



New South Wales

Roads and Traffic Legislation Amendment (Load Restraint) Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Roads Act 1993* to enable officers of the Roads and Traffic Authority, police officers and other authorised officers to give directions concerning heavy vehicles and commercial vehicles with unstable or otherwise unsafe loads and to enable action to be taken to detain any such vehicle until its load is safe, and
 - (b) to amend the *Traffic Act 1909* to create new offences relating to the use of vehicles in cases where the use of vehicles that are loaded unsafely results in death or personal injury or damage to property.
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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.

Clause 3 is a formal provision giving effect to the amendments to the *Roads Act 1993* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Traffic Act 1909* set out in Schedule 2.

Schedule 1 Amendment of Roads Act 1993

Schedule 1 [1] makes it clear that authorised officers have power to stop vehicles for the purpose of checking the safety of vehicle loads.

Schedule 1 [5] amends a provision empowering authorised officers to give directions relating to vehicles that have loads exceeding maximum weight limits. The amendment will extend the defence of it not being possible to comply, or secure compliance, with a direction to a direction requiring the vehicle to be driven to another location. Currently, the defence applies only to directions requiring loads to be removed or adjusted.

Schedule 1 [6] inserts proposed section 231A. The proposed section empowers an authorised officer (that is, an RTA employee or an employee of another roads authority, authorised to exercise the functions of an authorised officer, a police officer or any other person prescribed as an authorised officer by the regulations) to give certain directions if the authorised officer is of the opinion that a load on a heavy vehicle, or a vehicle used for business or commercial purposes, is not safe. Directions that may be given include directions prohibiting the vehicle from being driven until the load is stable and safe, requiring particular action to be taken to secure, remove or adjust the load, prohibiting the depositing of the load or part of it in a particular place and requiring the vehicle to be driven to another location so that it is not on a road or road related area. It will be an offence to breach such a direction with a maximum penalty of \$3,300. It will be a defence, in the case of failure to comply with directions relating to the securing, removal or adjustment of loads or the moving of vehicles, if a defendant establishes that it was impossible to comply, or to secure compliance, with any such direction.

Existing provisions relating to the enforcement of directions will also apply to such directions, including an authorised officer's power to take possession of and detain a vehicle if a direction is not complied with and provisions relating to the form and manner of giving directions.

Schedule 1 [2], [3], [4] and [7] make consequential amendments.

Schedule 1 [8] enables an authorised officer who has given a direction relating to the load carried by a vehicle to detain the vehicle until the load is stable or safe or secured in such a way that it is not likely to fall or be dislodged or is appropriately secured.

Schedule 1 [9] enables savings and transitional regulations to be made consequent on the enactment of the amendments made by Schedule 1 to the proposed Act.

Schedule 2 Amendment of Traffic Act 1909

Schedule 2 [1] inserts proposed section 8C. The proposed section creates new offences relating to unsafe loads on motor vehicles and trailers. A person will be guilty of an offence if the person:

- (a) drives or stands, or causes or permits to be driven or to stand, a motor vehicle or trailer on a road or road related area, the person knows or reasonably ought to know that the vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because it is loaded unsafely, or
- (b) is the owner of a motor vehicle or trailer that is driven or stood on a road or road related area while loaded unsafely, the person knows or reasonably ought to know that the motor vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because it is loaded unsafely, or
- (c) is a director of, or a person concerned in the management of, a corporation that is the owner of a motor vehicle or trailer that is driven or stood on a road or road related area while loaded unsafely, the person knows or reasonably ought to know that the motor vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because it is loaded unsafely.

The maximum penalty for the offence will be \$5,500 or 12 months' imprisonment, or both, in the case of an individual or \$11,000 in the case of a corporation. It will be a defence to an offence under the proposed section if a person proves that the person was not in a position to prevent the motor vehicle or trailer from being driven or stood on a road or road related area while loaded unsafely.

Schedule 2 [2] enables savings and transitional regulations to be made consequent on the enactment of the amendment made by Schedule 2 [1] to the proposed Act.

First print



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New South Wales

Roads and Traffic Legislation Amendment (Load Restraint) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Roads Act 1993* with respect to directions relating to unsafe loads on vehicles and vehicles carrying such loads; to amend the *Traffic Act 1909* with respect to unsafe loads on vehicles; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Roads and Traffic Legislation Amendment (Load Restraint) Act 1998*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Roads Act 1993 No 33

The *Roads Act 1993* is amended as set out in Schedule 1.

4 Amendment of Traffic Act 1909 No 5

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The *Traffic Act 1909* is amended as set out in Schedule 2.

Schedule 1 Amendment of Roads Act 1993

(Section 3)

[1] Section 230 Powers relating to vehicles and loads

Omit "public road" from section 230 (1).

Insert instead "road or road related area within the meaning of section 231A". 5

[2] Section 230 (1)

Insert "or the safety of the vehicle's load to be checked" after "weighed" in section 230 (1).

[3] Part 14, Division 2 10

Omit the heading. Insert instead:

Division 2 Enforcement of excess weight limits and other load requirements

[4] Section 231 Vehicles exceeding maximum weight limits

Insert ", subject to any specified conditions," after "vehicle" where firstly occurring in section 231 (1) (d). 15

[5] Section 231 (4)

Insert "or (d)" after "subsection (1) (b)".

[6] Section 231A

Insert after section 231: 20

231A Vehicles contravening load requirements

- (1) If an authorised officer is of the opinion that a load on a vehicle is placed in a way that makes the vehicle unstable or unsafe, that it is not secured in such a way that it is unlikely to fall or be dislodged from the vehicle or that the method used to secure the load on the vehicle is not appropriate, the authorised officer may give a direction: 25

- (a) prohibiting the person in charge of the vehicle from driving the vehicle on a road or road related area until the vehicle's load is secured in a way that makes the vehicle stable and safe, secured in such a way that it is unlikely to fall or be dislodged from the vehicle or secured by an appropriate method, or 5
 - (b) requiring the person in charge of the vehicle to secure, remove or adjust the whole or any part of the vehicle's load, or 10
 - (c) prohibiting the person in charge of the vehicle from depositing any part of the vehicle's load in or on any specified place, or
 - (d) requiring the person in charge of the vehicle, subject to any specified conditions, to drive the vehicle from its present location to some other location (being a location situated not more than 20 kilometres or such other distance as is reasonable in the circumstances from its present location) for the purpose of removing the vehicle from a road or road related area. 15 20
- (2) A direction under this section may specify the manner in which, and the period within which, the direction must be complied with.
- (3) A person must not, without reasonable excuse, fail to comply with a direction under this section. 25
- Maximum penalty: 30 penalty units.
- (4) It is a defence to a prosecution for an offence arising from a failure to comply with a direction under subsection (1) (b) or (d) if the defendant establishes that it was impossible to comply, or to secure compliance, with the direction. 30
- (5) This section applies to the following vehicles only:
- (a) a vehicle having a GVM exceeding 4.5 tonnes,
 - (b) a combination, consisting of a motor vehicle connected to one or more vehicles, having a GCM exceeding 4.5 tonnes, 35

- (c) any other vehicle that is, in the opinion of an authorised officer, being used for business or commercial purposes.

(6) In this section:

GCM of a vehicle means the greatest possible sum of the maximum loaded mass of the vehicle and of any vehicles that may lawfully be towed by it at one time: 5

(a) as specified by the vehicle's manufacturer:
(i) on a plate fixed to the vehicle by the manufacturer, or 10

(ii) if the manufacturer has not specified the sum of the maximum loaded mass on a plate fixed to the vehicle, in another place, or

(b) as specified by the RTA if:
(i) the manufacturer has not specified the sum of the maximum loaded mass, or 15

(ii) the manufacturer cannot be identified, or
(iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate. 20

GVM of a vehicle means the maximum loaded mass of the vehicle:

(a) as specified by the manufacturer, or

(b) as specified by the RTA if:
(i) the manufacturer has not specified a maximum loaded mass, or 25

(ii) the manufacturer cannot be identified, or
(iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate. 30

road or road related area means a road or road related area within the meaning of the *Traffic Act 1909* (other than a road or road related area that is the subject of a declaration made under section 2A (1) (b) of that Act).

vehicle includes a trailer. 35

[7] Section 232 Powers of authorised officer if direction not complied with

Insert “, if a direction is given under section 231,” after “may” in section 232 (c).

[8] Section 232 (d)

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Insert after section 232 (c):

, and

- (d) may, if a direction is given under section 231A, detain the vehicle until the vehicle’s load is secured in a way that makes the vehicle stable and safe, secured in such a way that it is unlikely to fall or be dislodged from the vehicle or secured by an appropriate method.

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[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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Roads and Traffic Legislation Amendment (Load Restraint) Act 1998.

Schedule 2 Amendment of Traffic Act 1909

(Section 4)

[1] Section 8C

Insert after section 8B:

8C Unsafe loads

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(1) A person is guilty of an offence if:

(a) the person knows, or ought reasonably to know, that a motor vehicle or trailer is loaded unsafely, and

(b) the person drives or causes or permits the motor vehicle or trailer to be driven or to stand on a road or road related area, and 10

(c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely. 15

Maximum penalty: 50 penalty units, or 12 months' imprisonment, or both, in the case of an individual or 100 penalty units, in the case of a corporation. 20

(2) The owner of a motor vehicle or trailer is guilty of an offence if:

(a) the motor vehicle or trailer is loaded unsafely and is driven or stood on a road or road related area, and 25

(b) the owner knows, or ought reasonably to know, that the motor vehicle or trailer is loaded unsafely, and

(c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely. 30

Maximum penalty: 50 penalty units, or 12 months' imprisonment, or both, in the case of an individual or 100 penalty units, in the case of a corporation. 35

- (3) A person is guilty of an offence if:
- (a) the person is a director of, or a person concerned in the management of, a corporation that is the owner of a motor vehicle or trailer that is loaded unsafely and is driven or stood on a road or road related area, and 5
 - (b) the person knows, or ought reasonably to know, that the motor vehicle or trailer is loaded unsafely, and
 - (c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely. 10
- Maximum penalty: 50 penalty units, or 12 months' imprisonment, or both, in the case of an individual or 100 penalty units, in the case of a corporation. 15
- (4) It is a defence to a prosecution for an offence under this section if a person establishes that the person was not in a position to prevent the motor vehicle or trailer from being driven or stood on a road or road related area while loaded unsafely. 20
- (5) For the purposes of this section, a motor vehicle or trailer is **loaded unsafely** if:
- (a) a load on the motor vehicle or trailer is placed in a way that makes the motor vehicle or trailer unstable or unsafe, or 25
 - (b) a load on the motor vehicle or trailer is not secured in such a way that it is unlikely to fall or be dislodged from the motor vehicle or trailer, or 30
 - (c) an appropriate method is not used to secure a load on the motor vehicle or trailer.
- (6) In proceedings for an offence under this section, it is sufficient to prove that a motor vehicle or trailer was loaded unsafely if the prosecution proves that the load on 35

the vehicle or trailer was not placed, secured or restrained in a way that met the performance standards recommended in the *Load Restraint Guide—Guidelines for the safe carriage of loads on road vehicles* published by the Australian Government Publishing Service on 12 December 1994.

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(7) In this section:

motor vehicle includes a combination consisting of a motor vehicle connected to one or more vehicles.

[2] Schedule 1 Savings, transitional and other provisions

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Insert at the end of clause 1 (1):

Roads and Traffic Legislation Amendment (Load Restraint) Act 1998.