognate Bills

There are 2 Bills which are cognate with this Bill: the *Road Transport Legislation (Repeal and Amendment) Bill 2013* and *Road Transport (Statutory Rules) Bill 2013*.

The *Road Transport Legislation (Repeal and Amendment) Bill 2013*:

- (a) repeals the *Road Transport (Driver Licensing) Act 1998*, *Road Transport (Vehicle Registration) Act 1997*, *Road Transport (Safety and Traffic*

Management) Act 1999 and Road Transport (Safety and Traffic Management) Regulation 1999, and

- (b) renames the *Road Transport (General) Act 2005* as the *Road Transport (Vehicle and Driver Management) Act 2005* and confines its operation to mass, dimension, load restraint and access requirements for heavy vehicles and other vehicles and to the regulation of certain other matters relating to heavy vehicles (such as driver fatigue management and heavy vehicle speeding compliance) pending the future adoption of the proposed *Heavy Vehicle National Law* in New South Wales, and
- (c) makes amendments to certain other Acts and statutory rules consequential on the enactment of the proposed Act and the renaming and amendment of the *Road Transport (General) Act 2005*.

The *Road Transport (Statutory Rules) Bill 2013*:

- (a) makes amendments to the statutory rules under the existing road transport legislation that are continued in force as statutory rules under the proposed Act that are consequential on the enactment of that proposed Act and the proposed *Road Transport Legislation (Repeal and Amendment) Act 2013*, and
- (b) renames the *Road Transport (General) Regulation 2005* as the *Road Transport (Vehicle and Driver Management) Regulation 2005* and makes other amendments to confine its operation as a consequence of the renaming and amendment of the *Road Transport (General) Act 2005* by the proposed *Road Transport Legislation (Repeal and Amendment) Act 2013*, and
- (c) sets out the terms of the proposed *Road Transport (General) Regulation 2013*, which will be taken to be a Regulation made under the proposed Act.

Comparison of this Bill with existing law

For the purposes of comparison, a number of provisions of this Bill contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of Acts and statutory rules (as in force immediately before the enactment of the proposed Act) that currently form part of the road transport legislation and are to be re-enacted. Abbreviations in these notes include the following:

- (a) *DL Act* is a reference to the *Road Transport (Driver Licensing) Act 1998*,
- (b) *Gen Act* is a reference to the *Road Transport (General) Act 2005*,
- (c) *Gen Reg* is a reference to the *Road Transport (General) Regulation 2005*,
- (d) *STM Act* is a reference to the *Road Transport (Safety and Traffic Management) Act 1999*,
- (e) *STM Reg* is a reference to the *Road Transport (Safety and Traffic Management) Regulation 1999*,
- (f) *VR Act* is a reference to the *Road Transport (Vehicle Registration) Act 1997*.

Except where otherwise indicated in this explanatory note, this Bill substantially re-enacts provisions of these existing Acts and statutory rules.

If there are common or similar provisions located in 2 or more existing Acts, they have (wherever possible) been consolidated into a single set of provisions of general application.

Also, common definitions have been collected in clause 4 of the Bill and applied generally. If there have been differences in the definitions of the same terms in existing Acts, generally the definition of the term in the *Road Transport (General) Act 2005* has been used in preference to that in another Act.

Outline of provisions

Chapter 1 Preliminary

Part 1.1 Introductory

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.

Clause 3 sets out the objects of the proposed Act.

Part 1.2 Interpretation

Clause 4 defines certain words, terms and expressions used in the proposed Act, including the following.

The term *heavy vehicle* is defined to mean a motor vehicle or trailer that has a GVM of more than 4.5 tonnes, and to include:

- (a) a special purpose vehicle that has such a GVM, and
- (b) a passenger-carrying vehicle that has such a GVM.

The term *the Authority* has been defined to mean Roads and Maritime Services.

The term *the statutory rules* is defined to mean the regulations and rules made by the Governor under the proposed Act.

Clause 5 provides that references in the proposed Act (other than in Part 1.2) to a *road* are to be read as including a reference to a *road related area* unless otherwise expressly stated.

Clause 6 defines the term *road transport legislation* to mean the following:

- (a) the proposed Act and the statutory rules made under the proposed Act,
- (b) the *Road Transport (Vehicle and Driver Management) Act 2005* (which is the new name of the existing *Road Transport (General) Act 2005* as amended by the *Road Transport Legislation (Repeal and Amendment) Bill 2013*) and the regulations under that Act,

- (c) the *Motor Vehicles Taxation Act 1988* and the regulations under that Act,
- (d) any other Act or statutory rule made under any other Act (or any provision of such an Act or statutory rule) that is prescribed by the statutory rules.

Clause 7 defines the terms *registered* and *registration* in relation to a vehicle.

Clause 8 defines the terms *registered operator* and *Australian registered operator* in relation to a vehicle.

Clause 9 defines the terms *first offence* and *second or subsequent offence*.

Clause 10 defines the term *responsible person* for a vehicle.

Clause 11 provides for how the rights, liabilities and obligations of multiple responsible persons for a vehicle are to be determined.

Clause 12 enables the statutory rules to apply the *Acts Interpretation Act 1901* of the Commonwealth to the interpretation of provisions of the proposed Act and the statutory rules where appropriate. This may be necessary from time to time where the provisions are based on model laws prepared by the National Transport Commission.

Clause 13 provides that notes included in the proposed Act do not form part of the proposed Act.

Part 1.3 Application

Division 1 General

Division 1:

- (a) sets out the interpretative principles to be applied in determining the relationship between the road transport legislation and other written and unwritten laws of the State, and
- (b) enables the statutory rules to provide for provisions of the *Roads Act 1993* not to apply to vehicles, persons or animals that are regulated by the road transport legislation, and
- (c) ensures that the Crown in all of its capacities is bound by the proposed Act to the extent that the legislative powers of the New South Wales Parliament permit.

Division 2 Alteration of scope of operation of road transport legislation

Division 2 enables the Minister, by declaratory order published in the Gazette, to include areas in, or exclude areas from, the scope of the road transport legislation and to exclude vehicles, persons and animals from the operation of that legislation. However, the Minister is required to consult with the Minister administering the *Motor Accidents Compensation Act 1999* before making such a declaration in respect of Chapter 4 (Vehicle registration) or the statutory rules made for the Chapter.

The Division also enables the statutory rules to exclude vehicles, persons and animals from the operation of the proposed Act and the statutory rules.

The Authority will be required to maintain a database of orders and declarations made under the Division.

Chapter 2 Statutory rules

Chapter 2 enables the Governor to make regulations and rules (which are referred to in the proposed Act collectively as *the statutory rules*) for the purposes of the proposed Act. Examples of statutory rule-making powers are listed in Schedule 1 to the proposed Act. The statutory rules may also create offences punishable by a penalty not exceeding 34 penalty units (currently, \$3,740).

Chapter 3 Driver licensing

Part 3.1 General functions of Authority in relation to driver licensing

Part 3.1 sets out the general functions of the Authority in relation to the licensing of drivers in New South Wales and the maintenance of the NSW driver licence register and NSW demerit points register. The Part limits the power of the Authority to issue NSW driver licences to residents of the State who are eligible to be issued with, or apply for, such a licence. The holders of driver licences from other States or the Territories, or from a foreign country, must first surrender that licence before being issued with a NSW driver licence.

The Part also provides for the mutual recognition by the Authority of driver licences issued by another State or a Territory. The Authority is required to transmit certain information concerning driving offences committed in New South Wales to the driver licensing authority of the State or Territory in which the licence was issued or, if the offender is unlicensed, the driver licensing authority of the State or Territory in which the offender is resident.

Part 3.2 Demerit points system

Division 1 NSW demerit points register and offences

Division 1 requires the Authority to maintain the NSW demerit points register. It also provides for the kinds of offences for which demerit points may be incurred.

Division 2 Consequences for unrestricted licence holders who incur demerit points

Division 2 requires the Authority to give the holder of an unrestricted driver licence a notice of licence suspension if the holder incurs 13 or more demerit points (or, in the case of a professional driver, 14 or more demerit points) within the 3-year period

ending on the day on which the person last committed an offence for which demerit points have been recorded against the person. An *unrestricted driver licence* is defined in proposed section 4 (1) to mean a driver licence other than a learner licence or provisional licence. The length of the licence suspension varies depending on the number of demerit points incurred. The Division also enables the Authority to give the holder of an unrestricted driver licence a notice of licence ineligibility as an alternative to a suspension notice.

The Division enables a driver who has been served with a notice of licence suspension or licence ineligibility to elect, in certain circumstances, to be of good behaviour as an alternative to having the driver's licence suspended or being ineligible to apply for a licence.

The Division also provides for the circumstances when demerit points incurred by a person may be deleted from the NSW demerit points register.

The provisions of the Division are based on the provisions of Subdivision 2 of Division 2 of Part 2 of the *Road Transport (Driver Licensing) Act 1998*. The new provisions have the same substantive effect as the current provisions. However, the opportunity has been taken to reorganise and collect common provisions together to avoid the duplication in the current provisions.

Division 3 Consequences for learner or provisional licence holders who incur demerit points

Division 3 enables the Authority to give the holder of a learner or provisional driver licence a notice of licence suspension, licence cancellation or licence ineligibility if the holder incurs the threshold number of demerit points for the kind of licence concerned within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person. The *threshold number of demerit points* is defined in proposed section 4 (1) to mean:

- (a) for the holder of a learner licence or a provisional P1 licence—4 or more demerit points, and
- (b) for the holder of a provisional P2 licence—7 or more demerit points.

Division 4 General matters relating to demerit points

Division 4 sets out general provisions concerning the determination of demerit points (including in the case of combined licences).

Part 3.3 Interlock devices

Part 3.3 provides for the approval of interlock devices for use in motor vehicles for the purposes of the proposed Act and the approval of interlock installers and service providers. An *interlock device* is a device designed to analyse a breath sample for the presence of alcohol and prevent a motor vehicle from being started if it detects more than a certain concentration of alcohol. The Part also enables statutory rules to be made with respect to the use of such devices.

Division 2 of Part 7.4 of the proposed Act makes provision for the use of approved interlock devices as an alternative to licence disqualification for certain traffic offences.

Part 3.4 Offences concerning driver licensing

Division 1 Unlawfully obtaining or using licences

Division 1 makes each of the following offences:

- (a) obtaining a driver licence by false pretences,
- (b) possessing an Australian driver licence without lawful authority or excuse,
- (c) altering or producing a driver licence in a way that is calculated to deceive, forging a driver licence or fraudulently lending a driver licence to another person.

The Division enables a police officer, or a person authorised in writing by the Authority, to seize licences that are being used or possessed unlawfully. It also enables the officer or authorised person to obtain a sample of a person's signature to ascertain whether a licence that is presented is genuine.

Division 2 Driving without appropriate licence

Division 2 makes it an offence for a person to drive a motor vehicle while unlicensed or to employ or permit an unlicensed driver to drive a motor vehicle. The Division also makes it an offence for a person to drive a motor vehicle (or apply for a driver licence) while disqualified or if the person's driver licence has been cancelled or suspended.

Part 3.5 Protection of stored photographs

Part 3.5 sets out provisions regulating the keeping, use and release of photographs taken by or provided to the Authority in connection with the road transport legislation and certain other legislation.

Part 3.6 Other provisions relating to driver licensing

Part 3.6 authorises the Authority to refuse to issue or renew a driver licence without an appropriate photograph being taken or other identity information being provided on request.

The Part also:

- (a) enables the Authority to cancel or suspend a driver licence for speeding offences of a kind prescribed by the statutory rules, and
- (b) provides that a person cannot apply for another driver licence if the person's licence expires during a period of licence suspension, and

- (c) enables the Authority to request information from a person who claims to be a professional driver for the purpose of determining the demerit point threshold for the person.

Chapter 4 Vehicle registration

Part 4.1 Registration system for vehicles

Division 1 Functions and powers of Authority

Division 1 sets out the general powers and other functions of the Authority in relation to the registration of registrable vehicles in New South Wales. A *registrable vehicle* is defined in proposed section 4 (1) to mean:

- (a) any motor vehicle, or
- (b) any trailer, or
- (c) any other vehicle prescribed by the statutory rules for the purposes of the definition.

Division 2 NSW registrable vehicles register

Division 2 requires the Authority to maintain a register of registrable vehicles (called the *NSW registrable vehicles register*). The Division also makes it clear that the Authority cannot register a registrable vehicle unless satisfied that its garage address is in New South Wales.

Division 3 Devices, plates and documents

Division 3 enables the statutory rules to make provision with respect to the issuing, use, transfer, replacement and surrender of special number-plates for registrable vehicles. The Division also makes it clear that any devices, plates or documents issued by the Authority for the purpose of authorising the use of a registrable vehicle remain the property of the Authority.

Part 4.2 Offences concerning vehicle registration

Division 1 General offences

Division 1 makes each of the following an offence:

- (a) using an unregistered registrable vehicle on a road,
- (b) obtaining registration or an unregistered vehicle permit by dishonest means or possessing a device, plate or document obtained by such means without lawful authority or excuse,
- (c) a registered operator of a registrable vehicle failing to comply with certain obligations in connection with its registration.

The Division substantially re-enacts (with one modification) the provisions of sections 18–21A of the *Road Transport (Vehicle Registration) Act 1997*. The provisions of section 21 (Obligations of registered operators) have been re-enacted so as to make it clear that a failure to comply with the obligations imposed is an offence punishable by 20 penalty units (currently, \$2,200).

Division 2 Offences involving interstate number-plates and vehicles

Division 2 makes each of the following an offence:

- (a) a licensed motor dealer, without the approval of the Authority, causing, permitting or allowing an interstate number-plate to be affixed to a registrable vehicle in New South Wales,
- (b) a corporation causing, permitting or allowing an interstate registered vehicle owned by the corporation for at least 90 days to be used on a road in New South Wales,
- (c) a person failing to comply with directions given by the Authority or a police officer to provide documentation concerning an interstate registered vehicle.

An *interstate registered vehicle* is a vehicle that is registered in another State or a Territory.

Part 4.3 Defective vehicles

Part 4.3 enables a police officer, or the Authority, to inspect a registrable vehicle (whether or not on a road) for the purpose of deciding its identity, condition or the status (whether in this jurisdiction or another jurisdiction) of any registration or permit relating to the vehicle. It also enables warning and defect notices to be issued, and conditions to be imposed or the use of a vehicle to be prohibited, if it is defective. It will be an offence for a vehicle to be used contrary to any such conditions or prohibition.

The Part makes it an offence for a person to use (or cause or permit the use of) a heavy motor vehicle on a road if it is dangerously defective. A *heavy motor vehicle* is a motor vehicle that has a GVM of more than 12 tonnes.

Part 4.4 Powers in relation to registrable vehicles

Part 4.4 enables a police officer to seize an unregistered registrable vehicle that is being used on a road and also enables police officers and other authorised persons to seize number-plates that are attached to a vehicle whose registration has expired (for at least 15 days) or been cancelled.

The Part also enables the Authority to enter any premises in which the business of carrying out repairs to registrable vehicles damaged as a result of accidents is ordinarily carried on and carrying out inspections to see whether a vehicle in such premises complies with its applicable vehicle standards.

Part 4.5 Written-off vehicles

Division 1 Preliminary

Division 1 defines words, terms and expressions used in Part 4.5.

Division 2 Restrictions on registration of certain written-off vehicles

Division 2 requires the Authority to maintain a register of written-off vehicles (called the *NSW written-off vehicles register*) that records information about vehicles that the Authority has reason to believe are written-off vehicles or were previously written-off vehicles but which have since been repaired and then registered.

The Division requires the Authority not to register, renew or transfer the registration of any vehicle (or if the vehicle is registered, the Authority must cancel the registration of the vehicle) if its vehicle identifier is the same as the vehicle identifier of a NSW written-off vehicle or an interstate written-off vehicle unless the vehicle is the subject of an authorisation to repair issued by the Authority under the Division.

Division 3 Assessment of damaged vehicles

Division 3 sets out procedures, notifications and other requirements in connection with the assessment of damage to certain vehicles.

Division 4 General

Division 4 contains miscellaneous provisions concerning the issuing of certificates of compliance by licensed repairers of vehicles, access to and use of the NSW written-off vehicle register, statutory rules for the purposes of Part 4.5 and certificate evidence.

Part 4.6 Other provisions relating to vehicle registration

Part 4.6 provides that an unregistered registrable vehicle in respect of which an unregistered vehicle permit issued by the Authority is in force is taken for the purposes of the proposed Act or any other Act relating to the registration or licensing of vehicles to be a registered vehicle. It also provides for who is required to pay registration fees in relation to a vehicle owned by the Crown or a NSW Government agency.

Chapter 5 Safety and traffic management

Part 5.1 Alcohol and other drug use

Division 1 Interpretation

Division 1 defines words, terms and expressions used in Part 5.1. It also provides for how alcohol concentrations may be measured for the purposes of the proposed Act.

The Division re-enacts (with some modification) the provisions of sections 8, 8A and 8B of the *Road Transport (Safety and Traffic Management) Act 1999*. In particular, the definition of *special category driver* in proposed section 107 makes it clear that the holder of an expired learner licence or provisional licence will be treated as a special category driver for the purposes of Part 5.1 regardless of how long the licence has been expired. A person who holds any other kind of expired driver licence will not be treated as being a special category driver unless the licence has been expired for more than 6 months.

Division 2 Offences involving alcohol or other drugs

Division 2 makes each of the following offences:

- (a) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while having a particular prescribed concentration of alcohol present in the person's breath or blood,
- (b) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while having a prescribed illicit drug present in the person's oral fluid, blood or urine,
- (c) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while having morphine or cocaine present in the person's blood or urine,
- (d) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while under the influence of alcohol or any other drug.

Schedule 3 sets out provisions relating to the procedures for, and the use of evidence obtained from, testing for alcohol or other drug use by drivers and other road users.

The Division also permits a police officer to detain a vehicle in respect of which certain offences against the Division have been committed.

Part 5.2 Speeding and other dangerous driving

Division 1 Speeding and other dangerous driving offences

Division 1 makes each of the following offences:

- (a) organising, promoting or taking part in any of the following without the written approval of the Commissioner of Police for the race, attempt or trial concerned:
 - (i) any race between vehicles on a road,
 - (ii) any attempt to break any vehicle speed record on a road,
 - (iii) any trial of the speed of a vehicle on a road,
 - (iv) any competitive trial designed to test the skill of any vehicle driver or the reliability or mechanical condition of any vehicle on a road,
- (b) operating a motor vehicle on a road in such a manner as to cause the vehicle to undergo sustained loss of traction by one or more of the driving wheels (or, in the case of a motor cycle, the driving wheel) of the vehicle,
- (c) driving a motor vehicle on a road negligently, furiously or recklessly or at a speed or in a manner that is dangerous to the public,
- (d) driving a motor vehicle on a road in a manner that is menacing to another person.

Division 2 Speed measuring evasion articles

Division 2 makes each of the following offences:

- (a) selling or offering for sale, or purchasing, a prohibited speed measuring evasion article,
- (b) driving a motor vehicle, or causing a motor vehicle or trailer to stand, on a road if a prohibited speed measuring evasion article is fitted or applied to, or carried in, the vehicle or trailer.

The Division enables police officers and officers of the Authority to remove (or require the surrender of) prohibited speed measuring evasion articles in certain circumstances. It also provides for the forfeiture to the Crown of such articles in certain circumstances.

Part 5.3 Traffic control and monitoring

Division 1 Interpretation

Division 1 defines words, terms and expressions used in Part 5.3.

In particular, the term *prescribed traffic control device* is defined to mean a sign, signal, marking, structure or other device to direct or warn traffic on a road (or part of a road) that is prescribed by the statutory rules for the purposes of the definition.

The term *speeding offence* is defined to mean an offence against the proposed Act or the statutory rules of failing to obey a speed limit (including an average speed limit calculated in accordance with Division 3), and to include:

- (a) an offence against regulations made for the purposes of section 11C of the *Road Transport (Vehicle and Driver Management) Act 2005* (being regulations concerning heavy vehicle speeding compliance), and
- (b) a speed limiter offence (being an offence against proposed section 162).

Division 2 Use of prescribed traffic control devices

Division 2 specifies the circumstances in which it is lawful for a prescribed traffic control device to be installed, displayed, interfered with, altered or removed. A person has appropriate authority to do so if:

- (a) the person is a public authority that has been directed by the Authority under Division 1C of Part 6 of the *Transport Administration Act 1988* to install or display (or to interfere with, alter or remove) the device, or
- (b) the person is otherwise authorised in writing by the Authority to install or display (or to interfere with, alter or remove) the device, or
- (c) the person is permitted or required to remove the device by or under proposed section 124.

The Division makes it an offence for a person to install, display, interfere with, alter or remove a prescribed traffic control device without appropriate authority. Proposed sections 124 and 125 also enable the Authority, the Commissioner of Police and certain other authorised persons to remove (or direct a person to remove) an unlawfully installed or displayed device and to recover any such removal costs.

Division 3 Use of average speeds to prove speeding offences

Division 3 enables the use of average speeds between detection points to prove speeding offences involving heavy vehicles.

The Division re-enacts (with some modification) the provisions of section 43A of the *Road Transport (Safety and Traffic Management) Act 1999*. Currently, section 43A of that Act does not extend to the proof of an offence against the heavy vehicle speeding compliance provisions of the regulations made for the purposes of section 11C of the *Road Transport (General) Act 2005* (which will continue in force under the renamed *Road Transport (Vehicle and Driver Management) Act 2005*). However, the Division will extend to this additional kind of offence because of the definition of *speeding offence* for Part 5.3.

Division 4 Approval of traffic enforcement devices

Division 4 enables the Governor, by order published in the Gazette, to approve types of devices (or combinations of types of devices) (to be called *approved traffic enforcement devices*) for any one or more of the following uses:

- (a) measuring the speed at which a vehicle is travelling (whether or not the vehicle concerned is also photographed),
- (b) photographing a vehicle that is driven in excess of a speed limit applicable to a length of road,
- (c) photographing a vehicle at a point during its journey between different points on a road for use in calculating the vehicle's average speed between those points,
- (d) photographing a vehicle that is driven in contravention of a traffic light signal displaying a red circle or a red arrow,
- (e) photographing a vehicle that is driven in a traffic lane on a road.

Currently, devices used in connection with the detection of particular kinds of traffic offences are approved under different sections of the *Road Transport (Safety and Traffic Management) Act 1999* for the detection purpose concerned. See, in particular, sections 44, 45, 47A, 56, 57A and 57C of the *Road Transport (Safety and Traffic Management) Act 1999*. In most cases, a device requires the approval of the Governor. However, section 45 of the *Road Transport (Safety and Traffic Management) Act 1999* requires certain camera speed detection devices to be approved by the Commissioner of Police.

The Division seeks to consolidate in a single set of provisions the approval of traffic enforcement devices and to require all approvals to be made by the Governor. Approvals for a device may be given for one detection purpose or for several detection purposes for those devices with such a capability. However, the kinds of detection purposes for which an approval can be given are limited to the same purposes for which approval can be given under the *Road Transport (Safety and Traffic Management) Act 1999*.

Division 5 Use of evidence obtained from approved traffic enforcement devices

Division 5 sets out procedures for the use of, and the purposes for which, evidence obtained by an approved traffic enforcement device may be used in proceedings for certain kinds of traffic offences.

Currently, the use of evidence obtained from approved devices is governed by different provisions depending on the kind of device concerned even though the provisions concerned are each in largely similar terms. See, in particular, sections 47, 47B, 57 and 57B of the *Road Transport (Safety and Traffic Management) Act 1999* and section 22C of the *Road Transport (Vehicle Registration) Act 1997*.

Also, evidence obtained by an approved speed measuring device cannot be used to prove an offence against the heavy vehicle speeding compliance provisions of the regulations made for the purposes of section 11C of the *Road Transport (General) Act 2005* (which will continue in force under the renamed *Road Transport (Vehicle and Driver Management) Act 2005*). This is because the use of such devices is limited to speeding offences against the *Road Transport (Safety and Traffic Management) Act 1999*.

The Division seeks to consolidate in a single set of provisions the current provisions relating to the use of evidence obtained from approved traffic enforcement devices. The permitted uses of such evidence will remain largely the same. However, the Division will also extend to the proof of heavy vehicle compliance offences against the renamed *Road Transport (Vehicle and Driver Management) Act 2005* because of the definition of *speeding offence* for Part 5.3.

Part 5.4 Vehicle use and traffic safety

Division 1 Dangers and obstructions to traffic

Division 1 enables certain officers to remove vehicles and things from a road that constitute an obstruction or danger to traffic and give directions to protect the public and facilitate the free flow of traffic.

Division 2 Traffic safety

Division 2 makes each of the following offences:

- (a) standing or driving, or permitting the standing or driving of, an unsafely loaded vehicle that results in death or injury to another person or damage to property,
- (b) failing to stop and give assistance to a person who is injured or killed by a vehicle or horse driven or ridden by the person failing to stop.

Division 3 Unauthorised use of vehicles

Division 3 makes each of the following offences:

- (a) using a motor vehicle or trailer without first obtaining the consent of the owner,
- (b) procuring the use or hire of a motor vehicle or trailer by fraud or misrepresentation.

Chapter 6 Road transportation

Part 6.1 Monitoring of heavy vehicles and vehicles carrying dangerous goods

Part 6.1 provides for the monitoring of certain heavy vehicles and vehicles carrying dangerous goods while travelling on roads and the keeping of vehicle movement records for that purpose.

Part 6.2 Speed limiting of heavy vehicles

Part 6.2 provides for certain heavy vehicles to be fitted with speed limiters to prevent them from being driven on roads at a speed in excess of 100 kilometres per hour.

Chapter 7 Compliance and enforcement

Part 7.1 Authorised officers

Part 7.1 provides for the appointment of authorised officers (in addition to police officers and persons prescribed by the statutory rules, who are authorised officers in any event) in connection with the administration and enforcement of the road transport legislation. The Part also makes it an offence to obstruct, hinder or impersonate an authorised officer.

Part 7.2 Identity powers

Part 7.2 enables an authorised officer:

- (a) to require production of a driver licence from a driver or rider of a vehicle or horse and to state the driver's or rider's name and address, and
- (b) to require production of driver licences from certain supervising passengers of drivers of motor vehicles and to state their names and addresses, and
- (c) to require a responsible person for a motor vehicle and certain other persons to disclose the identity of a driver of the vehicle who is alleged to have committed an offence against the road transport legislation.

The Part requires drivers to produce their driver licences to the court hearing a charge for a breach of the road transport legislation. It also makes it an offence for a person to knowingly demand production of a driver licence by another person without lawful authority.

Part 7.3 Criminal responsibility

Division 1 Liability for offences generally

Division 1 provides for the following matters:

- (a) the manner in which an offence against the applicable road law (within the meaning of the renamed *Road Transport (Vehicle and Driver Management) Act 2005*) is to be dealt with under the road transport legislation if more than one person is liable for the offence,
- (b) prohibiting double jeopardy in relation to the same failure to comply with the road transport legislation,
- (c) that each person who is a director of a corporation that has contravened the road transport legislation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

The provisions of this Division dealing with the liabilities of directors and managers of corporations differ from the current provisions of section 178 (1) of the *Road Transport (General) Act 2005*. That subsection makes a director or manager of a corporation liable for a contravention by the corporation without the need to prove that the director or manager knowingly authorised or permitted the contravention. The other provisions of section 178 of the *Road Transport (General) Act 2005* dealing with the liability of partners, employers and others for offences by partnerships, associations and employees will be retained in section 178 of the renamed *Road Transport (Vehicle and Driver Management) Act 2005* because those provisions are limited to applicable road law offences within the meaning of that Act.

Division 2 Liability for camera recorded offences and parking offences

Division 2 makes a responsible person for a registrable vehicle liable for certain camera recorded traffic offences and for parking offences if the responsible person does not disclose the identity of the actual driver or person in charge of the vehicle at the time of the offence concerned.

The Division re-enacts (with some modification) the provisions of section 179 of the *Road Transport (General) Act 2005*. In particular, the Division now makes it clear that a person falsely nominates another person as being the driver or person in charge of a vehicle for the purposes of the offence of false nomination if either a false name or address (or both a false name and address) is supplied for that other person.

Division 3 Penalty notices

Division 3 enables police officers and other authorised officers to issue penalty notices for offences against the road transport legislation and certain other Acts and statutory rules if those offences have been prescribed for that purpose under the statutory rules made under the proposed Act.

Division 4 Proceedings for offences

Division 4 provides that proceedings for an offence against the road transport legislation are to be dealt with summarily before the Local Court or Supreme Court. The Division extends the period during which certain kinds of offences against the road transport legislation may be commenced (including offences against an applicable road law within the meaning of the renamed *Road Transport (Vehicle and Driver Management) Act 2005*). In other cases, the applicable period is 6 months after the offence is alleged to have been committed because of the operation of section 179 of the *Criminal Procedure Act 1986*.

The Division also provides that section 10 (Dismissal of charges and conditional discharge of offender) of the *Crimes (Sentencing Procedure) Act 1999* does not apply if a person is charged before a court with a certain offence (an *applicable offence*) if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge, that section is or has been applied to or in respect of the person in respect of a charge for another applicable offence (whether of the same or a different kind). An *applicable offence* is defined to include certain dangerous driving offences, drug and alcohol related offences and offences involving the use of heavy vehicles. The new provision re-enacts (with some modification) the provisions of section 187 (6) of the *Road Transport (General) Act 2005*. However, the new provision now extends to certain offences involving heavy vehicle driver fatigue or heavy vehicle speeding compliance under the renamed *Road Transport (Vehicle and Driver Management) Act 2005*.

Part 7.4 Sanctions concerning licences

Division 1 Licence disqualification

Division 1 provides for the circumstances in which a court that convicts a person of an offence against the road transport legislation may order the disqualification of the person from holding a driver licence and the circumstances in which an automatic disqualification will be applied on conviction for a major offence. The Division includes provisions for the automatic licence disqualifications for certain offences.

The Division also provides for the bringing forward of consecutive disqualification periods to avoid orphan periods and for the effect of licence disqualifications.

Division 2 Use of interlock devices as alternative to disqualification

Division 2 enables a court to order the use of an interlock device for certain alcohol-related offences as an alternative to licence disqualification.

Division 3 Habitual traffic offenders

Division 3 provides for the declaration, by operation of the Division, of certain persons to be habitual traffic offenders if they are convicted of 3 or more serious traffic offences within a 5-year period. A habitual traffic offender is disqualified

from holding a driver licence for a period of 5 years on the offender's declaration as such an offender.

Division 4 Suspension of licences and visiting driver privileges

Division 4 enables the Commissioner of Police to suspend a driver licence of a person for a period not exceeding 14 days if the Commissioner is of the opinion that the person is an incompetent, reckless or careless driver or under the influence of liquor.

The Division also enables a police officer to give a driver an immediate licence suspension notice for certain serious offences pending the determination of proceedings for the offence.

Division 5 Downgrading of licences

Division 5 enables the Authority to issue certain persons whose driver licences have been cancelled for certain offences involving a vehicle of a prescribed class with another licence that does not authorise the driving of vehicles of that class.

Part 7.5 Compensation orders

Part 7.5 enables a court that convicts a person of an offence against the road transport legislation to make certain kinds of compensation orders. In cases involving an applicable road law offence (within the meaning of the renamed *Road Transport (Vehicle and Driver Management) Act 2005*), a court is permitted to make orders requiring an offender to pay compensation to a roads authority for damage to road infrastructure.

Part 7.6 Sanctions concerning vehicles

Division 1 General

Division 1 sets out the objects of, and defines certain words, terms and expressions used in, Part 7.6.

In particular, the term *sanctionable offence* is defined to include certain high range speeding offences, drag racing and other serious speeding offences and police pursuit offences.

Division 2 Additional sanctions for certain offences

Division 2 enables a police officer to impose certain additional sanctions in connection with the commission of a sanctionable offence involving a motor vehicle. These include seizing or requiring the surrender of the motor vehicle concerned or its number-plates.

Part 7.7 Evidential provisions

Part 7.7 provides for the use of evidentiary certificates in proceedings as prima facie evidence of certain specified matters under the road transport legislation. The Part also makes it unnecessary to prove the appointment of certain specified office holders, including the Chief Executive of the Authority and the Commissioner of Police.

The Part contains other provisions relating to evidence of the state of mind of a body corporate or an employer, evidence of the mass rating of a vehicle or component, evidence regarding measuring devices and weighing by a weighbridge or weighing facility. It enables certain statements or allegations made by the prosecution in proceedings, such as statements that a specified vehicle was a heavy vehicle, to be prima facie evidence of the matter stated and gives evidentiary effect to matters contained in transport documentation.

The Part re-enacts (with some modification) the provisions of Part 5.6 of the *Road Transport (General) Act 2005*. In particular, the Part now provides that certificate evidence from the records of the Authority may be used in any legal proceedings. Currently, such certificate evidence may only be given in proceedings for an offence against the road transport legislation.

Part 7.8 Appeals and applications to Local Court

Part 7.8 confers rights of appeal to the Local Court against certain decisions made under the road transport legislation.

Currently, appeal provisions are largely located in Part 3 of the *Road Transport (General) Regulation 2005* based on regulation-making powers contained in section 242 of the *Road Transport (General) Act 2005*. Although section 241 of the *Road Transport (General) Act 2005* contemplates the possibility of reviews by the Administrative Decisions Tribunal, the current regulations provide for appeals to the Local Court instead of reviews by the Administrative Decisions Tribunal.

The opportunity has been taken to reorganise and collect common provisions together in the proposed Act (instead of the statutory rules) given their importance. The provisions have been consolidated so as to avoid the duplication in the current provisions. The Part provides for all appeals to be determined by the Local Court.

The Part also provides for the procedure to be followed in relation to original applications to the Local Court under the road transport legislation.

Chapter 8 Miscellaneous

Chapter 8 provides for certain miscellaneous matters relating to the operation of the proposed Act and the road transport legislation generally, including in relation to the following:

- (a) the fixing of fees for services provided by the Authority and the collection of unpaid fees and charges,

- (b) the delegation of functions under the road transport legislation,
- (c) the service and lodgment of documents,
- (d) indemnities from liability for the honest and good faith carrying out of functions under the road transport legislation,
- (e) the review of the proposed Act after 5 years.

Schedule 1 Examples of statutory rule-making powers

Schedule 1 sets out examples of the general subject-matter areas for the making of statutory rules under the proposed Act. The Schedule seeks to consolidate in a single set of provisions the various general statutory rule-making powers contained in the existing road transport Acts.

Schedule 2 Registration charges for heavy vehicles

Schedule 2 sets out provisions for the calculation and payment of registration charges for heavy vehicles.

Schedule 3 Testing for alcohol and drug use

Schedule 3 sets out provisions relating to the procedures for, and the use of evidence obtained from, testing for alcohol or other drug use by drivers and other road users.

The provisions of the Schedule are based on the provisions of Divisions 3–5 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*. The new provisions have the same substantive effect as the current provisions. However, the opportunity has been taken to reorganise and collect common provisions together to avoid the duplication in the current provisions.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act and the proposed cognate Acts.

In particular, the Schedule provides for the existing *Road Rules 2008*, *Road Transport (Driver Licensing) Regulation 2008* and *Road Transport (Vehicle Registration) Regulation 2007* to continue in force as Rules or Regulations made under the proposed Act.

Road Transport Bill 2013

Explanatory note

The Schedule also provides for the proposed *Road Transport (General) Regulation 2013* set out in Schedule 3 to the proposed *Road Transport (Statutory Rules) Act 2013* to be taken to be a Regulation made under the proposed *Road Transport Act 2013*. The provisions of the new Regulation are based on provisions that are currently located in the *Road Transport (Safety and Traffic Management) Regulation 1999* and *Road Transport (General) Regulation 2005*.