COMPLIANCE AND ENFORCEMENT:
MASS, DIMENSION AND LOAD
RESTRAINT

APPROVED POLICY PROPOSAL

November 2000

Prepared by
National Road Transport Commission
In November 2000, a majority of Australian Transport Ministers approved in-principle the National Road Transport Commission’s August 2000 compliance and enforcement policy proposal for heavy vehicle mass, dimension and load restraint. This paper sets out the approved policy.

The August 2000 policy proposal also contained a “Three Strikes and You Are Out” penalty as one of a range of new sanctions and penalties for mass, dimension and load restraint breaches. On the separate voting question of whether this penalty should continue to be included for development in the model legislation for this area of the national road transport law, the majority of Ministers voted against the continued inclusion of this penalty. Hence, the Three Strikes penalty has been removed from the policy.

This policy is needed to improve the existing compliance provisions of the national heavy vehicle loading regulations and to lay down what are intended to be best practice policies for the basis of future model legislative provisions and administrative guidelines that will provide strong, effective and nationally consistent tools for securing compliance with the heavy vehicle mass and dimension limits and load restraint standards.

Part A sets out the need for the policy, the problems to be addressed and the methodology used to develop the measures proposed. Part B discusses the measures and Part C contains the list of policy proposals.

The measures proposed are:

- a risk-based categorisation of offences;
- a set of offences, incorporating:
  - a chain of responsibility to ensure legal liability can be imposed on those whose conduct or role in the transport/loading chain results in a breach of the heavy vehicle mass, dimension and load restraint requirements; and
  - specific defences to ensure the legal responsibilities do not operate unfairly;
- enforcement powers to allow for appropriate and flexible responses to breaches of the requirements, having regard to the responsibilities of the various parties;
- evidentiary provisions to expedite the prosecution of such breaches; and
- a wide range of sanctions and penalties to enable courts to impose the punishment that best fits the offence.

In recognition of the need for the measures to be consistent not only with a national heavy vehicle compliance and enforcement framework, but also with the wider legal compliance and enforcement framework of every Australian jurisdiction, they have not been tailored for future template legislation. Rather, they have been classified as either essential to or desirable for nationally consistent outcomes. Those classified essential are considered necessary in all jurisdictions to ensure nationally consistent compliance and enforcement outcomes. Those classified desirable are not considered necessary in all jurisdictions for nationally consistent outcomes, but this does not diminish their value as necessary components of the overall best practice compliance regime put forward in this paper. This classification is an important development for the application of national compliance and enforcement measures. It ensures
the integrity of jurisdictional criminal justice approaches whilst securing a firm basis for the achievement of nationally consistent on the ground outcomes.

The model legislative provisions to give effect to the policy will be developed by the Commission using a jurisdictional parliamentary counsel and are intended to be submitted to the Australian Transport Council by the end of 2001 for approval. The administrative guidelines to accompany the provisions are being developed by Austroads in the current work program.

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REPORT OUTLINE

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NRTC Program: Compliance Outcomes

Program Objectives:
• Improve road transport industry, safety, efficiency and productivity.
• Improve regulatory efficiency and reduce administrative costs.
• Improve the effectiveness and efficiency of compliance arrangements.
• Encourage and facilitate continuous improvement in the road transport regulatory environment.

Key Milestones: In 1995, the National Road Transport Commission (NRTC) released a national Compliance and Enforcement Proposal that set out, for public comment, a detailed legislative approach to enforcing national road transport laws. Aspects of the 1995 Proposal specific to mass and loading have since been refined as a result of comment and additional consultation and research. Draft general compliance and enforcement provisions (1997) and the proposals on the penalty structure for gross (or ‘severe risk’) overloading, submitted to Ministers in December 1998, have also influenced the measures now proposed.

In April 1999, the Compliance and Enforcement: Mass, Dimension and Load Restraint draft policy proposal was circulated for comment and as a result of comments received on that paper, a revised proposal was prepared. This was circulated in November 1999 to Transport Agency Chief Executives, the NRTC’s Industry Advisory Group and Bus Industry Advisory Group, Executive Directors of road transport associations and to all others who commented on the April 1999 paper. From comment on the revised proposal and further consultation, the proposal was refined and was submitted on 30 August 2000 in-principle endorsement by Australian Transport Ministers.
In November 2000, Australian Transport Ministers voted to approve the policy in-principle. The Western Australian Minister did not approve the policy. The majority of Ministers also voted against the further inclusion in the policy of the proposed “Three Strikes and You Are Out” penalty.

The policy will be developed into model legislative provisions for further consultation and for Ministers to consider. Administrative guidelines to accompany these provisions will also be prepared in an Austroads project. Both the provisions and guidelines are intended to be completed by the end of 2001.

Abstract: This paper proposes the policy basis for model legislative provisions and administrative guidelines that will provide a nationally consistent, best practice, conventional compliance and enforcement regime for heavy vehicle mass, dimension and load restraint. The policy addresses: a risk-based categorisation of mass, dimension and load restraint offences; chain of responsibility provisions; enforcement powers; evidentiary provisions; and sanctions and penalties.

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PART A - BACKGROUND
A.1 INTRODUCTION

The consequences of breaches of mass, dimension and load restraint requirements include a risk to safety, at one end of the scale of severity, and minor unrecovered road wear (in the case of mass breaches), at the other. Other serious consequences include infrastructure damage, offenders gaining an unfair competitive advantage over those who are operating within the law and a tarnishing of the reputation of the road transport industry as a whole.

The existing national regulations for heavy vehicle loading (these are the Road Transport Reform (Mass and Loading) Regulations, the Road Transport Reform (Oversize and Overmass Vehicles) Regulations and the Road Transport Reform (Restricted Access Vehicles) Regulations) prescribe agreed national mass and dimension limits and load restraint standards, but contain only rudimentary provisions for the enforcement of those requirements. Further, although jurisdictions have relied on their existing compliance and enforcement processes to enforce the national requirements, there is significant variation between the jurisdictions on such fundamental matters as to whom is held accountable for a breach of the standards, and the consequences of that breach.

The policy is needed to address the deficiencies in the national heavy vehicle loading regulations and to provide legislative tools for a best practice, nationally consistent, conventional compliance regime for heavy vehicle mass, dimension and load restraint.

The following section explains what is meant by a conventional compliance model of regulation, and shows the relationship of this model to other compliance-enhancing policies and approaches that are being developed in the NRTC’s overall Compliance Outcomes (Smart Compliance) work program.

The remainder of Part A sets out the objectives of this policy, the problems to be addressed, and outlines the methodology and processes used by the NRTC in the development of the proposal, including the proposed next steps for development of the policy into legislative provisions and accompanying administrative guidelines.

A.1.1 Conventional Compliance in Context

Traditional regulatory responses relating to road transport have been focused on enforcement rather than compliance and have tended to be overly reliant on legislative ‘solutions’ such as increasing the maximum penalties. These responses are limited in focus and effect and are self-defeating if not combined with strategies that seek to enhance compliance by encouraging an understanding of the problem by industry, the judiciary and the community in general.

A modern regulatory approach to road transport legal compliance requires a suite of complementary strategies, including:

- conventional (sanctions-based) compliance strategies;
- incentives-based strategies;
- privileges-based strategies;

Note that the national Road Transport Reform (Vehicle Standards) Regulations prescribe standards for heavy vehicles, but the current proposal only relates to the requirements for vehicles plus load. A separate project will be undertaken by the NRTC to address the compliance and enforcement provisions needed for vehicle-only mass and dimension standards.
• education and training-based strategies;
• communications-based strategies;
• well-targeted enforcement practices;
• monitoring of the effectiveness of the compliance and enforcement outcomes; and
• ongoing research to keep abreast of developments.

This paper addresses the first of these approaches, proposing a conventional compliance and enforcement regime for heavy vehicle (and heavy combination) mass, dimension and load restraint requirements.

Conventional compliance is a criminal punishment model of regulation, where a sanction is applied once a person has been held legally liable for a breach. In general, legislative provisions are required to give effect to conventional compliance strategies.

Incentives-based compliance strategies (such as quality management schemes and accreditation schemes) confer a benefit to someone who demonstrates a commitment to maintaining a higher level of compliance. Privileges-based strategies (such as licensing schemes) make the granting and continuation of a privilege subject to meeting required standards and obligations. Education, training and communications-based strategies can utilise a range of powerful new media and technological tools which can have a positive effect on compliance levels and which can enhance enforcement effort (for instance, by educating industry and the community about the importance of compliance and the significance of breaches, and even by influencing sentencing decisions).

Strategies reliant on incentives, privileges, education, training and communications must still be underpinned by a strong conventional compliance scheme. In turn, the strongest conventional compliance scheme can only be effective if responsible industry parties accept the requirements as reasonable and if implemented with fair, well-targeted and consistent enforcement practices.  

Monitoring the effectiveness of the compliance and enforcement outcomes is also a vital component of an effective regulatory approach to ensure that each strategy and the mix of strategies achieves the required compliance outcomes. Ongoing research is needed to keep abreast of new technology, compliance trends and changes in the road freight task.

Although conventional compliance is, essentially, a punitive model of regulation, a comprehensive conventional compliance strategy will contain more than just penalties for non-compliance. From the NRTC’s work in the area of compliance and enforcement, and, in particular, from consultations with government and industry on the development of the present proposal, the ‘best practice’ conventional compliance model for heavy vehicle mass, dimension and load restraint is one that incorporates the following key elements:

• a rational basis for the measures it contains (in this case, a risk-based rationale);
• offences that are:

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2 It is not within the scope of the present paper to discuss strategies other than the conventional sanctions-based legislative model for tools to secure compliance with and enforcement of the heavy vehicle mass, dimension and load restraint requirements. These complementary approaches are being developed within the NRTC’s Compliance Outcomes (Smart Compliance) work program.
– directed at those responsible for conduct amounting to a breach, reflecting chain of responsibility and duty of care principles;
– capable of being applied with efficiency and certainty; and
– fair, by providing adequate safeguards against the potential inequitable application of legal accountability;

• enforcement powers that enable an effective response to each breach;
• evidentiary aids for proceedings to be brought efficiently before a court; and
• sanctions and penalties that are fitting and proportionate to each breach and that reflect the scope for risk to safety, risk to infrastructure and unfair commercial advantage, as well as the risk of eroded road user accountability, the risk to traffic and transport efficiency, the risk of erosion of the rule of law and the risk of erosion of government resources.

Part B of this paper discusses the measures needed to address these vital elements. Part C lists the proposed measures.

### A.1.2 Development of the NRTC’s Compliance and Enforcement Policies

The NRTC’s recent work on conventional compliance and enforcement has focused on the development of general compliance and enforcement provisions, and penalties for gross overloading offences.

The general provisions are being prepared in a separate, but interlinked, NRTC project and are intended to provide certain basic enforcement powers and duties, offences and evidentiary provisions that are common to many of the national road transport laws.

Model penalties for gross (severe risk) overloading were prepared by the NRTC in 1998 for use by the jurisdictions in conjunction with increased mass limits. The policy underpinning these model provisions has been reviewed and fine-tuned in the development of the present proposal in the context of a broader penalties and sanctions structure that also addresses minor and substantial risk overloading, dimension and load restraint breaches, and other related offences.

Appendix 1 outlines the stages in the NRTC’s work on conventional compliance and enforcement to date.

The general compliance and enforcement provisions will not address the specific powers, duties, offences and evidentiary provisions and penalties needed to ensure the effectiveness of the heavy vehicle mass, dimension and load restraint regulations. Similarly, the model penalty provisions for severe risk overloading address only a limited aspect of a conventional compliance framework for mass, dimension and load restraint.

The present policy specific to mass, dimension and load restraint will supplement the general compliance and enforcement provisions that are being developed by the NRTC, and will subsume the sanctions and penalties framework that has been developed in the very narrow context of severe risk overloading.
A.2 OBJECTIVES

The objectives of this policy are to:

• provide the policy basis for a nationally consistent, best practice, conventional compliance and enforcement regime for heavy vehicle mass, dimension and load restraint requirements;

• improve the effectiveness and efficiency of compliance with the mass, dimension and load restraint requirements in Australia (including minimising the extent of ‘across border’ problems involving vehicles in breach of nationally consistent mass, dimension and load restraint requirements);

• improve road safety and reduce infrastructure damage through improved compliance with and accountability for the requirements; and

• provide a simpler, more cost-effective and equitable scheme for the enforcement of the requirements.
A.3 PROBLEMS TO BE ADDRESSED

A.3.1 Consequences of Breaches

The main physical consequences of vehicles breaching the heavy vehicle mass, dimension and load restraint requirements are a risk to safety, damage to pavements/road infrastructure and less serious, unrecovered road wear and tear. Other adverse implications include traffic congestion resulting in annoyance to other road users and consequential loss of productivity, obtaining an unfair competitive advantage over those who operate within the law, tarnishing the industry’s reputation, eroding the rule of law and whittling away at government resources (other than infrastructure).

These breach consequences are outlined below.

A.3.1.1 Safety implications

In the development of regulatory provisions, road safety is of paramount concern, and any implications for safety resulting from a breach of the mass, dimension or load restraint requirements must be regarded most seriously.

Severe overloads pose a threat to the structural integrity of pavements and bridges, with consequential implications for the safety of road users. It is widely considered that serious concerns for the condition of bridges arise when vehicles are loaded to more than 50% beyond their legal mass. Severe overloads have the capacity to cause injury through compromising the stability, handling and braking capability of the vehicle.

Breaches of dimension limits also have implications for safety. Breaches of the width limits may jeopardise the safety of other road users, especially on narrow roads or lanes, particularly at night and other times when visibility is poor. Height breaches increase the risk of collision with overhead structures and, therefore, increase the risk of injury. Length breaches increase the risk of collision with adjacent vehicles (due to the altered turning circle, swept path and other behaviour characteristics of over-length vehicles and combinations, or when overtaking unexpectedly long vehicles). Exceeding the width, height or length requirements may also compromise the stability of the vehicle. This creates a risk to the safety of the driver, other road users and those in the vicinity of the road.

Shifting loads may adversely affect a vehicle’s stability and braking function. Falling or loose loads, and loose load restraints themselves, may endanger other road users and infrastructure. Some loads (for instance, hazardous goods) may present a wider danger than others when not properly restrained.

Breaches of the mass, dimension and load restraint requirements may, in some circumstances, also pose a risk to the safety of other road users by increasing traffic congestion or reducing the flow of traffic.

A.3.1.2 Road wear and infrastructure implications

The effects of exceeding mass requirements are costly. The greater the degree of overload, and the greater the travel when overloaded, the more costly and serious the consequences. These effects have been documented in the NRTC’s 1997 discussion paper, *Increased Mass Limits: Compliance and Enforcement Issues*.
In brief, the effect on roads has been found to vary exponentially with axle mass. The most widely known version of this is the ‘fourth power rule’. However, the exact relationship will vary between pavement types, geological conditions and road environments. The effect of the exponential relationship is that:

- most road wear is caused by vehicles with more heavily laden axles; and
- overloaded vehicles cause a disproportionate share of road wear.

Thus, in cases of small overloads, the major issue (in respect of infrastructure) is that operators are not paying for the costs to infrastructure caused by the loads.

The effect of loads on bridges is thought to be more linear, with the life of a bridge and the maintenance requirements dependent on the number of passages and the size of the load. While road effects are related to axle mass, bridge effects can be related to either axle mass or gross vehicle mass, depending on the relationship between the axle spacing and the length of the bridge span.

As the size of a load approaches the design strength of a pavement or bridge, the effects of the load will be more significant. In these cases, a small number of passages of the load can cause significant structural damage. The effect is usually cumulative. In an extreme case, a single passage of a severely overloaded vehicle could cause catastrophic failure.

As already stated, breaches of dimension limits may also cause damage to infrastructure. Height breaches may result in harm to overhead structures such as bridges and power lines, width breaches may be a risk to roadside infrastructure, especially in narrower urban streets, and length breaches – affecting the turning circle and other lateral behaviour of the vehicle – can also present a risk to road infrastructure.

Breaches of the load restraint requirements will vary in their potential effects on infrastructure, depending on the degree to which the load is not secured, whether any of the load has shifted or even fallen from the vehicle, and the type of load.

A.3.1.3 Increased traffic congestion

Another undesirable effect of some breaches is increased traffic congestion. Examples of how this can arise are:

- a non-complying vehicle moving slowly on the roadway to compensate for a lower power-to-weight ratio and/or poorer braking performance;
- a vehicle that breaches height requirements obstructing traffic when it either collides or tries to turn to avoid a low bridge;
- a vehicle that breaches the width requirements forcing other vehicles to travel behind it, without sufficient space for safe travel alongside it or for overtaking;
- load losses (due to poor restraints) either obstructing the roadway or impeding the travel of other vehicles, which are forced to give the non-complying vehicle a wide berth.

Increased traffic congestion leads to the inconvenience, delay and annoyance of other road users and the community at large, with consequential loss of productivity and, in severe cases, may even pose a risk to the safety of other road users.
A.3.1.4 Unfair competitive advantage

Those who operate within the law may be disadvantaged commercially vis a vis those who are less scrupulous or less professional. This is because those who breach the law, through carrying more load than is legally permissible or taking shortcuts instead of employing proper loading practices, gain an unfair competitive advantage over those who are prepared to operate within the mass, dimension and load restraint requirements. Unfortunate flow-on effects include an increase in the pressure on others to operate in breach of the requirements and a reduction in the ability of road authorities and the transport industry to work together to achieve systematic productivity improvements.

These implications apply regardless of the degree of the risk to safety or infrastructure, and increase in their significance in proportion to both the increasing degree of seriousness and frequency of the breaches involved.

A.3.1.5 Implications for public confidence in the industry

These breaches - particularly the more serious ones that cause personal injury or property damage or interfere with traffic flow, and certainly those that attract media attention - create a negative public image that damages the reputation of the road transport industry as a whole.

A.3.1.6 Erosion of the rule of law

Failure to comply with legal standards and obligations and failure to enforce effectively such breaches and failure to create the expectation that they will be detected and dealt with in a way that discourages further such behaviour, undermines the rule of law. It also reduces the community’s confidence in the capacity of industry, enforcement agencies and the courts to address wrongdoing.

A.3.1.7 Erosion of government resources (other than infrastructure)

Breaches of these requirements also result in the need for more government resources to be expended on enforcement and legal proceedings and other strategies to address breaches and their consequences. This deprives the community and industry of those same resources for more productive programs.

A.3.2 Incidence of Breaches

Although precise national data on the incidence of non-compliance with the requirements is not available, the information provided to the NRTC from the jurisdictions and from industry suggests strongly that a large proportion of non-compliance occurs at the minor breach category and decreases in the substantial and severe breach categories. This is also the pattern found in the recent survey conducted by the ARRB Transport Research Ltd for the NRTC and reported in the paper, Incidence of Grossly Overloaded Heavy Vehicles (ARRB, 1998).

A.3.3 Deficiencies in the Existing National Compliance Provisions

The existing national compliance provisions for heavy vehicle loading are contained in the NRTC’s Road Transport Reform (Mass and Loading) Regulations, the Road Transport
Reform (Oversize and Overmass Vehicles) Regulations and the Road Transport Reform (Restricted Access Vehicles) Regulations. These regulations are outlined below.

The Mass and Loading Regulations require compliance with the mass limits specified in the Schedule to the Regulations, including the manufacturers’ ratings and relevant Australian Design Rules for tyres, wheels, axles, couplings, motor vehicles, trailers and combinations. The Regulations also prescribe the maximum size for vehicles and the requirements for placing and securing loads.

The Oversize and Overmass Vehicles Regulations give authorities the power to exempt certain oversized or overmass vehicles from complying with particular vehicle standards and requirements of the Mass and Loading Regulations. Certain other vehicles and combinations that are too large or too heavy to be allowed full access to the road network may also be given access entitlements to specified routes and areas under the Restricted Access Vehicles Regulations.

Exemptions under the Oversize and Overmass Vehicles Regulations or the Restricted Access Vehicles Regulations may be made by gazettal notice, permit or emergency exemption. Conditions may be specified, such as the vehicles or combinations covered and the areas or routes to which the notice or permit applies.

These three sets of nationally endorsed regulations have allowed jurisdictions to take advantage of the agreed limits and standards for loaded vehicles well in advance of the development of the NRTC’s compliance and enforcement policies. For that same reason, they intentionally contain only basic compliance and enforcement provisions.

These basic compliance and enforcement provisions are not sufficient for a nationally consistent best practice approach, for several reasons. The main reasons are set out below.

**A.3.3.1 Lack of a sound, rational basis for the existing offences and monetary penalties**

In the existing national regulations, there is no legislative differentiation between minor and more serious offences, between unintentional offences and offences that are committed for commercial gain, between individuals and bodies corporate, or between first time and habitual offenders. Hence, the legislation provides no structure to assist enforcers in implementing the requirements fairly on a nationally consistent basis and provides no indication of which offences should be regarded more seriously by enforcers and the courts. This limits the overall effectiveness of the legislation as a tool to enhance nationally consistent compliance and enforcement.

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3 The National Road Transport Reform (Vehicle Standards) Regulations prescribe standards for heavy vehicles, but the current proposal only relates to the requirements for vehicles plus load. A separate project will be undertaken by the NRTC to address the compliance and enforcement provisions needed for vehicle-only mass and dimension standards.

4 Such as mobile cranes, concrete pumps and fire trucks and those which carry large indivisible items, as well as agricultural machines and implements.

5 The Road Transport Reform (Vehicle Standards) Regulations have similarly provided nationally agreed limits and standards for (unloaded) vehicles.
A.3.3.2 Parties other than drivers, owners and operators are not held accountable

There is a strong perception of undue enforcement focus on drivers, owners and operators. Under the current national regulations, only the driver and owner may be found guilty of breaching the Mass and Loading Regulations, and only the driver and operator are liable under the Oversize and Overmass Vehicles Regulations and the Restricted Access Vehicles Regulations.

The imposition of liability on the driver and owner or operator does not address the role of others in the transport chain including ‘off road’ parties who might influence the mass or dimension of a load or the manner of restraining that load. Hence, the existing national regulations have no deterrent effect on those other parties.

An associated problem is the definition of ‘operator’ used in the national regulations. The Oversize and Overmass Vehicles Regulations and theRestricted Access Vehicles Regulations rely on the following definition of ‘operator’:

... a person who controls or directs the operations of a combination, or a motor vehicle not forming part of a combination, or who is otherwise responsible for it.

This definition is not sufficiently precise. It is quite possible the term encompasses those who have some involvement in, say, the registration or the maintenance of the motor vehicle, but who have no involvement whatsoever in the transportation of the load.

A.3.3.3 Lack of enforcement options

The three sets of national regulations do not provide for enforcement options other than taking an offender to court. For instance, under the existing provisions, there are no arrangements for options such as infringement notices or administrative directions that might be more appropriate and more cost effective than prosecutions in certain situations. This is an inflexible approach for both enforcers and alleged offenders.

A.3.3.4 Provisions lack practical enforceability

The national regulations do not contain the evidentiary provisions considered necessary to ensure that prosecutions are brought before the courts efficiently and promptly.

A.3.3.5 Inadequate penalty structure

The national regulations do not provide a penalty structure that will give adequate sanction options to industry, enforcers and the courts. They specify only one form of penalty - a fine. Fines may be effective as deterrent or punitive sanctions in some situations, but not in all. And fines alone may not be sufficient to achieve rehabilitative or public protection goals of punishment in circumstances where such goals are desirable.

The maximum fines in the national regulations are also considered to be inadequate now, especially for offences committed by bodies corporate or repeat offenders. This is also the case with offences that involve premeditation or scheming.
A.3.4 Variations in Jurisdictional Laws

All States and Territories have legislation that controls heavy vehicle mass, dimension and load restraints. However, between the jurisdictions there are significant variations (arising from a mix of legislative and compliance policy differences) on the fundamental matters of:

- who is held accountable, primarily, for a breach of the requirements – this might be an ‘owner’, a ‘person in charge’, a ‘driver’, a ‘person who caused or permitted the vehicle to be used’, a ‘person in control of the vehicle’, a ‘person who caused or permitted the vehicle to be driven’, or various combinations of these;
- the type of liability imposed – this might be absolute liability, strict liability, absolute liability combined with a limited statutory defence, or the offence might require proof of criminal intent;
- the type of enforcement action that may be taken by enforcement agencies once non-compliance is detected;
- the evidentiary aids available in prosecutions; and
- the type and the level of the penalty or sanction that may be imposed by the courts.

In addition, much of the legislation operating currently in the Australian jurisdictions suffers from the same deficiencies (other than the specific problem with the definition of ‘operator’ outlined in section A.3.3.2, above) apparent in the existing national regulations.

These variations work to the disadvantage of industry and industry rightly demands nationally consistent standards and nationally consistent provisions to secure compliance with those provisions. National consistency will reduce the likelihood that behaviour considered quite legal in one jurisdiction will be treated as a criminal offence in the neighbouring jurisdiction, will make it much easier for industry to understand all the applicable mass, dimension and load restraint requirements.
A.4 METHODOLOGY

The approach taken to address the problems discussed above, is outlined below.

A.4.1 Consultation to date

The policies put forward in this paper have been shaped through the NRTC’s research on and analysis of these issues and from the areas of consensus reached during the extensive consultation that has taken place with industry and enforcement agencies in the development of the NRTC’s compliance and enforcement policies to date.

Appendix 2 summarises the consultative processes undertaken in the development of this proposal.

A Regulatory Impact Statement (RIS) has been prepared to evaluate the policy and to assess its costs and benefits. A preliminary version of the RIS was circulated with the November 1999 revised policy paper, and included a detailed summary of comments that had been made on the April 1999 draft policy proposal, along with the NRTC’s responses to the comments. A revised version of the RIS accompanied the August 2000 submission to the Australian Transport Council. This RIS includes a summary of all comments made on the November 1999 revised proposal and the NRTC responses.

A.4.2 Overall Approach

A.4.2.1 Identification of policies necessary for national consistency (essential, rather than merely desirable, measures)

The effectiveness of current conventional compliance models operating in Australia and overseas for heavy vehicle mass, dimension and load restraint standards was examined in detail. Effective elements of particular jurisdictions’ schemes have been included in the policy, as have proposals for reform that have already received national in-principle endorsement.

The policy aims to provide an appropriate regime for nationally consistent application and enforcement of the heavy vehicle mass, dimension and load restraint requirements laid down in the national regulations, as well as in various other legislative instruments in the Australian jurisdictions.

Because the State, Territory and Commonwealth compliance frameworks for heavy vehicles need to be consistent not only with a national heavy vehicle compliance framework, but also with their own wider legal compliance contexts, the policy attempts to provide considerable flexibility for all jurisdictions in their detailed treatment of the national conventional compliance scheme put forward in this paper.

This policy recognises that it is more important for industry to know the requirements to be complied with nationally to avoid any breaches and to provide a consistent national framework for dealing with those in breach, than to insist on strict uniformity in the precise detail of how offenders are then treated.

Furthermore, the approach appreciates the importance of consistent application nationally in the field; that is, similar treatment for similar situations, not uniform treatment independent of the road environment.
As a result, the measures in this paper have been classified as either essential to, or merely desirable for, national consistency. Those classified essential are considered to be necessary in all jurisdictions to ensure nationally consistent compliance and enforcement outcomes.

A.4.2.2 Future model legislative provisions

The measures have not been tailored for template legislation. Rather, they will be developed into model legislation and are intended to be implemented in each jurisdiction using the most convenient and effective regulatory manner available. Legislative provisions, prepared by a jurisdiction’s parliamentary counsel in consultation with the Parliamentary Counsel’s Committee, will be prepared for adaptation by the other jurisdictions to give effect to the policies.

A.4.2.3 Administrative guidelines

The future legislative provisions will need to be complemented by nationally endorsed guidelines on administering the provisions and/or managing compliance. The identification and development of the necessary guidelines is a current Austroads project – C.RUM.HV.159: Mass, Dimension and Load Restraint Compliance Guidelines. An outline of this project is contained in Appendix 3.

A.4.2.4 Mutual recognition

Mutual recognition of the application by different jurisdictions of the measures proposed will also be needed. Mutual recognition provisions will be developed by the NRTC in conjunction with the development of the NRTC’s general compliance and enforcement provisions project.

A.4.2.5 Bilateral agreement mechanisms

Bilateral agreement mechanisms will need to be developed within the current Austroads project to prepare administrative guidelines for the assessment and enforcement of the mass, dimension and load restraint provisions (referred to in section A.4.2.3, above). These mechanisms are needed to enable scope for limited cross border travel of vehicles detected with certain, qualified, non-compliant loads while travelling interstate (refer to section B.3 on roadside enforcement powers and scope to authorise continuing travel).

A.4.3 Development of Key Aspects of the Proposal

A.4.3.1 Rationale based on consequences and incidence of non-compliance

The main implications of breaches of the mass, dimension and load restraint requirements (discussed above) have been used as signifiers of the minor risk, substantial risk and severe risk categories of breach. The measures developed in this proposal flow from this ‘risk-based’ categorisation of offences.

This rationale is detailed in section B.1.

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6 The NRTC’s general compliance and enforcement project is outlined in Appendix 1.
A.4.3.2 Chain of responsibility, liability and defences

The main activities in the road transport chain and the duties of any person who exercises responsibility for, or control over, any of these activities have been identified. Offences and defences associated with a breach of those duties reflect chain of responsibility and duty of care principles.

The proposed regulatory framework aims to ensure that those who bear responsibility for conduct that affects compliance will be held accountable (chain of responsibility). Parties who should have been aware of the breach or who should have taken precautions to prevent the breach will be held legally liable in this regulatory proposal even though they may not have been physically involved in or aware of the breach (duty of care).

The framework is also predicated on providing a level playing field for industry – one where participants compete on equal (legal) terms, the legal requirements and administrative arrangements being accepted as reasonable and appropriate for the circumstances where applied.

Special treatment is provided for breaches in the minor risk margin in order to:

- acknowledge use of reasonable effort;
- prevent systematic abuse of the mass and dimension limits and the load restraint standards at this level; and
- recognise that fairness at this level is essential for removing any doubt about accountability for more substantial breaches.

The proposed chain of responsibility, liability and defences are addressed in section B.2.

A.4.3.3 Enforcement powers

The minimum powers needed to adequately enforce compliance in each of the three breach categories have been analysed. The resultant national enforcement powers correspond with the three breach categories.

Enforcement powers are addressed in section B.3.

A.4.3.4 Evidentiary provisions

The evidentiary provisions needed to facilitate the proof of the proposed offences and defences have been considered, and a number of new national evidentiary tools have been developed.

Evidentiary provisions are addressed in section B.4.

A.4.3.5 Sanctions and penalties

Innovative national sanctions and penalties have been formulated to reflect a wide range of punishment strategies and to correspond, in a flexible manner, to the three breach categories. The sanctions and penalties are intended to be sufficiently severe to ensure that they are not treated by would-be offenders as just an extra cost before arriving at the bottom line.

Sanctions and penalties are addressed in section B.5.
A.5 NEXT STEPS

If endorsed by the Australian Transport Council, this policy will become the basis for drafting instructions for appropriate legislative provisions. The intention is that a ‘lead agency’ jurisdiction’s parliamentary counsel will draft the provisions, in consultation with the Parliamentary Counsels’ Committee (PCC). The NRTC will instruct the drafter in consultation with a small and committed legislation advisory committee that will provide detailed advice and give close consideration to the drafting instructions and the draft provisions. The NRTC will also liaise with a national reference group comprising representatives from transport agencies and industry at key milestones during this process.

Once complete, the legislative provisions can be a model for other jurisdictions to use, making any necessary adaptations to ensure consistency with their broader compliance frameworks. The involvement of the PCC in the development of the legislative provisions is to ensure the fundamental suitability of the provisions for application in all jurisdictions.

It is intended that the development of the legislative provisions for mass, dimension and load restraint will occur at the same time that general compliance and enforcement provisions are being prepared by the NRTC. This will maximise consistency in the two sets of provisions and ensure that all the necessary powers for the effective application of the mass, dimension and load restraint laws are available.

The indicative timing for the preparation of the model provisions is set out in the table below:

<table>
<thead>
<tr>
<th>Task</th>
<th>Actions</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope</td>
<td>• Confirmation of the project scope, deliverables, responsibilities and timelines with the lead agency and parliamentary drafter.</td>
<td>September – November 2000</td>
</tr>
<tr>
<td></td>
<td>• Consultation with transport agencies and industry on lead agency and project approach.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ministers’ endorsement of lead agency and project approach.</td>
<td></td>
</tr>
<tr>
<td>Special Consultative and Advisory Groups</td>
<td>• Establishment of a broad-based legislation reference group comprising nominees from each road transport and police agency, representatives from each of the road transport associations, Transport Workers Union and other interested bodies.</td>
<td>September to October 2000</td>
</tr>
<tr>
<td></td>
<td>• Establishment of a legislation advisory committee to provide detailed advice and to give close consideration to the drafting instructions and the draft provisions.</td>
<td></td>
</tr>
<tr>
<td>Drafting Instructions</td>
<td>• NRTC to prepare detailed drafting instructions in consultation with the legislation advisory committee and the legislation reference group.</td>
<td>September – December 2000</td>
</tr>
<tr>
<td>Resolve Length Breach Breakpoints (and any other residual technical issues or legal issues)</td>
<td>NRTC to prepare terms of reference and appoint suitable consultants.</td>
<td></td>
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<tr>
<td>---</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Consultants to undertake the sub-project.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consultation on the on the outcomes of the sub-project.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Modify outcomes as required.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Adjustment of the breakpoints proposed in the <em>Compliance and Enforcement: Mass, Dimension and Load Restraint</em> policy in line with the findings of the consultants.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Instructions to the parliamentary drafter to incorporate the revised breakpoints in the drafting of the provisions.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>November 2000 – February 2001</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Draft Model Provisions</th>
<th>A preliminary draft of the model provisions, settled in consultation with the NRTC and the legislation advisory committee and the legislation reference group.</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>February – April 2001</td>
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</table>

<table>
<thead>
<tr>
<th>Regulatory Impact Statement</th>
<th>A regulatory impact statement (the regulatory impact statement for the <em>Compliance and Enforcement: Mass, Dimension and Load Restraint</em> policy proposal, updated if and where necessary).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April – May 2001</td>
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</table>

<table>
<thead>
<tr>
<th>Wide Consultation</th>
<th>Wide consultation on the draft provisions and draft regulatory impact statement.</th>
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<tbody>
<tr>
<td></td>
<td>May – July 2000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Final Model Provisions</th>
<th>Final model provisions that are supported by Transport Agency Chief Executives, police agencies, the road transport industry, Parliamentary Counsels’ Committee, and central justice agencies.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>August – November 2001</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Implementation Plan</th>
<th>An overall implementation plan that covers the enactment/making of the legislative provisions and accompanying AUSTROADS’ administrative guidelines, as well as accompanying communications, training and educational programs, and which meets the needs of all jurisdictions.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September – November 2001</td>
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</table>

<table>
<thead>
<tr>
<th>ATC</th>
<th>Submission of the final model provisions and implementation plan to the Australian Transport Council.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>November/ December 2001</td>
</tr>
</tbody>
</table>

In addition, the national administrative guidelines for the assessment and enforcement of the future mass, dimension and load restraint provisions are being developed through the current Austroads project (referred to in section A.4.2.3, above). A detailed scoping exercise is the first task in that project, and, as part of that first task, a national workshop was held in Melbourne on 7 July 2000 to develop an agreed framework for the development of the guidelines.

Jurisdictions will be encouraged to move to implement the endorsed approach, (covering the model legislative provisions, administrative guidelines and process and related outcomes, including industry education and monitoring arrangements). Target dates for this will be identified in consultation with jurisdictions and industry as the model legislation is developed.
PART B - DISCUSSION OF MEASURES PROPOSED
**B.1 RATIONALE – A RISK-BASED CATEGORISATION OF OFFENCES**

A fundamental rationale for many of the offences, powers, sanctions and penalties proposed in this part of the paper is the seriousness of the risk or risks posed by a breach of the heavy vehicle mass, dimension or load restraint standards/requirements. Consequences of breaching these requirements have been outlined in Part A of this paper.

It is proposed to categorise breaches as minor risk, substantial risk or severe risk, depending on the nature and seriousness of each breach and the likelihood of their adverse consequences.

Where the only appreciable physical consequences are minor - for example, accelerated road wear and the offender obtaining a minor unfair commercial advantage over those who operate legally - the breach might be considered a (relatively) minor risk breach. In this category of breach for mass, there is no appreciable risk to safety, nor is there an appreciable risk of infrastructure damage. However, a mass breach that involves a risk of damage to infrastructure and increasing traffic congestion is more serious and this is considered to be a substantial risk breach. Whilst there may well be some risk to safety in this category of breach, this is not an appreciable risk. A mass breach that involves an appreciable risk to safety, as well as more severe infrastructure damage, is the most serious of all breaches and is termed a severe risk breach.\(^7\)

**Figure B.1: Risk-based categories of mass breaches\(^8\)**

\(^7\) This was considered to be the most convenient breakdown of potential risks. A different, but more complicated risk model, is the one used by the Global Exchange Inc. in a recent analysis performed for the United States Department of Transportation, Federal Highway Administration (FHWA 1999) in which breaches (violations) were categorised as follows:

1. violation is _potential single, immediate factor_ leading to [nominated result, for example, crash or injuries/fatalities];
2. violation is _potential single, eventual factor_ leading to [the nominated result];
3. violation is _potential contributing factor_ in [the nominated result];
4. violation is _unlikely potential contributing factor_ in [the nominated result]; and
5. violation has _little or no connection_ to [the nominated result].

\(^8\) This diagram is based on a similar pictorial representation contained in Queensland Transport’s _Managing Unsafe Overloading in Queensland_ policy proposal (revised January 1999).
For dimension and load restraint breaches, similar considerations apply.

This proposed risk-based categorisation has influenced the proposed enforcement actions that can be taken when a breach is detected and, to a large extent, the proposed sanctions that can be applied. Thus, different enforcement powers and sanctions have been linked to each of the breach categories, ranging in intrusiveness and harshness from minor risk breaches through to severe risk breaches.

The benefits of a three-tiered categorisation of offences include:

- the recognition of the safety, infrastructure, unfair competition and other adverse consequences of these breaches, these consequences increasing in magnitude with the extent of the breach;
- the likelihood of greater consistency in the enforcement and sanctions response to offences that pose a like degree of risk;
- the likelihood of that response being more fitting to the severity of the offence; and
- the enforcement capacity to better identify and target those breaches and breach patterns of most concern.

To minimise argument in each set of circumstances and for administrative convenience and efficiency, it is useful to nominate objective criteria - such as actual amounts or percentages of excess mass or size - that will establish these breach categories. In doing so, it is recognised that the demands of certainty and efficiency dictate the use of criteria that can, at best, represent the general rule. The alternative would be that factual proof of risk would be required in every case that is brought before a court.

Breakpoints, starting with those applicable to mass breaches, are considered below.

These breakpoints were developed by officers and industry representatives who have contributed to the development of this policy proposal, and have received majority endorsement of members of the focus group that was convened to assist the NRTC resolve the policy.

However, it must be stressed that the three offence categories (minor, substantial and severe risk) do not and cannot, in any scientifically absolute sense, correlate to the precise points at which infrastructure, safety and other adverse consequences become of real concern.

Using mass breaches as an example, it is very difficult to determine any precise, constant and universal level of overloading at which an offence will jeopardise safety, or the level or frequency at which a breach involves a risk of actual road damage rather than just unrecovered road wear. Further research would be costly and would not produce a set of clear cut, simple results that could be applied to all vehicles in all conditions and on all routes, in any event. The levels will vary by vehicle, route, traffic environment, visibility and all manner of other variables.

We do know that over and above the legal requirements, safety, infrastructure damage and other adverse consequences increase in magnitude. Hence, even though there may be some implications for safety in the lesser breach categories, it is only in the severe risk category that those implications are considered to be appreciable. Similarly, we can be confident that somewhere over the level of 120% overloading (the severe risk breakpoint), there will certainly be appreciable safety concerns, although those appreciable concerns may not,
objectively, commence right on the 120% mark (on the other hand, they may well commence before the 120% mark).

The breach categories attempt to define degrees of offences, relative to each other, and are expressed broadly and roughly, in terms of the nature, severity and likelihood of certain consequences. Their breakpoints reflect the best judgement of officers and industry from around the country at this point of time, and on this basis, are put forward as ‘best practice’.

Future work, including work on Performance Based Standards, may well provide us with more information on which to refine the breakpoints. However, in the interim, they are put forward as current best practice and are considered essential components of the package of compliance and enforcement measures for these breaches.

**B.1.1 Breakpoints for Breaches of the Mass Limits**

**B.1.1.1 Severe risk breaches**

The severe risk concept is one that has evolved from national meetings of regulators and industry association representatives in 1998 to develop a benchmark for the more serious enforcement consequences and penalties that should apply in cases of ‘gross’ overloading. Gross, in this context, refers to a serious level of overloading.

At those meetings, the term ‘gross overloading’ was considered generally unhelpful as it invited confusion between the concepts of a serious degree of overloading and all-up vehicle overloading, as in gross vehicle mass. The severe risk concept was considered to better express the potential consequences of a serious degree of overloading.

The breakpoint for a severe risk overload was agreed to be whichever is the least of the following:

- 20% over the GCM or GVM rating; or
- 20% over the legal axle group mass; or
- 20% over the allowable gross mass limit.\(^9\)

The reasons for selection of the above criteria for a severe risk overload were:

- 20% over the legal mass limits was accepted as the level at which jurisdictions generally require a vehicle to be adjusted to comply with load limits before being allowed to travel further, and is the level at which it was generally agreed that safety can become a concern\(^10\), in addition to there being more serious implications for infrastructure;
- manufacturers’ ratings were included as a criterion because of the strong degree of national acceptance that severe risk reflects safety risk. Manufacturers' ratings were considered the most convenient mechanism to do this, albeit that their connection to safety is tenuous in some cases\(^11\), and

\(^9\) Note that this is agreed policy, but not necessarily the precise wording that will appear in future model provisions. See Appendix 8 for preliminary draft model provisions that reflect that policy.

\(^10\) In some circumstances, vehicles and loads.

\(^11\) See the proposed treatment of manufacturers’ ratings under section B.1.1.5, below.
the use of the whichever is the least formula ensures that the breakpoint will never exceed 20% of the legal load limits (that is, manufacturers’ ratings that are set at levels higher than the legal limits will not raise this breakpoint).

In the course of reviewing this breakpoint in the context of resolving issues arising from the April 1999 draft policy proposal, the national focus group recommended that the severe risk breakpoint also incorporate vehicle components (that is, 20% over the legal mass limit or the mass rating of any vehicle component) and the breakpoint be re-expressed as ‘120% of’ the various limits instead of ‘20% over’ those limits to emphasise the extent of the abuse of the law.

B.1.1.2 Substantial risk breaches

The breakpoints for the substantial risk category are quite straightforward, because it is the middle category, the substantial risk category occupies the range between the minor risk and severe risk categories’ breakpoints. This range is intended to reflect substantial consequences, including an appreciable risk of infrastructure damage, more serious road wear impacts, a substantial level of abuse of the requirements and a gain of more substantial unfair competitive advantage over those who are operating within the legal limits risk and the consequences of greater levels of disrespect for the law. However, the risk to safety in this category is not considered likely to be appreciable.

B.1.1.3 Minor risk breaches

In the mass context, unrecovered road wear in addition to unfair competitive advantage are likely to be the main physical implications of the ‘minor risk’ breach category.

The April 1999 draft policy proposal put forward a breakpoint of up to 5% over statutory mass limits for minor risk breaches. The prime reason was that 5% is a figure that was quoted widely to NRTC officers during consultations on the range of excess mass that should be treated as minor by enforcement agencies and for which criminal charges should not necessarily be laid. The common view was that for excess mass up to 5% a driver would not necessarily be aware that the requirements had been breached. On the other hand, most consulted agreed that once over 5% excess mass a driver would be expected to know of the overload and to take remedial action. Also, 5% was considered a convenient, easily recalled breakpoint, in the same manner of the 20% severe risk breakpoint. Because the calculation of 5% of the mass requirements of every vehicle, combination and vehicle component would not be an easy task (especially at the roadside), it was proposed that this be converted to tonnage figures at the implementation (operational) stage of development of the proposal.

While there was some support for the 5% breakpoint, there was considerable criticism of the use of a single percentage-based figure as the minor risk breakpoint for breaches involving all heavy vehicles, vehicle configurations and axle groups. The 5% figure was seen by most of those who commented on the April 1999 proposal as over-simplistic for vehicles, combinations and axle groups, for any limits other than the normal statutory/regulation mass limits for vehicle components or the mass rating for vehicle components.

The focus group agreed that the 5% breakpoint for vehicles, combinations and axle groups should be rejected, and instead, endorsed solidly an approach of aligning the minor risk category with the 1987 tolerances developed by the National Association of Australian State Road Authorities (NAASRA) for axle mass and ‘all-up’ (vehicle/combination) mass (reproduced below), except for the NAASRA all-up tolerance for multi-combinations, which
was reduced in the November 1999 revised proposal on the basis of advice from within the focus group in respect of the increased precision in weighing practices available for these combinations over the last decade or so.

Table B.1.1: NAASRA Tolerances (NAASRA 1987)

<table>
<thead>
<tr>
<th>Axle Group Mass</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Steer</td>
<td>0.25t</td>
</tr>
<tr>
<td>Twin Steer Group</td>
<td>1.00t</td>
</tr>
<tr>
<td>Single Axle – Dual Tyres</td>
<td>0.50t</td>
</tr>
<tr>
<td>Tandem Axle (4, 6 or 8 Tyres)</td>
<td>1.00t</td>
</tr>
<tr>
<td>Triaxle (6 or 12 Tyres)</td>
<td>1.00t</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gross Mass</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to but not exceeding 5t</td>
<td>10%</td>
</tr>
<tr>
<td>Exceeding 5t but not exceeding 10t</td>
<td>0.5t</td>
</tr>
<tr>
<td>Exceeding 10t but not exceeding regulatory limit</td>
<td>1.0t</td>
</tr>
<tr>
<td>Exceeding regulatory limit but not exceeding 55t</td>
<td>1.5t</td>
</tr>
<tr>
<td>Exceeding 55t but not exceeding 85t</td>
<td>2.0t</td>
</tr>
<tr>
<td>Exceeding 85t but not exceeding 120t</td>
<td>3.0t</td>
</tr>
<tr>
<td>Exceeding 120t</td>
<td>4.0t</td>
</tr>
</tbody>
</table>

At this juncture, it is necessary to describe what is meant by ‘tolerance’, and how the minor risk breach category is intended to operate.

**Tolerances**

When calculating mass, enforcement agencies make allowances for inaccuracies and for variations in weighing devices and weighing methods. Traditionally, it has also been usual for enforcement agencies to make a third type of allowance - a ‘discretionary’ allowance, that may be attributed to enforcers giving transporters some additional latitude in the case of minor breaches that are unintentional and beyond their control. These three types of allowances have commonly been combined in a single tolerance.

The current tolerances were developed when refined methods of load control and measurement were not available. The discretionary allowance component of these tolerances has emerged over time as a practical means of reducing the amount of unnecessary prosecutions that are instigated.

The fact that infringement notices were not available in all jurisdictions is also likely to have played a part in the development of this dependence on the discretionary allowance.

There are several concerns about current tolerances:

- tolerances are not applied uniformly in Australia, although the NAASRA administrative tolerances, developed in 1987, are a common standard. However, there is very little justification for these variations between jurisdictions;
• other than the Northern Territory, which uses the NAASRA tolerance levels as a basis for the application of its defence to prosecution, tolerances have no legislative force in their own right;

• some jurisdictions allow even larger tolerances for specific commodities. These are often confused with issues of commodity concessions;

• there are strong reasons against the continuation of the administrative component of tolerances - that is, giving offenders the benefit of the doubt for unintentional, minor overloads - when this lacks any official, legislative basis;

• in the past, most or all operators targeted the top of the tolerance band. However, there is growing concern over the common law duty of care and the due diligence requirements of Occupational Health and Safety legislation, as a result of which some responsible operators are now avoiding the tolerance band. The dilemma faced by those operators who believe duty of care is important is that they may suffer an unfair commercial disadvantage **vis à vis** those who use the tolerance band as additional payload;

• with modern weighing equipment becoming increasingly accurate and methods of weighing and load control becoming increasingly refined, the justification for the current level of tolerances is being eroded;

• given that accuracy of weighing device and method varies, but the overall tolerances do not, the administrative discretion component also varies markedly and for no good reason; and

• tied to the above, an automatic tolerance gives the greatest (mass) benefit to vehicles with loads best able to be precisely loaded.

To overcome the problems detailed above, it is proposed that the minor risk breach category is created where previously an automatic tolerance has been applied, thereby taking advantage of the pre-existing, convenient and relatively well-understood set of levels in the NAASRA guidelines (except for the NAASRA all-up tolerance for multi-combinations, as mentioned above). Exceeding the mass limits within the minor risk category is, therefore, considered a technical breach, not merely a tolerance.

The proposal will not affect any allowances made purely for weighing and measuring methods. By and large, the allowances needed for weighing and measuring **device** accuracy are contained in weights and measures legislation of each jurisdiction and in the manufacturer's standards applying to each individual device. Current allowances for **methods** of weighing are presently being reviewed by AUSTROADS to ensure they are still appropriate.

Breaches will only take effect when confidence is reached that an offence has occurred, taking into account both machine accuracy and method of weighing (including site characteristics).

It should be noted that the NAASRA tolerance levels are to be reviewed in another AUSTROADS project, on the development of administrative guidelines for the assessment and enforcement of mass, dimension and load restraint breaches (see Appendix 3). As a result, the proposal in respect of the above minor risk mass breakpoints is subject to the results of the review of the NAASRA tolerance levels. Within this review, the suitability of the proposed minor risk breakpoints will be considered and revised as necessary.
The proposal also provides for some reasonable latitude for unintentional loading error. This is because it is proposed that action is only taken for a breach in this range where the offender has clearly not taken any reasonable steps to prevent the breach. (This proposed defence is discussed in section B.2, below.) Some jurisdictions may not wish to take any breach action at all in the minor breach range. This proposal does not affect such choice; however, the option to take action (issuing a breach report, formal warning, infringement notice or prosecution) should be available for use if required and in the appropriate circumstances (that is, once machine, site and method inaccuracies have been discounted and where it is clear reasonable steps were not taken to prevent the breach).

This approach will provide a legitimate means of excusing unintentional error for minor breaches, and will ensure the minor risk breach category is not automatically used as extra payload.12

The application in all jurisdictions of the above breakpoints for severe risk, substantial risk and minor risk mass breaches are considered essential to achieve nationally consistent outcomes.

B.1.1.4 Breakpoints for breaches of increased mass limits

Two main options for how the breach levels might apply in the case of vehicles with increased mass limits as a result of the Mass Limits Review (that is, for vehicles with road-friendly suspensions - 0.5 tonne for tandem axle groups and 2.5 tonnes for triaxle groups) or as a result of permits, notices, emergency exemptions or concessional schemes, were considered. These were:

(a) Providing that the proposed breakpoints shift in their entirety relative to the increased limits (as if the increased mass limits were the normal statutory/regulation limits).

The April 1999 proposal argued that this option would ensure that those who are entitled to take advantage of increased limits are not placed in an inequitable position vis à vis those who are expected to comply with the unadjusted mass limits and favoured this approach.

However, comment on the April 1999 proposal from several transport authorities criticised this approach and argued that as general principles, (a) those operating under increased mass have no excuse for even minor breaches of the increased limits and (b) a severe risk breakpoint of 20% over the increased limits is too high over the point at which safety is considered to become an appreciable risk (this was considered to be at the point of 20% over the normal statutory/regulation limits or ratings).

(b) Providing that the proposed breakpoints for breaches committed by vehicles to which increased mass limits apply are calculated from the normal statutory/regulation limits, rather than the increased limits.

This second option was preferred and endorsed by the focus group.

12 See section B.2.3.1, below.
However, this approach could, if unqualified, preclude the application of the minor risk category of breach where the increased mass entitlement exceeds the normal minor risk breach breakpoint. In some circumstances, this might not be considered just.\(^\text{13}\)

As a result, it is proposed that if the particular arrangement under which increased mass has been granted expressly makes provision for alternative breakpoints to apply, then those breakpoints will override the normal breakpoints, thereby providing an exception to the general rule. For example, if a concessional scheme expressly provides for the breach breakpoints to be calculated from the increased limits, then these alternative breakpoints will apply.

This approach is also consistent with the treatment of breaches of Class 2 vehicles in the Road Transport Reform (Restricted Access Vehicles) Regulations.

This is considered a sound approach that will ensure that arrangements under which increased mass is granted are transparent in respect of the potential consequences that flow from a breach of the increased mass limits.

**B.1.1.5 Breakpoints for breaches of manufacturers’ ratings**

A problem arises as to how a breach of the manufacturers’ mass ratings should be dealt with in the minor risk and substantial risk categories for mass breaches.\(^\text{14}\)

**Gross vehicle mass and gross combination mass**

The gross vehicle mass and gross combination mass ratings are particularly important because if they are exceeded, it is likely some of the other ratings (for instance, mass ratings for tyres, rims and axles) may also be exceeded. They are also important because the braking system is set up to allow the vehicle to stop within a certain distance if it is loaded to the maximum ratings. If it is heavier, then the vehicle is at risk not only of breaking but of not braking safely.

If manufacturers’ ratings are a true indication of the levels at which manufacturers are prepared to warrant the safe working capacity of vehicles and their components, any exceeding of the manufacturers’ mass ratings may have serious implications for safety. However, in practice, manufacturers’ ratings are not necessarily a reliable gauge of when safety becomes a real consideration, as many (sometimes competing) factors, such as market forces and the potential for manufacturers’ liability claims, also affect the levels at which these ratings are set.

Some approaches are:

1. Applying the same breach categories to manufacturers’ ratings as are proposed to apply to the legal mass limits. However, the problems with this option are:

   - where the manufacturer’s rating is set at a different level to the legal limits, two different breach/enforcement/penalty scales will operate simultaneously, creating confusion and inconsistency;

\(^{13}\) Note that with the ‘Second Hurdle’ accreditation requirement for higher mass limits for triaxles, internal National Heavy Vehicles Accreditation Scheme sanctions may also apply.

\(^{14}\) Note that a severe risk has been accepted nationally as comprising 20% over the GCM or GVM rating: see under section B.1.1.1, above.
• there is a school of thought that says breaches of manufacturers’ ratings can never be considered minor breaches (that is, any breach of manufacturers’ ratings creates a risk to safety, which cannot, by definition, be a minor risk).

2. Treating all breaches of manufacturers’ ratings as being a risk to safety and therefore falling within the severe risk category. This was an option rejected by transport agencies and industry representatives at the 1998 national meetings on penalties for gross overloading.

3. Adopting a different sliding scale to that used for breaches of the mass limits. (For instance, in the Northern Territory, the administrative actions that correspond with the proposed minor risk category of offence - that is, allowing a vehicle to proceed to its destination - apply to a breach of the manufacturers’ ratings of up to 5% excess mass; whilst the most severe enforcement actions do not commence until there is more than 10% mass in excess of the manufacturers’ ratings. However, the problems identified with option 1, above, would appear to apply to this option.

4. Taking action on a breach of a manufacturer’s rating when it is below the limit set in legislation. The argument for this option is that penalties should escalate for increasing overloads over the manufacturer’s limit (which is actually that vehicle’s legal limit) rather than the statutory mass limit.

This last option was put forward in the April 1999 paper as the most sensible and practical and as the preferred option. Comment on the paper soundly supported this proposal, and was confirmed in comment on the November 1999 revised policy proposal.

Other ratings

Other ratings are also very important and exceeding them can have severe safety implications.

Where legal limits are specified for particular individual components of the vehicle, the approach of enforcing the manufacturers’ ratings only when they are below the limit set in legislation should apply (in the same manner as for gross vehicle mass and gross combination mass, as set out above).

Where no legal limits are specified, it appears to be a sensible and consistent approach to apply to the manufacturers’ ratings the same principles and rules proposed to apply to the legal mass limits (as if the ratings were legal limits).

B.1.1.6 (Future) treatment of breakpoints for breaches of axle group limits

Traditionally, pavement wear, safety and to a lesser extent bridge wear, are controlled by axle mass limits on heavy vehicles. These limits control the load that can be transmitted to a pavement or bridge depending on the number of axles in a group and the types of tyres used (dual, single, wide single). Gross limits also apply being the lesser of:

• gross vehicle mass for the relevant vehicle or combination (for example, 42.5 t for a 6 axle artic. under current mass limits for general access vehicles);

• manufacturers’ ratings of gross vehicle mass, gross combination mass and aggregate trailer mass; and

• the sum of the axle limits.

There are suggestions that these gross limits are sufficient to protect pavements from excessive wear due to heavily loaded axle groups. The premise underlying these suggestions
is that in order for a vehicle to remain within a gross mass limit, it must be lightly laden on one axle group if it is very heavily laden on another. However, increasing the load on some axle groups (above current legal limits) can cause more pavement wear (measured as Equivalent Standard Axles) than the same additional tonnes on other axle groups. Consequently, any reductions in wear from reduced loads on some axle groups may make up for increased wear from higher loads on other axle groups. It is suggested by some, however, that physical limitations on loading would prevent significant extra tonnes being carried on the types of axle groups that would cause most damage when overloaded.

The same limitations might provide sufficient safety controls within gross mass limits for these vehicles. For bridges, axle masses are mainly a concern for wear of bridges with very short spans, so practical loading limitations within gross mass limits may also provide sufficient protection for bridges.

These issues will be investigated in detail in a separate study. This study will critically evaluate the premises underlying the suggestion that gross mass limits can be used to control pavement wear and will consider the merits of introducing performance standards to regulate the pavement wear of different vehicles, in place of specific mass limits on individual axle groups. Clearly, the results of this separate study may have a significant influence on the compliance and enforcement requirements associated with the regulation of axle group masses. The proposals contained in this paper in their application to axle mass limits will be reviewed if necessary, following completion of the project to investigate the basis for controlling pavement wear and the role of axle mass limits.

B.1.2 Breakpoints for Breaches of Dimension Limits

The April 1999 paper put forward breakpoints for dimension breaches of up to 5% for a minor risk dimension breach, from 5% up to 10% for a substantial risk breach, and 10% and over for a severe risk breach. Whilst those breakpoints found some favour, most comments on the April 1999 proposal were to the effect that the breakpoints were too high relative to the seriousness of the impacts of dimension breaches – particularly width and height breaches – and that the breakpoints for width, height and length should be given separate consideration.

Furthermore, there was a strong view put in comments on the April 1999 proposal and from focus group members that using percentages for the breakpoints for dimension breaches is not at all sensible or appropriate (for instance, using percentages for the length breakpoints would mean that the breakpoints for a severe risk breach of a road train is far greater in absolute terms than those applying to smaller trucks and that there is no good reason for such a disparity).

The current, revised breakpoints for dimension breaches have been subjected to a great deal of discussion and analysis by focus group members. Those put forward in this final proposal are considered appropriate by the majority of participants, but not all.

The length breakpoints, in particular, provoked the greatest range of views and the largest number of breakpoint variables (no less than 8 different sets of breakpoints were considered). The more limited breakpoints (200mm and 300mm for substantial risk and severe risk breaches respectively) that were put forward in the November 1999 revised proposal were considered too low in comments from some Transport Agency Chief Executives and one of the road transport industry associations and have therefore been adjusted upwards (to 300mm and 600mm, respectively). However, these figures are still considered too low by some commentators.
As a result, the breakpoints for length are, at this stage, proposed as indicative values only and will be subject to a technical study to determine, to the extent possible, breach levels at which infrastructure and safety become of appreciable concern. This study, proposed to be managed by the NRTC, will be conducted prior to the settlement of any model legislative provisions and administrative guidelines that are developed to give effect to this policy proposal, and will be incorporated within those future legislative provisions.

**B.1.2.1 Width**

The following breakpoints were favoured by the majority of representatives from transport agencies in the focus group:

- minor risk breach – up to and including 75mm;
- substantial risk breach – between 75mm and 150mm; and
- severe risk breach – 150mm and over.

The above breakpoints should be halved in the case of a width projection on one side of the vehicle or in the case of an unevenly distributed projection.

It is proposed to include, within future legislative provisions to be developed to give effect to this policy proposal, provision for the up-grade of a minor or substantial risk width breach to a severe risk breach if the width breach occurs at night or at a time of weather-reduced visibility. If it is not found to be practicable to include this policy in legislative provisions (for example, if it proves too difficult to define legislatively the circumstances in which the policy should operate), the policy should be given effect in the administrative guidelines that are being developed by AUSTROADS to accompany the future legislative provisions.

**B.1.2.2 Height**

The following breakpoints for height were favoured by the majority of representatives of transport agencies on the focus group:

- minor risk breaches – up to and including 100mm;
- substantial risk breaches – between 100mm and 200mm; and
- severe risk breaches – 200mm and over.\(^\text{15}\)

**B.1.2.3 Length**

The following *indicative* breakpoints\(^\text{16}\) are now proposed for length breaches for vehicles and combinations:

- minor risk breaches – up to and including 300mm;
- substantial risk breaches – between 300mm and 600mm; and
- severe risk breaches – 600mm and over.

\(^{15}\) There is an accepted anomaly in this applying irrespective of whether 4.3m or 4.6m is the statutory height limit. The resulting simplicity is preferred to the added complexities if all relevant aspects are considered.

\(^{16}\) As stated above, these values will be subject to the results of a technical study to determine, to the extent possible, breach levels at which infrastructure and safety become of appreciable concern.
B.1.2.4 **Internal dimension breaches**

These proposed breakpoints should also apply to internal width, height and length breaches, respectively.

B.1.2.5 **Breakpoints for breaches of increased dimension limits**

The breakpoints for breaches involving vehicles operating at increased dimension limits granted under a permit, gazettal notice, emergency exemption or any other scheme, should be calculated from the standard statutory dimension limits, unless otherwise specified by the scheme itself. This is the same approach taken above in respect of the breakpoints for breaches of increased mass limits, discussed earlier. Thus, any alternative breakpoints stated in the permit, notice, etc would override the ‘default’ dimension breakpoints (being those calculated from the normal statutory limits).

Note that the above does not include breaches of dimension limits provided in the regulations, subject only to access approvals of Class 2 vehicles under the Road Transport Reform (Restricted Access Vehicles) Regulations.

B.1.3 **Breakpoints for Breaches of Load Restraint Requirements**

In relation to load restraint, the April 1999 paper put forward sets of objective and ‘back up’ subjective tests as the breakpoints for load restraint breaches. These received some support; however, upon closer analysis by the focus group, they were found to be unreliable and difficult to apply in all instances. Instead, the focus group preferred the matrix, shown below:\footnote{This was an approach initiated by the focus group representative from the Western Australian Department of Main Roads.}

<table>
<thead>
<tr>
<th>LIKELIHOOD</th>
<th>CONSEQUENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>How serious is the risk of the load shifting or being lost?</td>
<td>Is the loss of the load likely to constitute an immediate safety risk?</td>
</tr>
<tr>
<td>Has already occurred or is imminent (eg grossly inadequate or loose restraints, severely degraded equipment)</td>
<td>No</td>
</tr>
<tr>
<td>Is likely to occur in time, due to degradation of equipment (eg: minor fraying of ropes, marginal overload of equipment’s rated capacity) but is not yet imminent</td>
<td>Minor</td>
</tr>
</tbody>
</table>

This matrix would need to be accompanied by a set of detailed guidelines that would set out the factors that should be taken into account when assessing risk (for instance, whether the vehicle is in a built-up area, the type of load, the meaning of ‘imminent’, the suitability of the vehicle for the load, etc.) and that include some comprehensive examples or scenarios in the interpretation of the matrix.
The guidelines would need to specify that ‘loss of load’ may also refer to loss of part of the load, but not a minute loss. The ability to take action as a severe risk breach by considering the road ahead and the distance travelled and the potential for unexpected events (for example livestock crossing) should also be available.

The development of these guidelines is part of the current AUSTROADS project to prepare administrative guidelines for the assessment and enforcement of mass, dimension and load restraint breaches.
B.2 OFFENCES

The offences proposals in this paper deal with the following matters:

- who should be accountable for a mass, dimension or load restraint breach and the obligations they should have (chain of responsibility); and
- the extent of that liability and any specific defences (liability and defences).

B.2.1 Chain of Responsibility

B.2.1.1 Introduction

The aim of chain of responsibility provisions is to ensure that all who bear responsibility for conduct which affects compliance should be made accountable for failure to discharge that responsibility.

The existing provisions in the Mass and Loading Regulations (which only target the driver and vehicle owner) and the Oversize and Overmass Vehicles Regulations and the Restricted Access Vehicles Regulations (which only target the driver and operator) do not achieve this aim. There are others in the transport/loading chain who should be made accountable because of the degree of control or responsibility they exercise over loading activities.

Chain of responsibility models

Chain of responsibility provisions have emerged in recent years primarily in the context of occupational health and safety laws and environmental regulation.

Chain of responsibility is a cornerstone of all the NRTC’s compliance and enforcement reforms, with wide support from industry and government. NRTC has so far tailored chain of responsibility provisions for two major areas of the road transport law: the Road Transport Reform (Dangerous Goods) Regulations 1997 and the Road Transport Reform (Driving Hours) Regulations 1998.

Whilst the chain of responsibility provisions needed for the mass, dimension and load restraint requirements will focus on different parties and different responsibilities, the Dangerous Goods Regulations and the Driving Hours Regulations provide good examples of how the chain of responsibility principle can be applied to different regulatory subject areas in the national road transport law.

(a) Dangerous Goods model

The Dangerous Goods Regulations received unanimous endorsement by the Ministerial Council for Road Transport in June 1997.

The responsibilities of each of the parties in the dangerous goods transport chain are defined by drawing a distinction between the primary liability of the person responsible for ensuring that a particular requirement is met, and the secondary liability of a person who is responsible only to the extent that he or she knew, or reasonably ought to have known, that the obligation was not fulfilled.

Under this model, packers, loaders, manufacturers, consignors, prime contractors and drivers each have defined legal responsibilities that correspond to their respective duties in the loading and transport of dangerous goods. The extent of
their liability (primary or secondary) reflects the extent of their control over these duties.

(b) Driving Hours model

The Driving Hours Regulations provide a different model for the application of the chain of responsibility principle. In the Driving Hours Regulations, a general duty is followed by a refinement of that duty in the case of specified parties – consignors, employers and drivers – who have special obligations.

B.2.1.2 Mass, dimension and load restraint chain of responsibility

Chain of responsibility provisions for mass, dimension and load restraint requirements have met with strong in-principle support on each occasion they have been proposed by the NRTC. However, the model first put forward in the 1995 Compliance and Enforcement Proposal is no longer considered sufficient.

In the area of mass compliance, the 1995 Compliance and Enforcement Proposal’s chain of responsibility provisions made the driver and the operator primarily responsible for overloading offences. The ‘consignor’ was liable also, but only if shipping documents understated the weight of the load\(^\text{18}\). Comment on the 1995 Compliance and Enforcement Proposal and further discussions with enforcement agencies and industry representatives from several jurisdictions, identified the following shortcomings with the chain of responsibility provisions, namely:

- practical difficulties with implementing a driver-operator-consignor chain had not been addressed;
- the alternative definition of operator suggested in the 1995 Compliance and Enforcement Proposal could not work without injustice in the mass, dimension and load restraint contexts;
- the proposed limited liability on consignors would not have gone far enough to redress the perceived inequities in the present regulations for drivers, owners or operators;
- at the same time, the presumption that a party may avoid liability by pointing to a reliance upon incorrect documentation, regardless of how unreasonable such a reliance might have been in the circumstances, conflicts with modern duty of care principles; and
- an aiding and abetting ‘catch-all’ provision in the 1995 Compliance and Enforcement Proposal (as with ‘cause or permit’ offences) did not offer an efficient or practical solution.

These problems are discussed in more detail in Appendix 4.

Activities or elements, rather than roles

To develop an accurate and workable chain of responsibility model, the NRTC examined the fundamental roles and responsibilities of the main parties in the transport/loading chain.

Identifying the main parties in the chain proved to be extremely difficult because there are so many different parties involved in transporting goods – manufacturers, packers, consignors,

\(^{18}\) No chain of responsibility was put forward for dimension and load restraint requirements in the 1995 Compliance and Enforcement Proposal.
freight consolidators, freight forwarders, loaders, transport companies, drivers, unloaders, goods receivers and consignees (to name only the main ones). Various employees of these parties may also have roles as individuals in their own right, as may subcontractors and agents. The chain becomes even more complex in the case of international freight where shippers, stevedores and customs agents are also involved.

Each loading transaction is different and involves different combinations of these parties. Sometimes, two or more of these roles may be played by the one person. For instance, a manufacturer may also pack and load the goods and may even own the vehicle and employ the driver; and a driver commonly performs the loading and unloading, as well as the driving itself.

The multiple and shifting roles mean it is not practical to develop a legislative chain of responsibility that identifies all involved in the transport chain by title and then assigns individual responsibilities, in the style of either the NRTC’s Dangerous Goods Regulations or Driving Hours Regulations. The permutations and combinations of the titles and responsibilities would result, inevitably, in overly lengthy and complex legislation.

A preferable approach to the use of roles or titles, in the mass, dimension and load restraint contexts, is utilising the essential elements or activities of the transport of goods chain.

**Elements of the mass, dimension and load restraint chain of responsibility**

In any transport of goods chain, there is a minimum of five essential elements or activities. These are:

- **consigning** – commissioning the carriage of the load by road;
- **loading** – placing or restraining the load on the vehicle or combination;
- **carrying** – controlling the use of the vehicle or combination for the transport of the load by road (normally performed by a transport operator);
- **driving** – the physical act of driving the loaded vehicle or combination;
- **receiving** – paying for the goods/taking possession of the load;

Additionally, in cases of pre-packaged loads and container freight, there is a further essential activity:

- **packing** – placing items in packages, containers or pallets.\(^{19}\)

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\(^{19}\)Packing is not relevant in bulk or volume loading.

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**Figure B.2.1: Chain of Responsibility = Chain of Activities**
There is also one main group of particular titles that should be added to the above transport chain of activities:

- **directors, secretaries or senior managers of bodies corporate** - The NRTC proposed in the 1995 Compliance and Enforcement Proposal and in the draft Road Transport Reform (Compliance and Enforcement) (General) Bill that a director, secretary or a senior management\(^{20}\) of a body corporate that has committed a road law offence may be punished as an individual who has been found guilty of the offence. As a general, or core, compliance and enforcement provision for the national Road Transport Law, this is intended to have application in the mass, dimension and load restraint contexts.

The approach applied for mass, dimension and load restraint provisions has been to identify the responsibilities that correspond to each of these activities using the degree of the knowledge or control that a person performing the activity might be expected to have in respect of compliance with the mass, dimension and load restraint requirements. The responsibilities were couched as legal duties (subject to defined defences) and, importantly, expressed to apply to any person, regardless of that person’s formal title or role in the transport chain.

This activity-based approach has the following benefits:

- the resultant chain of responsibility provisions should reflect more accurately the actual chain of responsible participants in the activities that make up the road transport of goods; and
- categorising activities into the above, minimal, groupings should reduce the potential for cluttering up the legislation with too many overlapping and shifting roles and titles.

The inclusion of all of the above in the chain of responsibility for the mass, dimension and load restraint requirements is considered essential to nationally consistent outcomes. The responsibilities attaching to these activities are discussed in turn below.

**B.2.1.3 General principles applying to the chain of responsibility**

The four general principles applying to the chain of responsibility are contained in the existing national regulations for mass, dimension and load restraint and are retained in the current proposal.

(a) Where more than one party is liable, proceedings may be taken (simultaneously, if desirable) against each liable party; it is not intended that there be ‘shifting liability’ or that there be ‘point the finger’ type provisions – all may be jointly and severally liable, depending on their individual involvement.

(b) The successful prosecution of one party in the chain should not be a precondition to the prosecution of another in the chain for the same breach incident (but may be a consideration as to which other parties are, or are not, prosecuted).

(c) A person may be liable for more than one offence if requirements relating to different parts of a vehicle, or different vehicles in a combination, are breached.

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\(^{20}\) The meaning of ‘senior manager’ will be to the effect of ‘high managerial agent’ as in subsection 12.3(6) of the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth: ‘an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy’.
(d) However, a person who meets more than one description should only be punished once in relation to the same breach.

B.2.1.4 Consigning

The party who consigns the goods for transport by road may be the manufacturer, freight forwarder, importer, customs agent, person who arranges for the transport of goods immediately after their entry into Australia, freight consolidator, or a carrier who consigns goods for transport by other carriers. Consigning should also include being the nominated representative in Australia of an overseas-based consignor.\(^{21}\)

The consignor may stand to make considerable profit by ignoring the mass and loading requirements. Loading over the mass and dimension limits allows the consignor to pay for fewer road transport journeys to send the same quantities of product. Taking short cuts with load restraints may also reduce time and expenses.

The consignor may contribute to breaches by exerting pressure on loaders, carriers and drivers to overload, to accept overloaded freight containers or to take risks with loads that exceed the dimension limits or that are restrained inadequately. Even where he or she is not involved personally in loading or transporting the goods, the commercial reality is that the consignor will usually know or be in a position to know the precise quantity, mass and size of the goods that are being sent. Thus, the consignor should be expected to make every reasonable effort to prevent any contravention of the requirements.

If transport documentation prepared by the consignor understates the weight or dimensions of the load, that misrepresentation is likely to create problems right along the chain - for loaders, carriers and drivers and any others who rely on the mass quoted in the transport documentation. Thus, the consignor should ensure that any transport documents relating to the load are as accurate as possible and do not state weights that are less than the actual mass of the load.

The consignor should also have a duty to ensure that a load is not heavier than that stated on the marked safe working limit of a freight container, and the distribution of the load is in accordance with any representations as to load distribution contained in the transport documentation.

B.2.1.5 Packing

Packing is an act that is quite removed from carrying containers or packages in a vehicle in contravention of the mass, dimension and load restraint requirements. It would be drawing too long a bow to suggest that a person who packs goods should be aware of the mass and dimension limits of the vehicle and take responsibility for ensuring compliance with those limits. Such responsibility rests more appropriately with the consignor for whom the packing is being performed.

However, it is a different matter when a person who packs the goods misrepresents the mass of a package or container by understating its mass. Those responsible for packing goods for

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\(^{21}\) The NRTC has had the advantage of a legal opinion obtained at the request of the AUSTROADS Working Party on Overweight Containers that outlines a legal mechanism by which proceedings might be taken against the Australian representative of an overseas-based consignor. This advice is worthy of consideration and will be analysed further in a current AUSTROADS/NRTC project to develop a national implementation plan to address overweight containers, before being adopted by NRTC as a formal proposal.
transport are considered to have a duty of care - to others in the transport chain specifically, and to the community at large - to ensure that their actions do not create a potential danger or breach. By understating mass they breach that duty.

A prosecution for such a breach should be taken against the individual, company or business partnership that has responsibility for, and control over, the packing of the goods. An individual employee of such bodies should not be liable, as it is the employer - not the employee - who has ultimate responsibility for the manner in which the goods are handled.

As with consigning, packing is often performed overseas. Thus, to ensure enforceability of the duty in the Australian courts, the Australian agent of an overseas-based packer should be held legally accountable for the acts committed by the principal.

B.2.1.6 Loading

The entity with responsibility for loading the goods on the vehicle may include a professional loading agent, a stevedoring company, a rail or sea freight forwarder, a prime or principal contractor, a subcontractor, a person who controls the loading facility and a person who supervises the loading. The driver, carrier, consignor and packer may also have sole or shared responsibility for the loading.

Proper loading of the vehicle is critical to ensuring that the mass, dimension and load restraint requirements are met. However, determining when those who load the vehicle should be accountable for mass, dimension and load restraint breaches is not clear-cut.

Even if the person who loads the goods does know the mass and dimensions of the load, he or she might not be in a position to know the mass, dimension and load restraint requirements of a particular vehicle, nor whether the distribution of the load complies with the vehicle’s axle limits. Further, the person who loads only some of the goods on a vehicle might have no involvement in the loading of other goods in the load. That person might not be responsible where it is the combined load, rather than a single consignment of goods, causing the breach.

On the other hand, there are circumstances where the person who loads the vehicle will know that the mass or dimension requirements may be exceeded or that the load is inadequately restrained.

Thus, there should be a general obligation on the loader to take reasonable steps to prevent any non-compliance with the requirements. Limiting this legal obligation to taking ‘reasonable steps’ will ensure it is not an unduly onerous obligation.

Also, as with consignors and packers, loaders should not make any false or misleading representations about the goods or the load.

B.2.1.7 Carrying – controlling the use of the vehicle

The person responsible for the transport of the goods by road may include all or any of the following: the fleet operator of the vehicle or vehicles concerned in the road transport of those goods, the prime or principal contractor, the sub-contractor, or the registered operator or owner of the vehicle or vehicles, or the lessee of the vehicle or vehicles.

There is a small proportion of carriers who breach the mass, dimension and load restraint requirements for commercial advantage. Carriers who deliberately engage in improper mass and loading practices should be subject to the appropriate enforcement sanctions.
However, aside from cases where the vehicle has been used without authority and by someone not legally entitled to use it, carriers should be held accountable for the manner in which that load is transported, even for reckless, negligent or accidental conduct. This is part of the modern duty of care expected by the community of truck operators. This duty is now recognised to such an extent that the ‘unsophisticated businessman’ argument, raised in the past by trucking company owners and managers, is unlikely to attract community or judicial sympathy.

The carrier is expected to know the mass, dimension and load restraint requirements and the safety limits requirements of the vehicle, as well as the mass, mass distribution and dimensions of the load and the manner in which the load is restrained. The carrier is responsible for using the appropriate driver, vehicle, equipment and operational systems for the transport task and for ensuring that the vehicle and its load comply with all of the applicable requirements.

Whilst responsible carriers are likely to have efficient systems in place and to instruct their drivers not to accept loads that breach the requirements, they acknowledge that unless they are held to be accountable, a general breakdown in compliance will be expected to occur. Thus, the carrier should be held liable for a breach of the mass, dimension and load restraint requirements, in circumstances other than when the vehicle is used by someone who is not legally entitled to use it. As well, best practice enforcement should not necessarily focus on the carrier where the driver has taken a load not authorised by the carrier.

The carrier also has a responsibility to ensure that any required permits or other approvals are obtained and that there is compliance with the conditions in permits, notices and emergency exemptions.

The carrier must not, of course, provide false or misleading information about the load, or the load-carrying capacity of the vehicle, combination or its parts, in circumstances where the information might be relied upon by another (usually the driver or loader) and result in a breach of the mass limits.

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22 As it was recently reported in Safe Truck and Bus (Victorian Road Freight Advisory Council, April 1997 at p.1), the modern evidence is -

‘... Judges have an expectation that:

1. Managers of a business, especially one involving assets (of even one truck) and some degree of public safety exposure (mingling with traffic and the general public for many hours per day) are expected to have the sophistication to understand and tackle issues of the complexity of legal liability to their employees.

2. The toughness of the market and the inability to get customers to pay rates that allow for that sophisticated management or safety procedures or training are not excuses. If you can’t fulfil all your obligations (including employee and public safety) in a business, get out of it, is the [judicial] line.

3. Owners and managers who ignore warnings of unacceptable behaviour will attract more severe punishment.

4. Those who actively work with their employees to subvert the law or safe procedures will attract even more severe punishment – and ignorance or financial pressures only impose further severity and are still not an excuse.’
B.2.1.8 Driving

Nearly all drivers, operators, industry associations and enforcers consulted by NRTC agreed there are occasions when a driver will not be aware the vehicle or combination does not comply with the mass and loading requirements.

However, it is the driver who has taken that vehicle on the road, and other road users have the right to expect the vehicle will be driven in a safe manner and within the law. The driver should know the requirements relating to the vehicle being driven, including the manufacturers’ ratings. The driver should know the mass of the load on the vehicle and the mass distribution requirements of the vehicle. The driver is considered to have the obligation to not drive a motor vehicle, trailer or combination that does not comply with the mass and loading requirements.

In addition, in the case of compliance with the mass limits, those consulted agreed that there will be a level of excess mass at which any driver cannot but help realise the vehicle or combination is overloaded.

A driver is also required to ensure compliance with all dimension requirements. Compliance involves relatively straightforward measurements.

Again, even though a driver may have had no part in the loading of the vehicle, the driver should nevertheless ensure the vehicle or combination does not breach the load restraint requirements before taking that vehicle or combination on a road. A driver should be accountable if a load on the vehicle is not placed, secured and restrained in accordance with the load restraint requirements, even where the loading is performed by others. At the same time, it may not be fair to hold a driver liable for equipment failures (such as restraint anchor points that do not comply with the requisite standards) where the provision and maintenance of the equipment is the responsibility of the carrier.

It is also recognised that many drivers commit mass and loading offences as a result of pressure from employers, operators or consignors. Flowing from this recognition, as a general best practice enforcement policy, a driver need not be prosecuted (but can be prosecuted) where it is just and practical to prosecute the carrier or another party who is more culpable than the driver.

Nevertheless, this policy needs to be tempered by the competing consideration that failure to penalise the driver for non-complying vehicle mass, dimension or load restraints in some circumstances might have the undesirable effect of reducing drivers’ accountability for matters within their control23. In-principle, the driver could always refuse a non-complying load (albeit that the consequences could be dire). The commercial reality is that this would happen rarely, if at all, particularly in the lower breach category.

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23 A recent statement of which was made by Justice Bignold of the New South Wales Land and Environment Court in Stephen Clements v Stephen George Dixon, (#50075/97, 9/12/97). Failure to impose a penalty -

‘would signal to the community that subordinate and junior employees were immune from the consequences of wrong moral choices made in the discharge of their work responsibilities merely because they were following work practices imposed upon them by their superiors’. Justice Bignold said, ‘And the problem could escalate to encourage employers to shield themselves behind the indiscretions ... of junior employees who were merely doing their job’.
B.2.1.9 Receiving

Those who receive loads are usually in a good position to know the mass of the goods they are accepting or for which they are paying. This will sometimes translate to condoning or encouraging illegal loading practices by paying for overloaded, oversized loads or unsafe loads, or turning a blind eye to improper methods of transporting the goods by road.

Responsible freight receivers can play an important role in discouraging poor loading practices. For instance, one consignee consulted by the NRTC refused to accept overloaded deliveries, whilst another refused to pay for that part of a load that was in excess of one tonne over the legal limit. Once such procedures were put in place and firmly adhered to by these consignees, it was reported that there was a marked improvement in the proportion of deliveries that met the mass and loading requirements.

However, in many cases, those who accept or pay for goods transported on vehicles that are not in compliance with the mass, dimension or load restraint requirements can not be expected to know the legal mass of the vehicle. Further, they may only have responsibility for a part of a load.

Thus, receivers have a duty not to knowingly or, at most, not to recklessly, accept a load that has been transported illegally.

B.2.1.10 Directors

A director, secretary or senior manager of a body corporate that has committed a breach of the mass, dimension or load restraint requirements should be held personally accountable for that breach. This position reflects the prevailing view that directors should take responsibility for all aspects of a body corporate’s activities.

However, personal liability should not attach to the director, secretary or senior manager if they were not in a position to control the conduct of the body corporate in relation to the offence (for instance, if the senior manager controlled only the publicity functions of the body corporate but had nothing to do with its operations), nor should they be liable if they made every reasonable effort to prevent the offence.

B.2.1.11 General duties

The following duties should be expected of any person, a breach of which may result in criminal liability:

(a) the duty not to knowingly provide false or misleading information to another person about the goods, vehicle or load, or make a false or misleading statement about the goods, vehicle or load; and

(b) the duty to remain stationary if directed to do so and to comply with the proper directions of authorised enforcement personnel.24

B.2.1.12 ‘Causing or Permitting’

Any person who ‘causes or permits’ any of the proposed offences should also be liable under this scheme. Cause or permit provisions are useful to seal off any unintentional legal

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24 This duty is considered in section B.3, below.
loopholes that may provide an excuse to someone who has caused a loading breach but whose actions do not technically fit into one of the specific activity categories in the chain.

Such provisions are considered desirable, but not essential, for nationally consistent outcomes.

B.2.2 Absolute or Strict Liability

Once those who are to be included in the chain of responsibility have been identified, the nature of the liability that should attach to each of the parties in the chain should be addressed.

For many of the offences proposed in this paper absolute liability is considered appropriate.

Criminal liability holds an individual responsible for the commission of an offence so that a penalty can be applied. It requires that the person committed the act or made the omission constituting the offence and that at the relevant time the person had the necessary state of mind. The state of mind required for more serious offences is generally intention or recklessness, and sometimes negligence. The rationale is that a person should only be held criminally liable for something they actually intended to do, or at least did out of carelessness.

Most summary and regulatory offences are strict or absolute liability offences. Strict liability means the person will be guilty even if he or she did not intend to commit the offence, although the person will have a defence if the offence was committed as a result of an honest and reasonable mistaken belief as to relevant facts. Absolute liability excludes such a defence.

Regulatory offences are further characterised by their purpose of public safety protection, their relatively low penalties, for instance fines rather than imprisonment, and the need for the achievement of justice efficiency. The absence of the requirement to prove a fault element is an important aid to effective enforcement and is somewhat balanced by the lower penalties that attach to such offences.

In response to the NRTC’s 1995 Compliance and Enforcement Proposal, there was support for the application of absolute liability and strict liability from several enforcement agencies, but objections were expressed by some Justice Departments, industry associations and other enforcement agencies. Objections to strict liability and absolute liability are that it is not just to impose a penalty in the absence of a fault element, and unduly harsh laws have the capacity to bring the legal system into disrepute.

Although, as a matter of principle, the law should avoid making a person liable for an offence if the person is not at fault in relation to that offence, there are exceptions to this principle which can be justified on pragmatic and public safety grounds.

For breaches of the heavy vehicle mass, dimension and load restraint requirements, compelling reasons exist for excluding the usual requirement that the prosecution prove the defendant’s state of mind - beyond reasonable doubt. In short:

- the prime purpose of the mass, dimension and load restraint requirements is safety;
- the offences are regulatory in nature;
- they need to be dealt with efficiently and at a low cost; and
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● the penalties attached to these offences are relatively low.\textsuperscript{25}

In considering whether strict or absolute liability should apply, it is useful to also consider the desirability of allowing the defence of honest and reasonable mistake to be raised. Strict liability provides the possibility of raising this defence. Absolute liability does not.

The elements of the common law defence of honest and reasonable mistake are:

(a) the defendant must have been operating under an honest and reasonable mistake;

(b) the state of facts, if true, would render the defendant’s conduct innocent; and

(c) the mistake must be one which a reasonable person could have made in the same circumstances. It must be subjectively and objectively reasonable.

The focus is upon the mental state of the defendant and determining whether an error has truly been made. The defendant must convince the court on the balance of probabilities. The prosecution must discount the defence, when raised, beyond a reasonable doubt.

The most significant reason for not having a defence of honest and reasonable mistake in the mass, dimension and load restraint contexts is because of the seemingly generous excuse it would provide. This was demonstrated in the case of \textit{Mayer v Marchant}.\textsuperscript{26}

It is this formulation of the defence of honest and reasonable mistake which strongly points to the requirement that ‘due diligence’ be part of a statutory defence in order to ensure a conscious advertence to a possible breach every time the vehicle is loaded.\textsuperscript{27}

As mass, dimension and load restraint offences are regulatory in nature, the commission of which can be avoided in most circumstances by responsible parties, then it appears fair to expect greater thought rather than allowing offenders to shelter behind an ‘honest and reasonable mistake’. It is also too easy to accept the actions or effects of a third party in these cases and to fail to turn one’s mind to the possibility of being overweight, or over dimensional, or unsafely loaded.

For these reasons, strict liability, with its defence of honest and reasonable mistake, is not considered the best approach and absolute liability is preferred.

However, to address possible injustice from the unqualified general application of absolute liability it is clear that specified statutory defences are required and these are discussed in section B.2.3.

\textsuperscript{25}Whilst the sanctions and penalties proposed in this paper are potentially serious for the most serious categories, and for repeat offenders, the levels are generally low in comparison to non-regulatory style offences and indeed, to other absolute liability offences (for instance, Victorian environmental offences).

\textsuperscript{26}(1973) SASR 567: ‘I agree that where the defence is applicable it is sufficient if there is a general belief in a general proposition covering the relevant circumstances, such as that of a certain number of gallons of distillate loaded on to a vehicle of a certain type will produce a load of a certain weight, and that it is not necessary that there should be a conscious advertence to each practical application of that proposition, such as that a particular vehicle on a particular stage of its journey carried a particular load. To require this would, I think be to deprive the defence of practical effect in a case like the present.’

\textsuperscript{27}However, due diligence has not been imported within the realm of the common law defence of honest and reasonable mistake, see \textit{He Kaw Te} (1985) 157 CLR 523; 60 ALR 449 and Abadee J in \textit{Australian Iron Steel v EPA} (1992) 29 NSWLR 497 at pp. 50-513.
Although absolute liability, coupled with appropriate statutory defences, is considered best practice, the NRTC recognises, that for some jurisdictions, absolute liability cannot be implemented because it conflicts with their broader criminal and legal policy frameworks. Those jurisdictions which cannot implement absolute liability can, nevertheless, utilise strict liability coupled with an honest and reasonable mistake defence. This approach is considered a sufficient alternative to the preferred approach of absolute liability with a statutory defence, for the reason that strict liability will produce, in practical terms, outcomes very consistent with those produced by the application of the proposed ‘reasonable steps’ defence (see below). Hence, absolute liability is considered desirable (not essential) for nationally consistent outcomes.

B.2.3 Defences

B.2.3.1 A reasonable steps defence

For drivers and carriers

The parties in the proposed chain of responsibility who are (still) likely to be the most common targets for enforcement action are the driver and the carrier. However, for the reasons discussed in the previous section, these parties are not always in a position to know of, or to prevent, a breach.

The existing national mass, dimension and load restraint regulations do not provide any general statutory defences.

However, there may well be circumstances where all reasonable care has been taken to prevent non-compliance, yet, because of systemic problems, equipment inaccuracies and incorrect documentation, a breach of the mass, dimension and load restraint requirements occurs. Such circumstances should be treated differently to intentional, reckless or negligent overloading. Particular problems in achieving accuracy exist in the mass context. These are outlined in Appendix 5.

A formal defence should be available to parties who would otherwise be guilty of breaching the requirements to avoid liability for breaches which the offender took reasonable steps to avoid and of which the offender did not have the requisite knowledge.

If an honest and reasonable mistake defence is too broad, for the reasons listed above, a tighter statutory formulation of a defence is needed. In its application to drivers and carriers such a defence should:

- be sufficient in its breadth to remove doubt that the excess load was not the product of an inadvertent and reasonable error when making a genuine attempt to achieve compliance;
- be sufficient in its breadth so that once over that limit it would be quite fair and reasonable to say that a driver must either know or be assumed to know that the limit has been exceeded;
- not be too wide to excuse an appreciable risk to safety; and
- (ideally) also encourage an improvement in loading accuracy.

In New South Wales, subsection 235(3) of the Roads Act 1993 provides a due diligence style defence for a person charged with certain offences under that Act who:
- did not know, and could not reasonably be expected to have known, of the contravention; and
- had taken all reasonable steps to prevent the contravention.

This defence addresses the unfairness aspect of penalising someone for an overload of which that person neither knows, nor could reasonably be expected to have known, and also requires positive proof of ‘all reasonable steps’. However, ideally, a cap should also be placed on the amount of excess mass to make it clear that none but minor breaches might be excusable and to ensure there is no doubt in the capacity to enforce over that limit.

Another model for a statutory defence is regulation 44 of the Northern Territory’s Motor Vehicle (Standards) Regulations. Although a breach of the mass limits under the Northern Territory legislation is an offence of absolute liability, regulation 44 provides an express defence where the offender has taken reasonable efforts to comply with the mass limits and where neither the manufacturers’ ratings nor specified overload margins have been exceeded. Regulation 44 states:

*It shall be a defence ... if the person charged with the offence proves that he made or caused to be made all reasonable efforts to comply with the [mass] requirements and that the [specified] respective load limits ... -*

(a) have not exceeded the manufacturer’s recommendations, by specification or otherwise, of the safe working load for any component; and
(b) have not been exceeded by more than the lesser of –

1 in the case of a single axle group – 0.25 tonne;
2 in the case of an axle group other than a single axle group – one tonne; or
3 10% of the gross vehicle mass or gross combination mass specified in that regulation.

The Northern Territory defence does not impose the requirement contained in the New South Wales defence that the defendant must prove that he or she had no knowledge of the contravention or could not reasonably have been expected to have such knowledge. To meet the first of the objectives stated above, this requirement is needed; that is, it is not considered enough that the offender’s acts show ‘reasonable efforts’ if the offender actually knew or should have known of the overload. On the other hand, the Northern Territory defence confines the excuse to a limited margin of excess mass (essentially, the accepted tolerance band), missing from the New South Wales defence.

All of the objectives set out above appear to be achieved by either the New South Wales defence limited to a specified margin or the Northern Territory defence with an additional requirement that the defendant did not know, and could not reasonably be expected to have known, of the breach.

Confining this defence, in its application to drivers and to carriers to the minor risk breach category has considerable merit:

- Substantial risk offences target appreciable risks of infrastructure damage, whilst severe risk offences target appreciable risks to safety as well as to infrastructure. Minor risk

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28 For instance, see *RTA NSW v Timothy David Bettington*, (unreported) NSW Supreme Court, No. 10758/94, 9 May 1994, Wood J; and *Lee v Huxton Haulage Pty Ltd* (1994) 2 NSWCR, Barr AJ.
offences target merely unfair competitive advantage and, in the mass context, accelerated road wear. Confining the proposed defence to the minor risk breach category protects the need for certainty of action against the more serious breaches.

- The risk of injustice to the driver or carrier of not having the defence in the substantial and severe risk categories of offences is relatively low, in that there is a greater likelihood the offender has intentionally (or at least, recklessly or negligently) – rather than incorrectly – committed a substantial or severe risk offence.

- It is more efficient and less costly to bring a driver or carrier to justice for substantial risk or severe risk offences if absolute liability applies without the proposed defence in those offence categories.\(^{29}\)

However, it is recognised that some jurisdictions may not wish to limit the application of this defence for drivers and carriers to minor risk breaches. Whilst there are strong arguments in support of such a limitation of its application, it is also anticipated that the circumstances in which a driver or carrier might successfully invoke this defence where the breach involves a substantial or severe risk breach will be extremely rare. Hence for practical purposes, it is considered that nationally consistent outcomes will be achieved even if the defence is not limited to minor risk breaches for drivers and carriers. If this expectation does not prove well founded, the ‘desirable’ status would need to be reviewed.

Similarly, as mentioned under the discussion on absolute liability, some jurisdictions have no option but to apply strict liability with the honest and reasonable mistake defence. They may have little, if any capacity, to limit the application of the honest and reasonable mistake defence to the minor risk category of breach.

For these reasons, the reasonable steps defence is considered desirable for nationally consistent outcomes, but not essential.

*For consignors, packers and loaders*

Consignors, packers and loaders in the chain of responsibility may be at least one step removed from the offences of actually driving the vehicle that does not comply with the requirements (applicable to the driver) or being responsible for the use of that vehicle (applicable to the carrier). These parties, for instance, may not be liable where the vehicle’s load contains consignments from different sources.

The rationale for confining the reasonable steps defence to offences in the minor risk range when committed by drivers or carriers does not sit comfortably when applied to these other parties in the chain of responsibilities.

For this reason, it is considered more just and appropriate to allow these parties the benefit of the availability of the defence across each of the minor risk, substantial risk and severe risk categories.\(^{30}\)

The application of the defence to consignors, packers and loaders in all breach categories is considered desirable for nationally consistent outcomes.

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\(^{29}\) However, although certainty and administrative efficiency are also important considerations in the minor risk category of offences, there is more potential for injustice to an offender from the unqualified imposition of absolute liability in the minor risk category.

\(^{30}\) Of course, the defence is still potentially more onerous than the honest and reasonable mistake defence for strict liability offences, as it requires each party to satisfy a court that reasonable efforts were taken and that he or she had no actual or imputed knowledge.
Determining what are reasonable steps

It would be a very difficult task to define what are reasonable steps and what are not, because of the enormous variety of loading operations, controls and systems (discussed in Appendix 5).

Nevertheless, one option to develop a degree of certainty into the meaning of such a broad term would be to provide that as long as a defendant had no knowledge of the breach, the defence might be established by a person who satisfies the court that he or she has complied with all relevant requirements of an approved industry code of practice.  

The use of industry codes of practice to provide guidance on matters covered by general duties in legislation is common in occupational health and safety, building and environmental legislation. Codes provide flexibility and have the advantage of being industry specific. Because they are to be developed by industry, they are more likely to be accepted and observed.

Codes of practice usually set out one means of complying with the legislation but duty holders can still achieve the regulatory objectives by using means equivalent to, or better than, the recommended method.  

Similarly, the proposed use of industry codes as a way of achieving compliance with the requirements is not for the purpose of creating the duties (that is the function of future model legislative provisions) but rather setting out guidance on how the duties in the legislation might be met.

Thus, a person who is complying with a relevant and approved industry code would be able to establish the proposed reasonable steps defence (provided he or she had no knowledge or imputed knowledge of the breach). Compliance with an industry code need not be the only way that the requirement of taking reasonable steps can be established, but could be one important way.

In order to develop and approve such codes, and under the general auspices of the NRTC:

- an implementation working party should be established (suggested for Stage 2) to resolve broad guidelines and business rules for the development and content of such codes;
- individuals or industry groups would develop codes;
- codes would be subject to approval by Authorities;
- there would be mutual recognition of approved codes amongst jurisdictions;
- codes would lapse if not reviewed and if then found necessary, updated, at specified intervals; and
- codes would nominate approved auditors.

A defendant wishing to rely on an approved industry code would be required to produce a statutory declaration from an approved auditor to the effect that all relevant standards and procedures under the code and the spirit or intent of the code were met. This statutory declaration would be evidence of reasonable steps in the absence of evidence to the contrary.

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31 An alternative approach would be to provide that the person is deemed to have complied with the requirements.

32 In Victoria, for example, section 55(1) of the *Occupational Health and Safety Act 1985* empowers the Minister to approve codes of practice for the purpose of providing practical guidance to duty holders.
There does not appear to be any impediment to using compliance with an approved industry code as a factor that would support an honest and reasonable mistake defence. It is considered that the proposed option of compliance with an approved industry code is desirable, but not immediately essential, to nationally consistent outcomes.

Overall, the application of the proposed reasonable steps defence would be likely to:

- offer a fair and flexible approach to enforcement;
- encourage compliance through the development of industry specific codes of practice; and
- ensure that enforcement proceedings are better directed to those whose breach is sufficiently serious to warrant that level of enforcement action.

Because the proposed defence is qualified by the requirement that a defendant prove not only that he or she was not aware of the contravention but, indeed, took reasonable steps to ensure compliance with the requirements, there is also the capacity for the scope of this defence to dynamically reflect improvements in loading and weighing practices and accessibility to these improvements over the passage of time.

The defence is desirable for nationally consistent outcomes.

**B.2.3.2 Special carrier’s defence**

Similarly, in addition to the reasonable steps defence that is proposed for carriers, the carrier should also be afforded a defence when the vehicle is used by someone not legally entitled to use it. This defence is proposed to apply whether the breach falls within the minor risk, substantial risk or severe risk breach category.

The defence is considered essential for the long-term purpose of guarding against injustice, but only desirable in the short term, to the extent that there are doubts that nationally consistent and agreed wording can be achieved that will preclude abuse of the provision.

**B.2.3.3 Special driver’s defence**

In addition to the reasonable steps defence for drivers, the driver should be afforded a defence where a breach has occurred as a result of equipment that is provided or maintained by someone other than the driver. This defence should also apply in the three breach categories, but not in a way that absolves drivers who either were or should have been aware of the problem.

As with the special carrier’s defence, the special driver’s defence is considered essential for the long-term purpose of guarding against injustice, but only desirable in the short term, to the extent that there are doubts that nationally consistent and agreed wording can be achieved that will preclude abuse of the provision.

**B.2.3.4 A special defence for unevenly distributed loads**

As noted in section B.1.1.6 ((Future) treatment of breakpoints for breaches of axle group limits), the way in which pavement wear, public safety and bridge wear are controlled through mass limits is being reviewed in a separate study. Depending on the results of this study, the approach to regulation of axle mass limits may be changed. Clearly, this will mean that the proposals contained in this paper in relation to axle mass limits may need to be updated. This
would include re-evaluating penalties and potential defence provisions relating to axle mass limits.

\textbf{B.2.3.5 \textit{Additional general defences}}

Several general defences will also be available, including: \footnote{Such defences are not to be excluded by absolute liability. See, for example, their formulation in the Commonwealth Model Criminal Code.}

- mental impairment;
- claim of right;
- duress; and
- sudden or extraordinary emergency.
B.3 ENFORCEMENT POWERS

Currently, each jurisdiction has its own approach to the enforcement of mass, dimension and load restraint requirements. Unless there is a national approach to enforcement, the benefits to industry and jurisdictions of national mass, dimension and load restraint requirements will not be realised.

B.3.1 General Powers to Investigate Compliance

The 1995 *Compliance and Enforcement Proposal* put forward some general enforcement powers for mass and loading which have since been developed into draft legislative provisions in the NRTC’s draft *Road Transport Reform (Compliance and Enforcement) (General) Bill*.

These draft provisions were intended as an attempt to set out national core powers and duties of members of the police force and authorised officers in the enforcement of national road laws, and include:

(a) powers to stop and move vehicles by:
   - directing the driver to stop or keep the vehicle stationary;
   - directing the driver to move the vehicle to the location specified by the enforcement officer;
   - directing the driver to move the vehicle if it is causing a danger or obstruction;
   - moving an unattended vehicle that is causing a danger or obstruction and using reasonable force to enter the vehicle to do so; and

(b) general investigative powers of:
   - inspecting a heavy vehicle and garage address;
   - directing that documents, records or devices be produced;
   - giving a written notice requiring the production of documents, records or devices;
   - requiring the name and address of a driver or person in charge or apparently in charge of the vehicle or garage address;
   - requiring the identity of the registered operator or operator;
   - directing the driver or person in charge or apparently in charge of the vehicle or certain premises to give reasonable assistance;
   - entering and searching vehicles and garage addresses under warrant; and
   - seizing evidence.

Relevant clauses from the draft Bill are included in Appendix 6. It should be noted that the provisions in the draft Bill are being reviewed and many of the specific aspects of the above general powers are likely to change as a result. Nevertheless, it is considered that provisions to the effect of those contained in the draft Bill will be needed to allow for the stopping, moving and investigation of breaches of the national mass, dimension and load restraint requirements. These draft provisions provide illustrative wording for this policy.
B.3.2 Need for Additional Enforcement Powers

In addition to the general powers to stop and move vehicles and to investigate possible contraventions, there is a need for national, specific enforcement powers to enable authorised officers and members of the police force to deal effectively with vehicles that are found to be breaching the mass and loading requirements.

The questions that arise for consideration are:

- Should a non-complying vehicle be allowed to proceed?
- If so, to what destination, and on what legal basis?
- Under what circumstances is it preferable, or even imperative, that a non-complying vehicle be allowed to proceed, and to what extent?

This section of the paper proposes answers to these questions and a framework of powers for enforcement officers to deal with these situations.

B.3.3 Relationship Between General and Specific Powers

To ensure the effectiveness of the conventional compliance and enforcement regime for mass, dimension and load restraint, both the general and the specific powers are required.

It is, at this stage, intended that the development of both sets of legislative provisions will proceed at the same time, once there has been endorsement in-principle of the policies proposed in this paper.

B.3.4 Objectives of Additional Enforcement Powers

The particular objectives of the policy framework for the additional administrative enforcement powers are:

- to provide the powers necessary for enforcement officers to administer the proposed conventional compliance regime consistently, efficiently and fairly;
- to enable enforcement effort and resources to be targeted effectively and appropriately at the offences and offence patterns of most concern;
- to provide industry with the confidence that enforcement action following detection of a breach will be applied in a manner that is even-handed, consistent and appropriate to the breach; and
- to be sufficiently flexible to allow exceptions to the general rules to meet the needs of particular cases.

A minimalist approach would be to provide a blanket power for an enforcement officer, when confronted with any vehicle that does not comply with the mass, dimension or load restraint requirements, to take whatever steps are necessary in the enforcement officer’s opinion to prevent any risk to safety or property. However, such an approach would not achieve any of the above objectives.

The desirable approach is a framework that provides powers specific to particular types of breaches, as well as some flexibility of response for exceptional circumstances. Enforcement outcomes that are fair and appropriate to each breach require more specific policies and powers that are directed at the actions necessary to deal with similar situations in a consistent way. Specific powers to deal with specific situations will promote efficiency and certainty.
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B.3.5 Risk-based Approach

This approach creates a set of enforcement powers specific to each of the three breach categories developed in this paper – the minor risk, substantial risk and severe risk categories – proposing enforcement powers that are considered necessary to respond to breaches in each category. Thus, limited powers are proposed in the minor risk category, reflecting the relatively minor impacts of such a breach. More extensive powers are proposed in the substantial risk category, proportionate to the additional risks posed by substantial risk breaches. The most extensive powers are reserved for the severe risk range of breaches, in recognition of the level of abuse of the law, the seriousness of the unfair commercial advantage gained through the commission of the breach, the potential impact on infrastructure, and the need to prevent any possibility of a continuing risk to safety.

At the same time, the model proposed in this paper provides enforcement officers with some limited discretionary powers to depart from the general enforcement practices that would otherwise apply in the relevant category of breach, where particular circumstances justify such a departure.

The powers considered necessary in each of the breach categories are discussed below.

The broad approach of linking different enforcement powers to corresponding degrees of breach is one that has found favour in at least two other administrative enforcement models in recent times: the AUSTROADS model put forward in the Business Rules for Management of Mass Limits Final Report and the sanctions model proposed in the Queensland Department of Transport’s Policy paper entitled ‘Managing Unsafe Overloading in Queensland’ (amended January 1999). These models (outlined in Appendix 7) have influenced the foundation for the national approach proposed.

The overall approach is considered essential for nationally consistent outcomes; however, some of the actions (for instance, the availability of infringement notices for severe risk breaches) are not considered essential.

B.3.6 Enforcement Powers Applying to Minor Risk Breaches

For breaches in the minor risk range, implications are relatively minor, mainly involving the capacity of offenders to obtain a small degree of commercial advantage over those who operate within the law, and, in mass breaches, accelerated road wear. Infrastructure damage and safety are not of concern in breaches in the minor risk range. Thus, in most cases involving breaches within this range, severe powers justified on public protection principles will not be required. It must also be emphasised that there is a strong need to keep administrative actions as simple as possible to reduce the administrative burden in this category.

The most common roadside response to vehicles that are detected with breaches in the minor risk category would be to allow the driver to continue to his or her intended destination. This might be empowered by the enabling legislation or might otherwise be granted by authorised
officers at the point of detection of the breach. However, an indemnity is required for enforcement officers authorising non-complying vehicles to proceed.\textsuperscript{34}

Also, focus group members agreed that agreement between the jurisdictions affected by any ongoing travel across borders must be obtained.

How breaches are processed in this category would be a matter for each jurisdiction. Formal warnings could be used. Infringement notices and prosecutions might also be issued for breaches in this category where it is believed the reasonable steps defence could not successfully be invoked.

**B.3.7 Enforcement Powers Applying to Substantial Risk Breaches**

Although there are not intended to be any appreciable risks to safety arising from mass breaches within this category, there is an increased risk of infrastructure damage and causing inconvenience to others and consequent loss of productivity. The vehicle does not have an entitlement to proceed, and should be obliged to remain stationary until the legal requirements are met. At the same time, there is also a need for administrative flexibility in this category (taking into account the freight, location of the offence and all of the surrounding circumstances).

As a general rule, it is not acceptable that vehicles with loads that exceed the requirements to such a degree and present a risk of damage to public assets be permitted to continue or complete their journey. However, an enforcement officer should be empowered to authorise the driver to proceed no further than the nearest town, settlement, roadhouse or other place suitable for legalising the load. It is expected that the issue of such authorisation will be the usual (but not the inevitable) outcome of a breach in this category.

Conditions may be attached to the authorisation such as that the driver proceed only on the routes nominated by the authorised officer or member of the police force or comply with reduced speed limits, temporary restraints, warning signals, or other requirements as are necessary in the opinion of the enforcement officer, to minimise any potential risk to public safety.

Once again, a strong indemnity is needed for officers authorising non-complying vehicles to proceed, and the agreement of jurisdictions affected by any cross border travel will also be required.

It will not be up to the enforcement officer to state what steps should be taken to meet the legal requirements. Obvious ones, for breaches of the mass or dimension limits, include off-loading some or the entire load and transferring the load to a more appropriate vehicle. For breaches of the load restraint requirements, more restraints might be needed or inadequate restraints might need to be replaced with better ones.

Failure to remain stationary or to comply with the conditions in the authorisation without reasonable excuse should be a serious offence with a high penalty to discourage

\textsuperscript{34} Note that such an indemnity is provided in clause 13 of the draft General Bill:

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(1) An authorised officer does not incur civil liability for an act or omission done honestly and in good faith in the course of his or her duties.

(2) A liability that would, apart from sub-section (1), attach to an authorised officer attaches instead to the Authority.
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contravention. A maximum fine in the vicinity of $10,000 or imprisonment for up to 2 years for an individual, and $50,000 for a body corporate is proposed to apply.

The breach would, eventually, be followed by the issue of either an infringement notice or prosecution proceedings depending on the jurisdiction’s enforcement policy. Prosecution proceedings would be a common outcome for breaches in this category.

However, infringement notices are considered desirable for substantial risk breaches for the reason that infringement notices are suitable for non-habitual offenders who appear to have made an error of judgement (falling short of a reasonable steps defence) rather than having committed the breach intentionally, for commercial gain. Infringement notices are discussed under Sanctions and Penalties in section B.5, below.

The proposed formal warning sanction should not apply to a substantial risk breach.

B.3.8 Enforcement Powers Applying to Severe Risk Breaches

In the case of severe risk breaches, there is an appreciable risk to safety and a serious risk of damage to infrastructure, including bridges.

In the severe risk breach category, there are more compelling reasons than in the substantial risk breach category for concluding the vehicle should have no entitlement to proceed further. Accordingly, the vehicle must remain stationary - either where breached, or at the nearest safe location if remaining at the site poses a public safety risk - until the legal requirements are met.

This requirement aims to ensure the community is protected from a continuation of the offence. It is a sanction that is likely to constitute a significant deterrent, given the financial implications of remaining stationary for each party in any particular transport transaction.

However, it is clear that with livestock and dangerous goods, in particular, the consequences of remaining stationary, even for short periods, may be extremely serious. In such cases, an enforcement officer should be empowered to authorise the vehicle to proceed to the nearest safe place to achieve compliance with the mass requirements. Bilateral agreement will be required between jurisdictions affected by any cross border travel authorisation.

The enforcement officer should also have discretion to exercise this power in other types of loads where the enforcement officer considers such a direction is appropriate in the circumstances. The authorisation might incorporate other conditions, such as route restrictions to avoid particular roads or bridges. Again, focus group members agreed that any across border travel would be subject to agreement arrangements.

In determining whether an area is safe, consideration must be given to the type of load and the availability of equipment suitable for handling the load without creating damage to the goods or causing a hazard. Particular loads will require unique treatment (for example, animal welfare considerations will apply where the load comprises animals). The AUSTROADS project to develop administrative guidelines for the assessment and enforcement of the mass, dimension and load restraint requirements will address these issues in detail.

Failure to remain stationary, or failure to comply with a condition in a direction to proceed to the nearest safe place without reasonable excuse, should be an offence with a maximum fine.

35 This is in contrast with the similar, but broader, exception provided in substantial risk breaches that enables the enforcement officer to direct a non-complying vehicle to the nearest suitable place.
in the vicinity of $10,000 or imprisonment for up to 2 years for an individual, and $50,000 for a body corporate for a first offence, and double those values for a second or subsequent offence.
The NRTC’s Mass and Loading Regulations, Oversize and Overmass Vehicles Regulations and Restricted Access Vehicles Regulations contain no evidentiary provisions (other than regulation 9 of the Mass and Loading Regulations, relating to proof of load restraint offences). The draft Road Transport Reform (Compliance and Enforcement) (General) Bill contains a number of proposed general or core evidentiary provisions for prosecutions. Those provisions relate to generally applicable averments and evidence of information in the possession of an Authority. These are useful provisions, from the point of view of the prosecution, intended to enable a prosecution to be more efficiently proved. However, from consultations with enforcement agencies and industry, there is a need for more specific evidentiary provisions to be included to facilitate proof of mass, dimension and load restraint breaches.

Further, with the proposal in this paper to extend liability along the transport chain of responsibility to parties other than just the driver and operator, additional evidentiary provisions are needed to bring effective proceedings against these additional parties.

Provisions to the effect of the following are considered essential to nationally consistent outcomes.

B.4.1 Provisions to Enforce the Mass Requirements

B.4.1.1 Admissibility of transport documentation

Transport documents should be admissible as proof of the matters contained in them to more readily prove such matters as:

- the identity of the various parties contained in the documents;
- the mass and dimensions stated in the documents (which will assist in proving offences relating to understated mass or dimensions);
- the volume or quantity or description of the goods; and
- the contract price for the transport of the goods.

The type of documentation that would be useful includes any documentation which is associated with the goods being transported or which is transmitted electronically in conjunction with the movement of goods, and includes an invoice, delivery note, operator documents, driver’s run sheets, consignment note, load manifest, export receipt advice, bill of lading, contract of carriage, sea carriage documents, log book entry, food receipt, toll-way receipt, workshop records or subcontractor’s payment advice.

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36 Sub-regulation 9(1) provides that a loading breach may be proved by the prosecution showing non-compliance with the NRTC’s Load Restraint Guide. A document purporting to be the Load Restraint Guide is presumed to be the Load Restraint Guide unless proved to be otherwise (subregulation 9(2)) - so that the prosecution is not obliged to prove the document formally. The burden of proof in a prosecution for failure to comply with the loading requirement will shift to the defendant if the load or part of the load fell off the vehicle (subregulation 9(3)) so that the burden of proof is reversed in such a case.
B.4.1.2 Determining mass limits for tyres

Clause 1.2(2) of the Schedule to the national Mass and Loading Regulations states:

The mass on a tyre must not exceed the greatest load capacity determined for the tyre by the manufacturer at a cold inflation pressure that does not exceed:

(a) 825 kilopascals for a radial ply tyre; or

(b) 700 kilopascals for any other tyre.

To enforce this requirement, it is necessary to determine both the manufacturer’s rating for a tyre and the weight on each tyre in an axle group. Thus:

1. when the amount purporting to be the load capacity determined by the manufacturer for a tyre is marked or printed on the tyre, that amount should be presumed to be the greatest load capacity for the tyre at cold inflation pressure determined by the manufacturer; and

2. the mass carried on the axle or axle group divided by the number of tyres in the axle or axle group (as the case may be) should be taken to be the mass on the tyre.

The second of these proposals will provide for easier proof in circumstances where it is impracticable to determine the mass on each tyre.

B.4.1.3 Admissibility of manufacturers’ ratings

An additional evidentiary provision is required to the effect that a statement made by a manufacturer and tendered by either the prosecution or the defence that a vehicle or vehicle component was rated by its manufacturer to a particular mass, will be prima facie proof of the safe mass standard of the vehicle or component. This is subject to B.4.1.4, below.

B.4.1.4 Registrar’s record of ratings

There should be a presumption to the effect that the manufacturer’s rating formally recorded on the registrar of motor vehicles record/registration authority’s record on the relevant date was the rating at that date.

B.4.1.5 Admissibility of portable weighing device certificate

A certificate or averment in respect of an approved portable weighing device record should be admissible evidence and taken to be proof of the mass ascertained by weighing the vehicle, in the absence of evidence to the contrary and provided all requirements as to its accuracy and reliability are satisfied.

B.4.1.6 Admissibility of weighbridge certificates

A certificate or averment in respect of an approved weighbridge record should be admissible evidence and taken to be evidence of the mass ascertained by weighing the vehicle, in the absence of evidence to the contrary, and provided all requirements as to its accuracy and reliability are satisfied.
B.4.2 Provisions to Prove Load Restraint Offences

In addition to regulation 9 of the national Mass and Loading Regulations, a provision enabling proof of the performance standard or strength of equipment used to restrain a load is required in offences where it is alleged that the restraints used by the defendant were inadequate for the load.

An additional evidentiary provision should be included to the effect that a statement made by a manufacturer and tendered by either the prosecution or the defence that equipment used to restrain a load was rated by its manufacturer to a particular strength or performance standard will be prima facie proof of the strength or performance standard of the equipment.\(^{37}\)

B.4.3 Provisions to Prove Offences Under the Oversize and Overmass Vehicles Regulations and Restricted Access Vehicles Regulations

It will also be important, in the proof of offences under these Regulations relating to breaches of conditions contained in permits, notices and emergency exemptions, to have evidentiary provisions that enable the simple proof of those permits, notices and emergency conditions and of the facts that particular vehicles were subject to these conditions at particular times.

B.4.4 Other Evidentiary Provisions

It should be noted that the draft Road Transport Reform (Compliance and Enforcement) (General) Bill also contains a number of proposed general evidentiary provisions.

Those provisions are contained in draft clause 40 (averments) and draft clause 41 (evidence of information in the possession of the Authority) and are reproduced in Appendix 6.

They are intended to extend to prosecutions brought for breaches of the mass and loading requirements of the Road Transport Law.

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\(^{37}\) However, not all restraints are rated.
B.5 SANCTIONS AND PENALTIES

B.5.1 Introduction

As mentioned in Part A, the interim sanctions and penalties in the existing national mass, dimension and load restraint regulations are inadequate for the reasons that they only provide for the taking of criminal proceedings before a court and then only provide one form of penalty – a single maximum fine.

Since early 1994, the NRTC has been developing a comprehensive penalty framework for the national road transport laws. The objectives have been to produce a penalty framework that is optimal and just, consistent with penalties in other areas of the law and that ensures compliance with the requirements at the least cost to the business and the community at large. The intention has been to provide a penalty framework that contains an appropriate combination of penalty levels and sanction strategies in a way which will maximise compliance and minimise the need for enforcement. Such a combination also enables the most effective strategy or strategies to be applied to the particular circumstances of each situation.

This has involved consideration of the sanction strategies described below.

Deterrence - the level and form of the penalty which will discourage potential offenders from breaching.

Individual deterrence - the level and form of the penalty which will deter someone who has offended from offending again (such as by removing the person's ability or desire to offend). Higher penalties for repeat offences are an example of this.
**Retribution** - this is the principle that people should be punished for their wrongdoing. Punishment is usually increased for offenders showing criminal intention and retributive penalties often escalate according to the perceived seriousness of the offence.

**Rehabilitation** - this is the notion that the offender can be reformed so he or she will not offend again. This is done, for example, by requiring the offender to undergo supervision or education programs.

**Protection** - this includes sanctions such as imprisonment and preventing an offender from re-committing a breach by banning him or her from the industry. The idea behind this strategy is to prevent crime and protect society from people who are likely to offend.

**Restitution** - this is the philosophy of requiring an offender to repay those who have suffered loss or damage as a result of the offence. In this way, an offender might be required to pay for bridge or other infrastructure damage that has been caused by a breach of the mass, dimension or load restraint requirements.

The NRTC's proposed criteria for setting penalties are:

- the potential consequences (such as posing a safety or environmental risk);
- the state of mind of the offender (such as recklessness);
- whether fraud or dishonesty is involved;
- the potential or actual gain flowing from the committing of the offence;
- whether the conduct is a breach of an official direction or order;
- whether there are prior offences; and
- whether the conduct is likely to be deterred by a particular penalty (1995 *Compliance and Enforcement Proposal*, p. A-23).

The penalty framework also reflects values about what is fair and equitable (such as additional penalties for offenders who profit from their crime) and what is proportionate (such as escalating penalties representing the seriousness of an offence and its consequences).

In developing penalties specifically for mass, dimension and load restraint breaches, several additional views and factors have been taken into account, including:

- there was general agreement that penalties should reflect the potential commercial advantage, the potential infrastructure damage and the risk to safety which can flow from additional excess mass or size, or from lack of adequate load restraints;
- minor offences need not proceed to court;
- the more serious offences should have to be dealt with by a court;
- penalties should increase for second or subsequent offences;
- minimum penalties should apply to second or subsequent offences;
- monetary penalties alone do not provide sufficient deterrence. Initiatives are required that offer additional means of addressing systematic or persistent offending;
- sanctions are addressed primarily at those best able to prevent these or subsequent breaches;
• special attention is given to avoid incentive for obstruction of enforcement effort or for commission of ongoing offences;

• adequate recognition needs to be given to the intended trip distance to ensure the compliance framework is effective where longer distances are involved; and

• there was also general acknowledgment of a view widely expressed by road authorities that courts underestimate the impact of mass dimension and load restraint offences and therefore sentence too leniently.

The hierarchy of sanctions and penalties developed to address these matters includes a broad range of different penalty levels and types and links many of these penalties to the minor risk, substantial risk and severe risk breach categories. The penalty hierarchy is set out below and these sanctions and penalties are described in detail in the following sections in ascending order of severity.

The sanctions strategies addressed by these sanctions and penalties are shown in the following figure:
Figure B.5.1 (c): Mix of Sanctions Strategies Used in the Proposal

The inter-relationship of these sanctions and penalties and the risk-based categorisation of mass, dimension and load restraint offences is illustrated in the following table:

### Table B.5.1: Inter-relationship of Sanctions and Offence Categories

<table>
<thead>
<tr>
<th>SANCTION</th>
<th>MINOR RISK</th>
<th>SUBSTANTIAL RISK</th>
<th>SEVERE RISK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal warning</td>
<td>✓</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Infringement penalty</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Fine</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Commercial benefits order</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Restitution order</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Supervisory intervention order&lt;sup&gt;38&lt;/sup&gt;</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Discretionary order affecting registration and/or licence</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Prohibition order</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Not all penalties have been linked to these categories because other considerations such as the degree of scheming involved in the commission of an offence, the number of occasions an offender has previously committed that or similar offences, the motivations of the offender in

<sup>38</sup> The supervisory intervention order and prohibition order are not restricted to severe risk offences. Hence, these orders may apply against those who are deliberately and persistently abusing the lesser offence categories for extra payload.
committing the offence and the personal and financial circumstances of the offender will also be taken into account by a court when determining the appropriate sentence.

However, the intended express linking of some of the penalties – for instance, fine levels – to the minor risk, substantial risk and severe risk categories of breaches, will give a strong indication to courts, offenders and the community at large of the relative seriousness of the level of each breach incident.

In its endorsement in December 1998 of the NRTC’s draft policy proposal for penalties for severe risk overloading, the Australian Transport Council has already endorsed some of the penalties proposed in this present paper in the specific context of severe risk overloading. Indeed, for these penalties, draft provisions have already been prepared. The draft Road Transport Reform (Compliance and Enforcement) (General) Bill also contains draft provisions that attempt to embody some of the other penalties.

Appendix 8 contains a copy of the draft model penalty provisions for severe risk overloading. Appendix 6 contains relevant excerpts from the draft Road Transport Reform (Compliance and Enforcement) (General) Bill. The discussion of these penalties below identifies where draft model provisions exist.

These draft provisions in Appendices 6 and 8 may be of some use to illustrate how the proposed penalties might be worded in future legislation. However, the draft provisions should not be used for the purposes of comment on the present policy proposal. The draft provisions are part of other reforms and need not be considered in any detail within the present, broader project, which encompasses all compliance and enforcement aspects of the heavy vehicle mass, dimension and load restraint requirements, not just the penalties for severe risk overloads. It should also be noted that this present paper relates only to finalising agreed policy for this broader project. Stage 2 of the project will involve the preparation of model legislative provisions. Thus, the draft penalty provisions will be formally reviewed during Stage 2.

### B.5.2 Formal Warnings

The idea of providing for a formal warning system to deal with minor contraventions of the Road Transport Law received considerable support in comment received on the 1995 Compliance and Enforcement Proposal.

Clause 44 of the draft Road Transport Reform (Compliance and Enforcement) (General) Bill attempts to embody that idea and gives members of the police force and authorised officers the power to deliver and record a formal warning for a minor and inadvertent contravention when the offender has not committed more than two road law offences in the previous two years. Previous road law offences can be offences that have been dealt with by way of formal warning, infringement notice or court proceedings.

The formal warning will provide an alternative to the infringement notice procedure or taking court proceedings for minor risk breaches committed by those who do not have a significant history of similar offences.

It is considered that the formal warning will act as a specific deterrent to minor risk offenders - the ‘sting’ lying in the fact that the warning will be recorded and may be used by a traffic authority or by the police in deciding whether or not to withdraw a subsequent formal warning or to bring infringement or court proceedings instead. In the mass, dimensional load
restraint breaches context, a ‘minor and inadvertent contravention’ is proposed to have a meaning that corresponds with a minor risk breach.

Comment on the April 1999 draft proposal has indicated continuing, but qualified, support for the penalty from some, and concern that the implementation of the penalty would require significant additional administrative effort to collect and maintain breach data.

The general view of the focus group was that the formal warning should be pursued as a proposal for consideration for future application, but it may not be practical for implementation in the short term. Hence, this penalty has not been classified as essential for nationally consistent outcomes.

The focus group also found there was insufficient reason to limit to two the number of formal warnings that may be issued before more serious proceedings are taken.

**B.5.3 Infringement Penalties**

Infringement notices are proposed as an alternative to prosecutions for minor and substantial mass, dimension or load restraint breaches.

The NRTC’s 1995 *Compliance and Enforcement Proposal* put forward the following infringement penalty structure for mass offences: $200 up to 10% overload; $400 between 10% and up to 15% overload; $1,000 between 15% and up to 20% overload; and $100 for every additional 1% overload.

Responses to both the 1995 *Compliance and Enforcement Proposal* and the December 1997 discussion paper on *Increased Mass Limits: Compliance and Enforcement Issues* mentioned the need for an infringement penalty cut-off point; that is, it is not appropriate that infringement notices be issued for serious overloads. There is considered to be an inconsistency in providing for a relatively low administrative penalty in the case of a serious overload when the same degree of overload would attract a very serious penalty if the matter were taken to court. The solution to this inconsistency does not lie in increasing the infringement penalties that may be imposed. This would only compromise enforcement efficiency and lead to increased administrative costs, as a greater number of infringements would be challenged in court in the hope of either acquittal or a lesser penalty. Hence, an infringement notice cut-off point is considered to provide best practice

An appropriate (and convenient) infringement notice cut-off point would be just prior to the level at which offences become severe risk, that is, before safety is an appreciable risk. Thus, infringement notices would be issued as alternatives to taking court proceedings in the minor and substantial risk categories. It is also proposed that a lesser infringement penalty apply for a minor risk breach than for a substantial risk breach.

The 1995 *Compliance and Enforcement Proposal* also recommended that the five times corporate multiplier apply to infringements. Applying the five times corporate multiplier that is proposed to apply to maximum fines is not considered desirable in the case of infringement penalties, for the good reason that a $2,000 body corporate infringement penalty for a substantial risk overload is likely to be challenged purely because its recipient perceives there

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39 At the same time, at least one jurisdiction has argued strongly to retain the use of infringement notices in the severe risk category of offence. The view of the focus group is that whilst this is neither essential to nor desirable for national consistency, the use of infringement notices for severe risk offences should be left up to each jurisdiction. At issue, ultimately, is the effectiveness of the compliance process in reducing such breaches.
is ‘nothing to lose’ by defending the infringement notice and taking the case to court, and also because the infringement penalty has a constant dollar value, irrespective of the financial circumstances of the offender and any mitigating factors, while a maximum fine values allows a court to exercise discretion taking into account all of the relevant circumstances of the particular case.

Consistent with the 1995 Compliance and Enforcement Proposal, it is not proposed that infringement penalties be used as evidence of prior convictions; however, the fact that a person has been issued with an infringement notice or has paid the penalty set out in the infringement notice may be recorded and used for the purposes of an enforcement agency deciding whether or not to withdraw a formal warning or infringement notice, and also to assist a court in determining whether or not a person is a ‘systematic or persistent offender’ for the purposes of making a supervisory intervention order or an order prohibiting an offender from involvement in the transport industry (see below).

Focus group members agreed strongly that the monetary value of an infringement penalty for a mass breach should reflect the road wear caused by a mass breach, but did not consider it appropriate to provide for a higher infringement penalty value for a second or subsequent offence (that is, the monetary value of an infringement penalty for a second or subsequent offence should be the same as for a first offence).

Proposed indicative infringement values are set out with the corresponding indicative fine values in table B.5.4 below. As with the fine values in this proposal, the infringement values are indicative only, to accommodate the different criminal justice policies and practices of the jurisdictions in their treatment of infringement penalties and infringement penalty values.

B.5.4 Fines

The States and Territories take different approaches to fines for mass, dimension and load restraint offences. The main areas of difference are:

- some jurisdictions set maxima and minima, while others set only maxima;
- some provide a single statutory maximum fine;
- in the case of mass breaches, some specify different penalties depending on whether the breach relates to a gross limit or axle or wheel limit, and some increase penalties in accordance with the percentage by which a particular limit is exceeded; and
- some provide an increased scale for second and subsequent offences.

These differences make comparisons difficult, but generally the range of fines specified is between $200 and $3,000 for individuals. A lower range applies when offences are enforced by way of infringement notice.

Fines for mass breaches have been proposed by the NRTC in the 1995 Compliance and Enforcement Proposal, the December 1997 Discussion Paper on Increased Mass Limits: Compliance and Enforcement Issues, and the submission to the Australian Transport Council in December 1998 in respect of severe risk overloading sanctions and penalties.

The April 1999 draft proposal drew on all of this work and put forward fine values and principles for fines for mass, dimension and load restraint offences. These values and principles have been refined even further from comment on the April 1999 paper, from the work of focus group members, and from a detailed analysis of the current fines.
Whilst the maximum fines applicable to this structure are higher than most of the existing maximum fines in the jurisdictions, the existing fines are, in many cases, no longer considered appropriate to address the significant problems of severe risk mass, dimensional and load restraint offences.

**B.5.4.1 Maximum fines**

It is proposed that fines should be available as court-imposed penalties for any minor, substantial or severe risk breaches of the mass, dimension and load restraint requirements. The monetary value of the maximum fines should be linked to the categorisation of the breaches as minor risk (with the least value), substantial risk (with a higher value) and severe risk (with the highest value).

The maximum fines available for mass breaches should reflect road wear caused by mass breaches, and should also escalate for every 1% of excess mass over the severe risk (20%) breakpoint.

A five times corporate multiplier will apply to the maximum fines. This is consistent with national corporations and taxation laws.

It is proposed that the maximum fine for a first offence should be half the maximum fine for a second or subsequent offence. However, because the criminal justice policy in some jurisdictions dictates that a distinction should not be drawn between maxima for first and second offences, the proposal that the maximum fine for a first offence be half that for a second or subsequent offence is considered only desirable, not essential, for nationally consistent outcomes. No minimum penalty should apply to a first offence.

**B.5.4.2 Minimum fines**

A minimum fine, at the value of the infringement penalty applicable to the breach, or 20% of the value of the maximum fine if there is no applicable infringement penalty (for instance, if the offence is a severe risk offence and the jurisdiction does not issue infringement notices for severe risk offences), is also proposed to apply to offences other than first offences.

The intention of the minimum fine is to ensure that at least a nominal fine (the value of the applicable infringement penalty) is imposed for a second or subsequent offence. The court will be required to impose this fine when the offender is found guilty of the second or subsequent offence. The second or subsequent offence must be the same offence detected in a separate and subsequent breach incident.

Because the criminal justice policy of some jurisdictions is opposed to minimum fines, the availability of the minimum fine is considered desirable, but not essential, to the national scheme.

The April 1999 paper proposed that the value of the minimum fine should equate to the maximum fine proposed for a first offence, that is, half of the proposed maximum fine. The focus group considered this minimum was too high, and a value of 20% (being the equivalent of the infringement penalty for minor and substantial risk breaches) was considered more appropriate.

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40 Indeed, with the likelihood that a Magistrate would only impose a relatively small fine for a first offence, there is not expected to be a significant difference in the outcomes of those jurisdictions that apply the proposed 50% maximum penalty to first offences and those that do not.
The five times corporate multiplier is not proposed to apply to the minimum penalties. This is consistent with the approach proposed for infringement penalties.

**B.5.4.3 Breach of both the manufacturer’s rating and the statutory limit**

Where both the manufacturer’s rating and the statutory limit have been exceeded by the one breach, then this should be treated by the court as a circumstance of aggravation that warrants the imposition of a heavier fine than might otherwise be imposed.

**B.5.4.4 Indicative values**

Jurisdictions use different means of denoting fine values. Sometimes actual dollar values are expressed; most usually penalty units are used. In the NRTC’s draft *Road Transport Reform (Compliance and Enforcement) (General) Bill*, penalty levels have been suggested to allow jurisdictions flexibility in nominating the value of fines in either dollar amounts or penalty units.

To accommodate the different criminal justice policies and practices of the jurisdictions in their treatment of fines and fine values, *indicative* fines are put forward in the present proposal. These will provide the relative fines considered appropriate for breaches in each offence category.

This is a structure of fines that is intended to provide strong guidance for industry, enforcers, the judiciary and the community about what is an appropriate fine for the particular degree of seriousness of each offence. Linking penalties to offence categories leaves little room for doubt about the relative seriousness of each offence.

The structure enables a first offender (particularly an individual) to be given some reasonable latitude in sentencing; whilst the doubling of the maximum fine and the minimum fine for a second or subsequent offender are intended to deter re-offending and to ensure that the punishment for a second offence reflects, to some extent, the seriousness of re-offending.

The following table provides suggested indicative values for the fines and corresponding infringement penalties for the offences put forward. Individual jurisdictions may choose to include further layers of fines/infringement penalties within the structure set out in the table. For those jurisdictions that apply penalty units instead of actual dollar maxima, the indicative fine values can be converted into corresponding penalty units.
Table B.5.4.3: Summary of Indicative Fines and Infringement Levels

This table offers a structure for fines and infringement penalties for the proposed offences. Individual jurisdictions may choose to include further layers of infringement penalties and fines within this structure.

<table>
<thead>
<tr>
<th>Category of breach</th>
<th>Indicative infringement value</th>
<th>Indicative fine value</th>
<th>Body Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Individual</td>
<td></td>
</tr>
<tr>
<td><strong>Dimension or load restraint breaches</strong></td>
<td></td>
<td>Body Corporate</td>
<td></td>
</tr>
<tr>
<td>Minor</td>
<td>$200</td>
<td>Maximum $1,000; minimum $200</td>
<td>Maximum $5,000; minimum $200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $500; no minimum</td>
<td>For a first offence: Maximum $2,500; no minimum</td>
</tr>
<tr>
<td>Substantial</td>
<td>$400</td>
<td>Maximum $2,000; minimum $400</td>
<td>Maximum $10,000; minimum $400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $1,000; no minimum</td>
<td>For a first offence: Maximum $5,000; no minimum</td>
</tr>
<tr>
<td>Severe</td>
<td></td>
<td>Maximum $4,000; minimum $800</td>
<td>Maximum $20,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td>For a first offence: maximum $10,000; no minimum</td>
</tr>
<tr>
<td><strong>Mass breaches</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minor</td>
<td>$250</td>
<td>Maximum $1250; minimum $250</td>
<td>Maximum $6,250; Minimum $250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $625; no minimum</td>
<td>For a first offence: Maximum $3,125</td>
</tr>
<tr>
<td>Substantial</td>
<td>$500</td>
<td>Maximum $2,500; minimum $500</td>
<td>Maximum $12,500; Minimum $500;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $1,250</td>
<td>For a first offence: Maximum $6,250</td>
</tr>
<tr>
<td>Severe</td>
<td></td>
<td>Maximum $4,000 plus $400 for every additional 1% over 120% overloading; and minimum $800 plus minimum $80 for every additional 1% over 120% overloading</td>
<td>Maximum $20,000 plus $2,000 for every additional 1% over 120% overloading; and minimum $800 plus minimum $80 for every additional 1% over 120% overloading</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $2,000 plus a maximum $200 for every additional 1% over 120% overloading; no minimum</td>
<td>For a first offence: maximum $10,000 plus a maximum $1,000 for every additional 1% over 120% overloading; no minimum</td>
</tr>
<tr>
<td><strong>Breaches of manufacturer’s ratings</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>As for mass breach</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Breach of increased mass or increased dimension requirements</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>As for breach of normal statutory/regulation limits, unless the particular arrangement under which increased limits apply specifies otherwise</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Compliance and Enforcement: Mass, Dimension and Load Restraint

<table>
<thead>
<tr>
<th>Category of breach</th>
<th>Indicative infringement value</th>
<th>Indicative fine value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Individual</td>
<td>Body Corporate</td>
</tr>
<tr>
<td><strong>Exceeding safe working limits of a freight container</strong></td>
<td>N/a</td>
<td>$500</td>
</tr>
<tr>
<td></td>
<td>Maximum $4,000; minimum $800</td>
<td>Maximum $20,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td>For a first offence: maximum $10,000; no minimum</td>
</tr>
<tr>
<td><strong>Breach of non-mass/dimension or load restraint conditions in permits, notices or emergency exemptions</strong></td>
<td>N/a</td>
<td>$800</td>
</tr>
<tr>
<td></td>
<td>Maximum $4,000; minimum $800</td>
<td>Maximum $20,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td>For a first offence: maximum $10,000; no minimum</td>
</tr>
<tr>
<td><strong>False or misleading transport documentation</strong></td>
<td>N/a</td>
<td>$500 (for those jurisdictions choosing to apply infringement notices for this offence)</td>
</tr>
<tr>
<td></td>
<td>Maximum $4,000; minimum $800</td>
<td>Maximum $20,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td>For a first offence: maximum $10,000; no minimum</td>
</tr>
<tr>
<td><strong>Other false or misleading information</strong></td>
<td>N/a</td>
<td>$500 (for those jurisdictions choosing to apply infringement notices for this offence)</td>
</tr>
<tr>
<td></td>
<td>Maximum $4,000; minimum $800</td>
<td>Maximum $20,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td>For a first offence: maximum $10,000; no minimum</td>
</tr>
<tr>
<td><strong>Causing or permitting a breach of the requirements</strong></td>
<td>N/a</td>
<td>$500</td>
</tr>
<tr>
<td></td>
<td>Maximum $4,000; minimum $800</td>
<td>Maximum $20,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td>For a first offence: maximum $10,000; no minimum</td>
</tr>
<tr>
<td><strong>Failing to comply with the direction of an officer</strong></td>
<td>N/a</td>
<td>$500 (only in those jurisdictions choosing to apply infringement notices for this offence)</td>
</tr>
<tr>
<td></td>
<td>Maximum $20,000; minimum $800 and imprisonment up to 2 years</td>
<td>Maximum $100,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td>For a first offence: maximum $10,000 and imprisonment of up to 2 years; no minimum</td>
<td>For a second or subsequent offence: maximum $50,000; no minimum</td>
</tr>
<tr>
<td><strong>Failing to remain stationary when directed to do so by an officer</strong></td>
<td>N/a</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Maximum $20,000; minimum $800 and imprisonment up to 2 years.</td>
<td>Maximum $100,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td>For a first offence: maximum $10,000 and imprisonment of up to 2 years; no minimum</td>
<td>For a first offence: maximum $50,000; no minimum</td>
</tr>
</tbody>
</table>
The way these penalties might work in practice is illustrated in the examples that follow.

---

**Example 1**

Offender A (an individual) is found guilty of exceeding the legal mass limits by 24%. This is a first offence. The maximum fine that might be imposed for a first offence of this degree is half (for those jurisdictions applying a lesser maximum penalty for a first offence) of $4,000 plus 4 x $400 = $2,800. Thus, the court would decide, taking a wide range of factors into account, what fine to impose (if any), up to a maximum fine of $2,800.

**Example 2**

If offender A came back to the court having committed a new mass offence and this offence involved, say, an overloading of 21% then, because this is a second offence, the maximum fine that would apply would be $4,000 plus 1 x $400 = $4,400. A minimum fine of 20% of $4,400 = $880 would also be imposed.

**Example 3**

If the overloading offences in the above examples had been committed by a body corporate and not an individual, then the maximum fines that would have applied are:

- in Example 1: $2,800 x 5 = $14,000; and
- in Example 2: $4,400 x 5 = $22,000; with a minimum fine of $880.

---

**B.5.5 Commercial Benefits Penalty**

In addition to any other penalty that can be imposed, it is proposed that a court may order payment of a ‘commercial benefits penalty’. This penalty involves the offender paying an amount, over and above any other monetary penalty, up to three times the amount calculated to be the commercial benefit that was, or would have been, derived from the offence.

The court may only make such an order if it is satisfied that the benefit derived or able to be derived from the contravention of the requirements would exceed the maximum penalty provided for the contravention.

In calculating the benefit, the court may take into account any relevant considerations, including:

- the value per tonne/km of the carriage of the particular goods;
- the distance over which the goods were carried, or were to be carried; and
- the benefit received or to be received for transporting the goods.

This penalty is based on the equitable principle that a person should not profit from his or her crime. As such, the penalty is directed against the financial incentives to commit breaches of the mass, dimension and load restraint requirements on high-value cargoes - particularly over long distances - and is intended as a powerful general and specific deterrent. The notion of a ‘benefit derived’ is flexible enough to take into account the different types and levels of incentive that might accrue from the commission of these offences.

There was only one response on the 1995 *Compliance and Enforcement Proposal* disagreeing with the imposition of the commercial benefits penalty, stating that levels of penalties related to income or profit were coercive. There was general support for the penalty in comment on
the December 1997 discussion paper on *Increased Mass Limits: Compliance and Enforcement Issues* and the penalty was included in the submission to Ministers at the Australian Transport Council meeting in December 1998. In comment on the April 1999 paper, the prevailing view was that even if this penalty is rarely used, it is important as a powerful deterrent. Its most likely application is where long trip distances are involved.

The application of this penalty is considered highly desirable, but not absolutely necessary for consistent national outcomes.

**B.5.6 Restitution Order**

In addition to any other penalty that can be imposed for a mass, dimension or load restraint breach, where an Authority demonstrates to the court on the balance of probabilities that the breach resulted in injury to any person or damage to any property, the court may make an order that the offender pay such restitution as the court considers appropriate in the circumstances to the person specified in the order.

This was a new penalty put forward for the first time in the April 1999 paper and it received positive feedback in many comments. There was no opposition expressed in the responses to the November 1999 revised proposal. The restitution order is considered very useful, but desirable rather than essential, for consistency of the national scheme.

**B.5.7 Supervisory Intervention Order**

To address systematic or persistent offenders, it is proposed that a court be empowered to impose a supervisory intervention order on a systematic or persistent offender against the road laws. This order may only be imposed following an application for the order made by an Authority.

To decide whether or not a person is a systematic or persistent offender a court may have regard to a very wide range of relevant factors, including previous infringements committed by the offender.

The order may be used to:

(a) direct the person, at the person’s own expense, to do things that the court considers will improve the person’s compliance with road laws, including:

   (i) appointing or removing staff to or from particular positions of influence or control;
   (ii) appointing an auditor;
   (iii) obtaining expert advice as to maintaining appropriate compliance; and
   (iv) implementing managerial or operational practices, systems or procedures; or

(b) direct the person, at the person’s own expense, to report or disclose information relating to the person’s compliance performance, things done by the person to ensure that failure by the person to comply with road laws does not continue, and the results of these things having been done, to:

   (i) the Authority; or
   (ii) the court; or
   (iii) the public generally;
   (iv) in the form, manner and frequency specified in the order; or
(c) direct the person to conduct the operations specified in the order subject to the direction of the Authority, or a person nominated by the Authority, for a period up to one year.

The rationale for the supervisory intervention order is that in some circumstances, a systematic or persistent offender might require supervision and further education to achieve compliance. Such an order would be onerous on the offender, but would not be as harsh a punishment as orders affecting heavy vehicle licences or registrations and orders that prohibit a person from involvement in the road transport industry (discussed below).

The supervisory intervention order is not linked to the minor risk, substantial risk or severe risk categorisation of offences. It should be capable of being used by a court to address situations where an offender is habitually using, say, the minor risk category as extra payload, just as it should be capable of being applied to more serious level breaches.

Whilst the supervisory intervention order is based on retributive, deterrent and public protection principles of punishment, its primary purpose is rehabilitative, by providing the offender with an opportunity - albeit under strict supervision - to remain in the industry and improve his or her operating performance.

This penalty has received wide support from both enforcers and industry. However, a concern shared by two jurisdictions is that the courts in making such an order are stepping into the realms of economic regulation of the industry. It should be emphasised that the orders can only be made on the application of an authority and their use is likely to be extremely rare.

The focus group also noted there may be some concern about the use of the option to appoint/remove staff under such an order, but considered that this option need not be removed at this stage. Retraining and supervision of staff were considered desirable by the focus group for inclusion as additional options and these options have now been incorporated in the proposed order.

This penalty is considered desirable only for nationally consistent outcomes.

**B.5.8 Suspension, Cancellation and Disqualification Orders**

In addition to any other penalty for an offence involving a severe risk breach, it is proposed that a court will have the power to modify, suspend, or cancel the registration of any heavy vehicle of which the offender is the registered operator, and may disqualify that person from becoming the registered operator. This power is considered essential to nationally consistent outcomes.

The April 1999 paper proposed that the registration of a heavy vehicle could be cancelled for up to five years. The focus group considered that the power to affect the registration should not include the reference to any period of time, as that reference might have an undesirable suggestive effect on the court exercising the power. Accordingly, the five-year upper limit has been removed in the present proposal.

Also, the focus group did not agree with the proposal in the April 1999 paper that this power might be exercised in respect of substantial risk breaches. The focus group preferred to limit the application of orders affecting registration to severe risk offences only. This was the policy put forward for comment in the November 1999 revised proposal and remains the current proposal. However, because some jurisdictions already have the power to suspend or cancel heavy vehicle registrations for mass, dimension and load restraint breaches, and the
Compliance and Enforcement: Mass, Dimension and Load Restraint

power is not so limited by legislation to serious offences, the option to impose an order affecting registration for a minor or substantial risk breach has not been discounted.

The court may also suspend or cancel a heavy vehicle driver licence or disqualify the offender from obtaining such a licence for up to five years. Again, it is proposed that the power to affect licences be limited to circumstances where it is proved that the offence is a severe risk offence.

The April 1999 paper also proposed that a licence could only be suspended or cancelled if the severe risk offence had been committed intentionally. The focus group did not consider this intentionality criterion was necessary, as it only adds an extra layer of difficulty to prosecutions, and a Magistrate would be less likely to apply this penalty for inadvertent breaches in any event. Hence, the element of intentionality was removed in the November 1999 revised proposal and responses to the revised proposal did not oppose that removal.

The powers to suspend, cancel and disqualify are based on retributive, deterrent and protective principles of punishment.

It is considered that the scope for these penalties is essential for nationally consistent outcomes; that is, it would not be consistent if an offender could escape a registration or licence suspension in a jurisdiction that does not have this as a penalty for an offence which would in another jurisdiction that has this penalty, attract such a suspension.

B.5.9 Order Prohibiting Involvement in the Transport Industry

As an alternative to making a supervisory intervention order (discussed above), the court may, again, only on the application of an Authority, make an order that prohibits a systematic or persistent offender from participating in the road transport industry. The order may prohibit the person, for a specified time, from:

(a) operating a heavy vehicle, a particular class of heavy vehicle or a heavy vehicle carrying a particular type of load; or

(b) being a director, secretary or high managerial agent of a body corporate that is involved in operating a heavy vehicle; or

(c) otherwise being involved in operating a heavy vehicle (except driving).

This is intended to be an extreme punishment that will have grave implications for an offender’s future in the road transport industry and livelihood.

It is a punishment that a court would not be inclined to order in any but extreme cases, involving elements of premeditation or scheming (but not, necessarily, severe risk breaches) or habitual offenders, and in which the court takes the view that the prime sentencing considerations are retribution, deterrence and public protection.

This penalty was supported in-principle by the focus group, but was not considered to be a penalty that is necessarily essential for nationally consistent outcomes.

B.5.10 Penalties Not Included at Present

B.5.10.1 Confiscation and forfeiture of vehicles and loads
Seizure of grossly overloaded vehicles and their loads, impounding vehicles and the forfeiture of vehicles and loads are not sanctions that have been widely supported to date.

The NRTC has floated these sanctions on a number of occasions - most recently in the December 1997 discussion paper on Increased Mass Limits: Compliance and Enforcement Issues - and they have not received support from any jurisdiction other than Queensland.

There are practical, resource and legal problems associated with carrying out seizure and forfeiture and the potential for legal actions to recover valuable freight or for compensation is considered disproportionate, at this stage, to the enforcement benefit flowing from the exercise of this sanction option.

Since the release of the April 1999 paper, Queensland has enacted the Road Transport Reform Act 1999 which provides for forfeiture by a court of a motor vehicle used to commit an ‘extreme overloading’ offence (one in which the vehicle is overloaded by 160% or more), section 79N. This may be a useful model for future reconsideration of the forfeiture option.

**B.5.10.2 Driver demerit points**

Driver demerit points were not supported in comments received on the 1997 discussion paper on Increased Mass Limits: Compliance and Enforcement Issues.

Currently, demerit points do not apply to mass, dimension or load restraint offences in any State or Territory. The effect of demerit points is primarily on drivers, although operators may be disadvantaged if their drivers cannot drive. The use of demerit points in the enforcement of dimension and load restraint requirements is not proposed at this stage.

However, demerit points for mass, dimension and load restraint offences could be a strong deterrent for drivers when they are close to losing their licence, and consideration should be given to the examination of this sanction for possible future recommendation.

**B.5.10.3 Imprisonment**

It is not proposed to include imprisonment as a specific penalty for mass, dimension and load restraint breaches. Imprisonment was rejected by Transport Agencies Chief Executives for severe risk overloading offences in October 1998. However, imprisonment is a sentencing option for some offences under the national road transport law, including some laws that are indirectly related to mass, dimension and load restraint breaches, such as offences of failing to comply with the directions of an authorised officer or failing to keep a severely overloaded vehicle stationary.

**B.5.10.4 ‘Three Strikes and You Are Out’ Penalty**

A ‘three strikes and you are out penalty’ was proposed by the Commission in the August 2000 Compliance and Enforcement: Mass, Dimension and Load Restraint policy proposal that was submitted to Australian Transport Ministers for in-principle approval. Only two Ministers voted in support of the continued inclusion and development of the penalty within the policy for mass, dimension and load restraint. Hence, the penalty has been removed from the policy and will not be developed in the model provisions to be drafted for this area of the road transport law.
PART C - LIST OF POLICY PROPOSALS
LIST OF POLICY PROPOSALS

As stated in Part A of this paper, the proposals listed in this part are intended to lay down best practice policies for the basis of future legislative provisions that will provide nationally consistent tools for the enforcement of heavy vehicle loading limits and standards.

They have been classified as either essential to or merely desirable for nationally consistent outcomes. Those classified essential are considered to be necessary in all jurisdictions to ensure nationally consistent compliance and enforcement outcomes. They have been marked with an ‘(E)’. Those marked ‘(D)’ are considered desirable, but not essential, for nationally consistent outcomes.

The proposals are listed together in this Part to facilitate comment on the whole package of measures. However, they should be read and considered in the light of their discussion in Part B of the paper, as well as in the broader context set out in the Part A.

1. RISK-BASED CATEGORIZATION OF OFFENCES

1.1 Offence Categories (E)

(1) Offences are to be categorised as ‘minor risk’, ‘substantial risk’ or ‘severe risk’, corresponding to their relative seriousness in terms of the nature, severity and likelihood of their consequences. (E)

(a) The main appreciable implications of minor risk breaches are likely to be accelerated road wear and obtaining an unfair commercial advantage over those who operate within the law. There are not likely to be any appreciable risks to safety or infrastructure in this category.

(b) The substantial risk breach category corresponds to an appreciable risk of infrastructure damage, increased traffic congestion and more substantial unfair commercial advantage and road wear impacts. There are rarely appreciable risks to safety in this category.

(c) The severe risk breach category corresponds to an appreciable safety risk, in addition to a serious risk of infrastructure damage and a serious level of obtaining an unfair competitive advantage.

(2) Other adverse consequences of mass, dimension and load restraint breaches - the magnitude of which escalate with the extent of the breach - include bringing the transport industry as a whole into disrepute, erosion of the rule of law, the erosion of government resources (other than infrastructure) and loss of productivity of other road users from increased traffic congestion.

1.2 Breakpoints for mass breaches (E)

(1) Subject to proposal 1.2 (4), below, the breakpoints for minor risk breaches of the normal statutory/regulation mass limits and manufacturers’ mass ratings should be as follows:

(a) for axles and gross vehicle/combination breaches, the breakpoints should align with the NAASRA tolerances, except for the NAASRA all-up tolerance for multi-combinations, which was reduced in the November 1999 revised proposal on the basis of advice from within the focus group in respect of the increased precision in weighing
practices available for these combinations over the last decade or so (refer to the figures in Table 1, below); and

(b) for vehicle components, 105% of the applicable limits/ratings.

(2) The breakpoints for substantial risk mass breaches should be over the minor risk level and up to, but not including, the level at which the severe risk level commences.

(3) Severe risk - whichever is the least of the following:

(a) 120% of the GCM or GVM or vehicle component mass rating; or
(b) 120% of the normal statutory/regulation axle group mass limit; or
(c) 120% of the normal statutory/regulation gross mass limit; or
(d) 120% of the normal statutory/regulation vehicle component mass limit.

(4) The proposed minor risk breach breakpoints will be reviewed in the course of the current AUSTROADS project, No. C.RUM.HV.159, to develop administrative guidelines for the assessment and enforcement of mass, dimension and load restraint breaches.

**Proposed Minor Risk Breakpoints**

The figures in table 1 below show the proposed minor risk breach breakpoints for breaches of the normal statutory/regulation mass limits (which align with the NAASRA figures, other than for multi-combinations), and also the corresponding values for the breakpoints applicable to the substantial and severe risk breaches of normal statutory/regulation limits (figures for the breakpoints for breaches of the GCM/GVM/mass ratings have not been included).

**Table C.1.2: Breakpoints for breaches of normal statutory/regulation mass limits**

<table>
<thead>
<tr>
<th>Minor Risk Breach (aligning with the NAASRA figures, in general)</th>
<th>Substantial Risk Breach</th>
<th>Severe Risk Breach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single steer</td>
<td>≤ 0.25t</td>
<td>&gt;0.25t - &lt; 120%</td>
</tr>
<tr>
<td>Twin steer group</td>
<td>≤ 1t</td>
<td>&gt;1t - &lt; 120%</td>
</tr>
<tr>
<td>Single axle</td>
<td>≤ 0.5t</td>
<td>&gt;0.5t - &lt; 120%</td>
</tr>
<tr>
<td>Tandem axle</td>
<td>≤ 1t</td>
<td>&gt;1t - &lt; 120%</td>
</tr>
<tr>
<td>Triaxle</td>
<td>≤ 1t</td>
<td>&gt;1t - &lt; 120%</td>
</tr>
<tr>
<td>Rigid ≤ 5</td>
<td>≤ 110%</td>
<td>&gt;110% - &lt; 120%</td>
</tr>
<tr>
<td>Rigid &gt; 10t</td>
<td>≤ 0.5t</td>
<td>&gt;0.5t - &lt; 120%</td>
</tr>
<tr>
<td>42.5t Artic (truck and dog)</td>
<td>≤ 1t</td>
<td>&gt;1t - &lt; 120%</td>
</tr>
<tr>
<td>4 axle groups (not truck and dog)</td>
<td>≤ 1t</td>
<td>&gt;1t - &lt; 120%</td>
</tr>
<tr>
<td>5 axle groups (not truck and dog)</td>
<td>≤ 1.5t</td>
<td>&gt;1.5t - &lt; 120%</td>
</tr>
<tr>
<td>Anything over 5 axle groups</td>
<td>≤ 2t</td>
<td>&gt;2t - &lt; 120%</td>
</tr>
<tr>
<td>Vehicle components</td>
<td>≤ 105%</td>
<td>105% &lt; 120%</td>
</tr>
</tbody>
</table>
(5) The proposals contained in this paper relating to breaches of axle group limits will be reviewed following completion of the separate project to investigate the basis for controlling pavement wear and the need for separate enforcement of axle mass limits. See proposal 2.6, below.

(6) Action to enforce the manufacturers’ ratings for gross vehicle mass and gross combination mass should only be taken when the ratings are below the legal limits set in legislation, in which case, the breach breakpoints should be calculated from the manufacturers’ ratings for that particular vehicle.

(7) Similarly, where limits are specified in legislation for a particular individual component of a vehicle, action to enforce any manufacturer’s rating for that component should only be taken when the rating is below the legal limit specified in the legislation, in which case, the breach breakpoints should be calculated from the manufacturer’s rating.

(8) Where the manufacturer’s rating for a particular individual component of a vehicle has been exceeded, but no separate legal limits for that component have been specified in legislation, the breakpoints for the offence categories should be calculated from the manufacturer’s rating, as if it were the legal limits.

(9) The breakpoints for mass breaches involving vehicles operating at increased mass as a result of a permit, gazetted notice, emergency exemption, concessional arrangement or any other regulatory scheme, should be calculated from the standard statutory limits unless the regulatory scheme itself specifies otherwise. That is, any breakpoints provided in the regulatory schemes themselves will override the ‘default’ mass breakpoints for the standard statutory limits.

Hence, for example, the Road Transport Reform (Restricted Access Vehicles) Regulations expressly provide that a mass breach involving a Class 2 vehicle is calculated from the permitted mass (not the normal regulation mass), provided that the vehicle is on an approved route. Where the vehicle is not on an approved route, the breach is calculated from the normal regulation mass. This proposal does not affect this, because the regulations expressly provide the basis for calculation of alternative breakpoints.

1.3 Breakpoints for dimension breaches (E)

(1) The breakpoints for width breaches should be as follows:

(a) for a projection that is evenly distributed across the vehicle:
   (i) for minor risk breaches: up to and including 75mm;
   (ii) for substantial risk breaches: between 75mm and 150mm; and
   (iii) for severe risk breaches: 150mm and over;

(b) for a width projection on one side of the vehicle or in the case of an unevenly distributed projection, half of the above breakpoints;

(c) to the extent practicable and appropriate, a minor or substantial risk width breach should be upgraded to a severe risk breach where the width breach occurs at night or at a time of weather-reduced visibility. If it is not found to be practicable to include this proposal
within future legislative provisions (for example, if it proves too difficult to define legislatively the circumstances in which it should operate), the proposed policy should be given effect in the administrative guidelines that are being developed by AUSTROADS to accompany the future legislative provisions.

(2) The breakpoints for height breaches should be as follows:

(a) for minor risk breaches: up to and including 100mm;
(b) for substantial risk breaches: between 100mm and 200mm; and
(c) for severe risk breaches: 200mm and over.

(3) The breakpoints for length breaches should be as follows:

(a) for minor risk breaches: up to and including 300mm;
(b) for substantial risk breaches: between 300mm - 600mm; and
(c) for severe risk breaches: 600mm and over.

However, the breakpoints for length are, at this stage, proposed as indicative values only and will be subject to a technical study to determine, to the extent possible, breach levels at which infrastructure and safety become of appreciable concern. This study, proposed to be managed by the NRTC, will be conducted prior to the settlement of any model legislative provisions and administrative guidelines that are developed to give effect to this policy proposal, and will be incorporated within those future legislative provisions.

(4) The breakpoints for breaches of internal dimension limits should be as for the corresponding breakpoints set out above.

(5) The breakpoints for dimension breaches involving vehicles operating with increased dimension as a result of a permit, gazettal notice, emergency exemption or any other regulatory scheme, should be calculated from the standard statutory limits unless the regulatory scheme itself specifies otherwise. That is, any breakpoints provided in the regulatory schemes themselves would override the default dimension breakpoints for the standard statutory limits.

Note: Hence, for example, the Road Transport Reform (Restricted Access Vehicles) Regulations expressly provide that a dimension breach involving a Class 2 vehicle is calculated from the permitted dimension (not the normal regulation dimension), provided that the vehicle is on an approved route. Where the vehicle is not on an approved route, the breach is calculated from the normal regulation dimension limits. This proposal does not affect this, because the regulations expressly provide the basis for calculation of alternative breakpoints.

1.4 Breakpoints for load restraint breaches (E)

(1) The following matrix should apply to determine the category of a load restraint breach:
Table C.1.4: Breakpoints for Load Restraint Breaches Matrix

<table>
<thead>
<tr>
<th>LIKELIHOOD</th>
<th>CONSEQUENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>How serious is the risk of the load shifting or being lost?</td>
<td>No</td>
</tr>
<tr>
<td>Has already occurred or is imminent (e.g., grossly inadequate or loose</td>
<td>Substantial</td>
</tr>
<tr>
<td>restraints, severely degraded equipment,)</td>
<td>Severe</td>
</tr>
<tr>
<td>Is likely to occur in time, due to degradation of equipment (e.g., minor</td>
<td>Minor</td>
</tr>
<tr>
<td>fraying of ropes, marginal overload of equipment’s rated capacity) but</td>
<td>Substantial</td>
</tr>
<tr>
<td>is not yet imminent</td>
<td></td>
</tr>
</tbody>
</table>

(2) This matrix should be accompanied by a set of detailed guidelines that set out considerations that should be taken into account when assessing risk (for instance, whether the vehicle is in a built-up area, the type of load, the suitability of the vehicle for the load and the meaning of imminent) and include some comprehensive examples or scenarios in the interpretation of the matrix. The guidelines should also specify that ‘loss of load’ may also refer to loss of part of the load, but not a minute, inconsequential loss.

(3) The breakpoints for load restraint breach categories will be subject to any review/modification that is considered necessary once the current review of the Load Restraint Guide is completed.

2. OFFENCES

2.1 Elements of the chain of responsibility (E)

(1) The parties who should be included in the chain of responsibility for compliance with heavy vehicle mass, dimension and load restraint requirements are those who perform or control the following activities:

   (a) **consigning** – commissioning the carriage of the load by road;

   (b) **packing** – (in cases of pre-packaged loads and container freight) placing items in packages or containers or pallets;

   (c) **loading** – placing or restraining the load on the vehicle;

   (d) **carrying** – controlling the use of the vehicle for the transport of the load by road;

   (e) **driving** – the physical act of driving the loaded vehicle;

   (f) **receiving** – paying for the goods/taking possession of the load;

   (g) a director, secretary or senior manager of a body corporate should also be included in this chain of responsibility.
2.2 General principles (E)

The following general principles should apply to proceedings brought against parties in the proposed chain of responsibility:

(1) Where more than one party is liable for an offence proposed in proposals 2.9 – 2.16 below, proceedings may be taken against each liable party.

(2) The successful prosecution of one party in the chain should not be a precondition to the prosecution of another in the chain for the same breach incident.

(3) A person may be prosecuted for more than one offence if requirements relating to different parts of a vehicle, or different vehicles in a combination, are breached.

(4) A person who meets more than one description of liable parties should, however, only be punished once in relation to the same breach.

2.3 Absolute liability (D)

(1) Absolute liability, which is considered to be best practice, should apply to the proposed mass, dimension and load restraint offences, unless expressly excluded, in these proposals.

(2) To counter the potential for injustice that arises from the general imposition of absolute liability in certain circumstances, the special statutory offences listed below are proposed to apply despite the imposition of absolute liability.

2.4 ‘Reasonable steps’ defence (D)

(1) A reasonable steps defence is proposed where indicated below. The elements of defence will be to the effect that:

   (a) the defendant did not know, and could not reasonably be expected to have known, of the contravention; and

   (b) the defendant had taken all reasonable steps to prevent the contravention.

(2) To prove all reasonable steps had been taken, the offender may choose to show compliance with all relevant requirements of an approved industry code of practice. This is one way of establishing this element of the defence.

(3) This defence should be available to drivers and operators for minor risk breaches.

(4) The defence, in its application to consignors, loaders and packers should be available in all three categories of breach.

(5) The manner of developing and approving industry codes of practice for this purpose are:

   (a) an implementation working party, convened by the NRTC, would resolve broad guidelines and business rules for the development and content and approval of such codes;

   (b) industry would be responsible for the initiation and development of such codes;

   (c) there would be mutual recognition by all jurisdictions of approved codes;

   (d) codes would lapse if not reviewed at specific intervals;
(e) codes would be updated, if during such reviews, updates were considered necessary; and

(f) codes would include processes for the nomination of approved auditors.

(6) A defendant wishing to rely on compliance with an approved code would be required to produce a statutory declaration from an approved auditor or other approved person to the effect that there had been compliance with all relevant standards and procedures in the code and with the spirit of the code. This statutory declaration would be evidence of reasonable steps in the absence of evidence to the contrary.

2.5 Special carrier’s defence (E)

A special carrier’s defence, that the vehicle was used by someone not legally entitled to use it, should be provided (refer to proposal 2.12 (3)).

2.6 Special driver’s defence (E)

A special driver’s defence relating to the condition of equipment provided or maintained by another should be provided (refer to proposal 2.13 (2)).

2.7 (Future) special axle group defence (for noting only)

A special statutory defence to address any inequities arising from unevenly distributed loads may be developed, depending on the results of the proposed study into pavement and safety implications of uneven load distribution.

2.8 Other general defences (E)

There are several general defences not excluded by absolute liability, and these include the following defences that should also apply:

(1) mental impairment;
(2) claim of right;
(3) duress; and
(4) sudden or extraordinary emergency.

2.9 Consigning

(1) A person who consigns goods should be defined to include a rail, air or sea freight forwarder, a manufacturer, an importer, a customs agent, a person who arranges for the transport of goods (including those entering Australia), a carrier who consigns goods for transport by other carriers, and an Australian agent of an overseas-based consignor. (E)

(2) A person who consigns goods should be guilty of offences in the following cases:

(a) For any breach of the mass, dimension and load restraint requirements (including a breach of manufacturers’ ratings, load distribution requirements or conditions in any permits, notices or emergency exemptions). (E)

   (i) This should be an offence of absolute liability. (D)

   (ii) The reasonable steps defence should be available. (D)
(b) When the safe working limits of a freight container are exceeded. (E)

(i) This should be an offence of absolute liability. (D)
(ii) The reasonable steps defence should be available. (D)

(c) When transport documentation prepared in connection with the consignment is false, or is misleading in respect of any matter that affects compliance with the requirements. (E)

(i) This should be an offence of absolute liability. (D)
(ii) The reasonable steps defence should be available. (D)

(d) For providing false or misleading information about the goods being consigned. (E)

(i) This offence should not be an offence of absolute liability. (E)
(ii) The offence must be committed either knowingly or recklessly. (E)

2.10 Packing

(1) A person who packs goods in a freight container, other container, package or pallet should be defined to be the person who performs the packing, including the nominated Australian representative of the person (in the case of an overseas-based packer). (E)

(2) A person who packs goods should have a duty not to provide any false or misleading information about the goods, container, package or pallet. (E)

(a) This should be an offence of absolute liability. (D)
(b) The reasonable steps defence should be available. (D)

2.11 Loading

(1) A person who loads the goods on the vehicle should be defined to be the person who performs the loading, including a professional loading agent, a stevedoring company, a rail, air or sea freight forwarder, a principal contractor, a subcontractor, and a person who controls the loading facility. (E)

(2) A person who loads the goods for transport by road should be guilty of an offence in the following cases:

(a) For any breach of the mass, dimension and load restraint requirements (including a breach of manufacturers’ ratings, load distribution requirements or conditions in any permits, notices or emergency exemptions). (E)

(i) This should be an offence of absolute liability. (D)
(ii) The reasonable steps defence should be available. (D)

(b) When transport documentation prepared in connection with the goods is false, or is misleading in respect of any matter that affects compliance with the requirements. (E)

(i) This should be an offence of absolute liability. (D)
(ii) The reasonable steps defence should be available. (D)
(3) For providing false or misleading information about the goods, vehicle or load.
   
   (i) This should not be an offence of absolute liability. (D)
   
   (ii) The offence must be committed either knowingly or recklessly. (E)

2.12 Carrying

(1) A person who carries the goods, ‘the carrier’, should be defined as the person who is actually responsible for the use of the vehicle or combination that transports the goods by road, including a fleet operator of the vehicle, a prime contractor, a sub-contractor, a registered operator, an owner of the motor vehicle (in the case of a combination) and a lessee of the vehicle. (E)

(2) A carrier should be guilty of an offence in the following cases:

   (a) For a breach of the mass, dimension and load restraint requirements (including a breach of manufacturers’ ratings, load distribution requirements or conditions in any permits, notices or emergency exemptions). (E)
      
      (i) This should be an offence of absolute liability. (D)
      
      (ii) The reasonable steps defence should be available.
      
      (iii) However, the reasonable steps defence, in its application to a carrier, should only be available if the offence falls within the minor risk category of offences (this does not apply where the breach is of a condition in a permit, notice or emergency exemption that does not impose a mass or dimension limit or load restraint standard). (D)

   (b) For providing false or misleading information about the goods, vehicle or load. (E)
      
      (i) This should not be an offence of absolute liability. (E)
      
      (ii) The offence must be committed either knowingly or recklessly. (E)

(3) An additional special defence should be available to carriers for breaches involving a vehicle used by someone not legally entitled to use it (note: this defence will need to be tightly constrained). (D) for the short term and (E) for the longer term

2.13 Driving

(1) A person who drives a heavy vehicle on a road or road related area will be guilty of offences in the following cases:

   (a) For a breach of the mass, dimension and load restraint requirements (including a breach of manufacturers’ ratings, load distribution requirements or conditions in any permits, notices of emergency exemptions). (E)
      
      (i) This should be an offence of absolute liability. (D)
      
      (ii) The reasonable steps defence should be available to a driver.
      
      (iii) However, the reasonable steps defence, in its application to a driver, should only be available if the offence falls within the minor risk category of offences (this does not apply where the breach is of a condition in a permit, notice or emergency exemption that does not impose a mass or dimension limit or load restraint standard). (D)
(b) For providing false or misleading information about the goods, vehicle or load. (E)
   (i) This should not be an offence of absolute liability. (E)
   (ii) The offence must be committed either knowingly or recklessly. (E)

(2) An additional driver defence should be available for breaches relating to the condition of equipment that is provided or maintained by another person (note: this defence will need to be tightly constrained) in (D) for the short term and (E) for the longer term.

2.14 Receiving

(1) A person who receives a consignment of goods should be guilty of an offence if he or she knowingly or recklessly engages in any conduct that might induce or reward a breach of the mass, dimension or load restraint requirements, including a breach of manufacturers’ ratings requirements, load distribution requirements or conditions in any permits, notices or emergency exemptions. (This is not an offence of absolute liability – knowledge or recklessness are elements of the offence.) (E)

(2) Paying for goods in excess of the legal payload quantity of those goods should be considered a factor relevant to whether a person has engaged in such conduct. (D)

2.15 Directors, secretaries and senior managers

(1) A director, secretary or senior manager of a body corporate should be personally liable for any committed by the body corporate. (E)

(2) It should be a defence if the director, secretary or senior manager were not in a position to influence the body corporate in relation to the offence, or, if they were in such a position, made every reasonable effort to prevent the offence. (E)

2.16 General offences

(1) It should be an offence if any person knowingly or recklessly provides false or misleading information about the goods, vehicle or load, or makes a false or misleading statement about the goods, vehicle or load. (E)

(2) It should be an offence if any person causes or permits any breach of the requirements, including a breach of manufacturers’ ratings requirements, load distribution requirements or conditions in any permits, notices or emergency exemptions. (E)

(3) It should be an offence for any person to fail to comply with the lawful direction of an authorised officer. (E)

Summary of Offences

Table 2 summarises the offences, liabilities and defences that are proposed to apply.
<table>
<thead>
<tr>
<th>Offence</th>
<th>Party</th>
<th>Liability</th>
<th>Special Defences (in addition to the general defences and possible axle group defence)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A breach of mass, dimension or load restraint requirement</td>
<td>Consignor (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (D)</td>
</tr>
<tr>
<td></td>
<td>Loader (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (D)</td>
</tr>
<tr>
<td></td>
<td>Carrier (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (ideally limited to minor risk offences); (D) • Where the vehicle was used by someone not legally entitled to use it. (D) for short term, (E) for longer term</td>
</tr>
<tr>
<td></td>
<td>Driver (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (ideally limited to minor risk offences); (D) • Where the breach relates to the condition of equipment that is provided or maintained by another person. (D) for short term, (E) for longer term</td>
</tr>
<tr>
<td>Exceeding safe working limits of a freight container</td>
<td>Consignor (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (D)</td>
</tr>
<tr>
<td>Preparing false or misleading transport documentation</td>
<td>Consignor (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (D)</td>
</tr>
<tr>
<td></td>
<td>Packer (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (D)</td>
</tr>
<tr>
<td></td>
<td>Loader (E)</td>
<td>Absolute liability (D)</td>
<td>• Reasonable steps defence (D)</td>
</tr>
<tr>
<td>Knowingly or recklessly inducing or rewarding a breach</td>
<td>Receiver (E)</td>
<td>Knowingly or recklessly (E)</td>
<td>• Not applicable (prosecution must prove knowledge or recklessness)</td>
</tr>
<tr>
<td>Directors’ liability for any of the above offences committed by body corporate</td>
<td>Directors, senior managers, etc., of bodies corporate (E)</td>
<td>As per the liability expressed to apply to the particular offence concerned</td>
<td>• If the director, etc was not in a position to influence the body corporate in relation to the offence, or, if he or she were in such a position, made every reasonable effort to prevent the offence. (E)</td>
</tr>
<tr>
<td>Causing or permitting a breach</td>
<td>All parties (E)</td>
<td>知情或故意 (E)</td>
<td>• Not applicable (prosecution must prove knowledge or recklessness)</td>
</tr>
<tr>
<td>Other false or misleading information</td>
<td>All parties (E)</td>
<td>知情或故意 (E)</td>
<td>• Not applicable (prosecution must prove knowledge or recklessness)</td>
</tr>
<tr>
<td>Failing to comply with the lawful direction of an authorised officer, including failing to remain stationary when directed to do so</td>
<td>All parties (E)</td>
<td>Without reasonable excuse (E)</td>
<td>• Reasonable excuse</td>
</tr>
</tbody>
</table>
3. ENFORCEMENT POWERS

3.1 General powers (D)*

(1) Provisions to the effect of clauses 17 to 28 and 31 of the draft *Road Transport Reform (Compliance and Enforcement) (General) Bill* are required to provide general powers to stop and move vehicles and to provide general investigative powers in respect of mass, dimension and load restraint breaches.

* Although these powers are considered necessary, until the general compliance and enforcement provisions are resolved, it is not appropriate to label all or any of the general powers essential.

3.2 Additional powers, specific to mass, dimension and load restraint breaches

(1) The administrative enforcement framework, summarised in Table 3, should be included in the mass, dimension and load restraint requirements regulatory regime. (E)

<table>
<thead>
<tr>
<th>Breach Category</th>
<th>Roadside consequences</th>
<th>Possible breach consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor risk</td>
<td>• The vehicle may be authorised to proceed to its proposed destination (as a general rule).</td>
<td>• Record breach</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Formal warning</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Infringement notice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Prosecution</td>
</tr>
<tr>
<td>Substantial risk</td>
<td>• The vehicle must remain stationary until the applicable legal requirements are met, unless otherwise authorised to proceed by the authorised officer.</td>
<td>• Infringement notice</td>
</tr>
<tr>
<td></td>
<td>• An authorised officer may authorise the vehicle to travel to the location specified by the authorised officer.</td>
<td>• Prosecution</td>
</tr>
<tr>
<td></td>
<td>• Unless there are exceptional circumstances, the authorised officer should specify a location no further than the nearest <em>suitable</em> place to ensure compliance with requirements.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• The authorisation may contain other conditions (as to routes, permits, etc).</td>
<td></td>
</tr>
<tr>
<td>Severe risk breach</td>
<td>• The vehicle must remain stationary until the legal requirements are met, unless otherwise authorised to proceed by the authorised officer.</td>
<td>• Prosecution</td>
</tr>
<tr>
<td></td>
<td>• In the case of a vehicle carrying livestock or dangerous goods or in other exceptional circumstances, an authorised officer may authorise the vehicle to travel to the location specified by the authorised officer.</td>
<td>• Infringement notices will not be excluded in this category</td>
</tr>
<tr>
<td></td>
<td>• Unless there are exceptional circumstances, the authorised officer should specify a location no further than the nearest <em>safe</em> place to ensure compliance with requirements.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• The authorisation may contain other conditions (as to routes, permits, etc).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• In determining whether a place is ‘safe’, the enforcement officer must consider the type of load and the availability of equipment suitable for handling the load without creating damage to the goods or a hazard.</td>
<td></td>
</tr>
</tbody>
</table>
(2) There must be a strong legal indemnity for officers authorising vehicles to proceed. \((E)\)

(3) Bilateral agreement between affected jurisdictions is required in respect of decisions of enforcement officers authorising travel of non-complying vehicles across borders. \((E)\)

(4) It will be an offence for a driver and/or carrier to fail to remain stationary or to fail to comply with a condition in a direction of an authorised officer without a reasonable excuse. \((E)\)

Jurisdictions may also choose to apply an infringement notice for lesser categories of this offence. Neither \((E)\) nor \((D)\), but this is an option that is not excluded.

4. **EVIDENTIARY PROVISIONS**

4.1 **Use of shipping documents in proceedings**

(1) The definition of transport documentation should include any documentation which is associated with the goods being transported or which is transmitted electronically in conjunction with the movement of goods, such as an invoice, delivery note, operator’s documents, driver’s run sheet, consignment note, load manifest, export receival advice, bill of lading, contract of carriage, sea carriage document, log book entry, food receipt, toll-way receipt, workshop record, and subcontractor’s payment advice. \((E)\)

(2) Transport documentation should be admissible as evidence of such matters as the identity of the consignor and the carrier, the nature of the load, intended travel destination, and any other matters. \((E)\)

4.2 **Mass limits for tyres**

(1) Provisions to the effect of the following should be included to assist in the proof of the manufacturer’s rating for a tyre and the weight on each tyre in an axle group in prosecutions brought for breaches of subclause 1.2(2) of the Schedule to the Road Transport Reform (Mass and Loading) Regulations:

(a) where an amount purporting to be the load capacity determined by the manufacturer for a tyre is marked or printed on the tyre, that amount is taken to be the greatest load capacity for the tyre at cold inflation pressure determined by the manufacturer, in the absence of evidence to the contrary; \((E)\)

(b) where it is necessary to determine the mass on a tyre, but it is impracticable to determine the mass on each tyre in an axle or axle group, the mass carried on the axle or axle group divided by the number of tyres in the axle or axle group (as the case may be) is to be taken to be the mass on the tyre, in the absence of evidence to the contrary. \((E)\)

4.3 **Manufacturers’ ratings**

Subject to proposal 4.4, a statement from a manufacturer may be used as _prima facie_ proof of the mass rating made by the manufacturer of the vehicle or component. \((E)\)
4.4 **Registrar’s record of ratings**

There should be a presumption to the effect that the manufacturer’s rating formally recorded on the registrar of motor vehicles record/registration authority’s record on the relevant date was the rating at that date. *(E)*

4.5 **Accuracy of portable weighing devices**

A certificate or averment in respect of an approved portable weighing device may be used as *prima facie* proof of the mass ascertained by weighing the vehicle, provided all requirements as to its accuracy and reliability are satisfied. *(E)*

4.6 **Accuracy of weighbridge records**

A certificate or averment in respect of an approved weighbridge record may be used as *prima facie* proof of the mass ascertained by weighing the vehicle, provided all requirements as to its accuracy and reliability are satisfied. *(E)*

4.7 **Evidentiary provisions for load restraint offences**

(1) Existing regulation 9 of the Road Transport Reform (Mass and Loading) Regulations (enabling proof of the performance standard or strength of equipment used to restrain a load in offences where it is alleged that the restraints used by the defendant were inadequate for the load) should be retained. *(E)*

(2) A statement made by a manufacturer as to the strength or performance of the load restraint equipment may be used as *prima facie* proof of the strength or performance of the load restraint equipment. *(E)*

4.8 **Averments and evidence of information in the possession of the authority**

(1) Evidentiary provisions to the effect of those currently contained in clauses 40 and 41 of the draft *Road Transport Reform (Compliance and Enforcement) (General) Bill* should apply to the enforcement of mass, dimension and load restraint requirements. *(For noting only, as these provisions are not finalised at this time.)* *(E)*

(2) Provisions to prove offences under the Road Transport Reform (Oversize and Overmass Vehicles) Regulations and the Road Transport Reform (Restricted Access Vehicles) Regulations. *(E)*

(3) Permits, notices and emergency conditions and the facts that particular vehicles were subject to these conditions at particular times should be matters that may be the subjects of appropriate averments. *(E)*

5. **SANCTIONS AND PENALTIES**

The framework of penalties and sanctions for the proposed offences should be as follows (in ascending order of severity).
5.1 Formal warnings

(1) Formal warnings should be included in the penalties and sanctions for minor risk offences. However, there are acknowledged difficulties at present in terms of the practical implementation of these penalties and, hence, they should not be considered essential to the scheme. (D)

(2) Formal warnings should not be regarded as convictions for any purposes, but may be used by an enforcement agency in the decision of whether to issue a further formal warning or to institute other proceedings for any subsequent breach committed by the same offender. (D)

5.2 Infringement notices

(1) Infringement notices should be available for minor and substantial risk breaches of the mass, dimension and load restraint requirements and for all other offences summarised in table 2 above. (E)

Note: Infringement notices may also be available for severe risk breaches and for failing to comply with the direction of an authorised officer, depending on the jurisdiction.

(2) The monetary value of an infringement penalty for a minor risk breach should be less than that for a substantial risk breach. (E)

(3) The monetary value of an infringement penalty for a mass breach should take account of road wear or infrastructure damage caused and/or potentially caused by a mass breach. (E)

(4) The monetary value of an infringement penalty for a second or subsequent offence should be the same as for a first offence. (D)

(5) The five times corporate multiplier that applies to fines (see proposal 5.3.7) should not be applied to infringement penalties. (D)

(6) Infringement notices should not be prior convictions but may be recorded and used for the purposes of an enforcement agency deciding whether or not to withdraw a formal warning or infringement notice, or to assist a court determine if the offender is a systematic or persistent offender for the purposes of making a supervisory intervention order or a prohibition from the transport industry order. (D)

Table C.5.3 provides suggested indicative values of the infringement penalties for the offences put forward.

5.3 Fines

(1) A fine should be available as a court-imposed penalty for any minor, substantial or severe risk breach of the mass, dimension and load restraint requirements and for all other offences summarised in table 2 above. (E)

(2) The monetary value of the maximum fines for mass, dimension and load restraint breaches should be linked to the categorisation of the offences as minor risk (with the least value), substantial risk (with a higher value), and severe risk (with the highest value). (E)
(3) The maximum fines available for mass breaches should take account of road wear or infrastructure damage caused or potentially caused by mass breaches. (E)

(4) The maximum fine for a mass breach should escalate for every 1% excess mass over the severe risk (120%) breakpoint. (E)

(5) The maximum fine for a first offence should be half the maximum fine for a second or subsequent offence. (D)

(6) A minimum fine, at the value of the infringement penalty applicable to the breach, or 20%\(^{41}\) of the value of the maximum fine if there is no applicable infringement penalty, should also be provided. A minimum fine for a first offence is not proposed. (D)

(7) The second or subsequent offence should be a second or subsequent finding of guilt where that finding of guilt relates to a separate and subsequent breach incident. (D)

(8) A five times corporate multiplier will apply to the maximum fines applicable to an individual. (E)

(9) The five times corporate multiplier should not apply to minimum fines. (D)

(10) Where both the manufacturer’s rating and the statutory limit have been exceeded by the one breach, then this should be treated by the court as a circumstance of aggravation that warrants the imposition of a heavier fine than might otherwise be imposed.

Table C.5.3 below provides suggested indicative values of the fines for the offences put forward.

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\(^{41}\) Or 40% of the value of the maximum fine for a first offence.
Table C.5.3: Indicative infringement penalties and fines

This table offers a structure for fines and infringement penalties for the proposed offences. Individual jurisdictions may choose to include further layers of infringement penalties and fines within this structure.

<table>
<thead>
<tr>
<th>Category of breach</th>
<th>Indicative infringement value</th>
<th>Indicative fine value</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Individual</td>
<td>Body Corporate</td>
</tr>
<tr>
<td><strong>Dimension or Load Restraint Breaches</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minor</td>
<td>$200</td>
<td>Maximum $1,000; minimum $200</td>
<td>Maximum $5,000; minimum $200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $500; no minimum</td>
<td>For a first offence: Maximum $2,500; no minimum</td>
</tr>
<tr>
<td>Substantial</td>
<td>$400</td>
<td>Maximum $2,000; minimum $400</td>
<td>Maximum $10,000; minimum $400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $1,000; no minimum</td>
<td>For a first offence: Maximum $5,000; no minimum</td>
</tr>
<tr>
<td>Severe</td>
<td></td>
<td>Maximum $4,000; minimum $800</td>
<td>Maximum $20,000; minimum $800</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td>For a first offence: maximum $10,000; no minimum</td>
</tr>
<tr>
<td><strong>Mass Breaches</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minor</td>
<td>$250</td>
<td>Maximum $1250; minimum $250</td>
<td>Maximum $6,250; Minimum $250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $625; no minimum</td>
<td>For a first offence: Maximum $3,125</td>
</tr>
<tr>
<td>Substantial</td>
<td>$500</td>
<td>Maximum $2,500; minimum $500</td>
<td>Maximum $12,500; Minimum $500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $1,250</td>
<td>For a first offence: Maximum $6,250</td>
</tr>
<tr>
<td>Severe</td>
<td></td>
<td>Maximum $4,000 plus $400 for every additional 1% over 120% overloading; and minimum $800 plus minimum $80 for every additional 1% over 120% overloading</td>
<td>Maximum $20,000 plus $2,000 for every additional 1% over 120% overloading; and minimum $800 plus minimum $80 for every additional 1% over 120% overloading</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $2,000 plus a maximum $200 for every additional 1% over 120% overloading; no minimum</td>
<td>For a first offence: maximum $10,000 plus a maximum $1,000 for every additional 1% over 120% overloading; no minimum</td>
</tr>
<tr>
<td><strong>Breaches of manufacturer’s ratings</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As for mass breach</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Breach of increased mass or increased dimension requirements</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As for breach of normal statutory/regulation limits, unless the particular arrangement under which increased limits apply specifies otherwise</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category of breach</td>
<td>Indicative infringement value</td>
<td>Indicative fine value</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
<td>---------------------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>Exceeding safe working limits of a freight container</td>
<td>N/a</td>
<td>Individual: Maximum $4,000; minimum $800</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$500</td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Body Corporate: Maximum $20,000; minimum $800</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $10,000; no minimum</td>
<td></td>
</tr>
<tr>
<td>Breach of non-mass/dimension or load restraint conditions in permits, notices or emergency exemptions</td>
<td>N/a</td>
<td>Individual: Maximum $4,000; minimum $800</td>
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<tr>
<td></td>
<td>$800</td>
<td>For a first offence: maximum $2,000; no minimum</td>
<td></td>
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<td></td>
<td></td>
<td>Body Corporate: Maximum $20,000; minimum $800</td>
<td></td>
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<td></td>
<td></td>
<td>For a first offence: maximum $10,000; no minimum</td>
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<tr>
<td>False or misleading transport documentation</td>
<td>N/a</td>
<td>Individual: Maximum $4,000; minimum $800</td>
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<td></td>
<td>$500</td>
<td>For a first offence: maximum $2,000; no minimum</td>
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<td></td>
<td></td>
<td>Body Corporate: Maximum $20,000; minimum $800</td>
<td></td>
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<td></td>
<td></td>
<td>For a first offence: maximum $10,000; no minimum</td>
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<tr>
<td>Other false or misleading information</td>
<td>N/a</td>
<td>Individual: Maximum $4,000; minimum $800</td>
<td></td>
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<td></td>
<td>$500</td>
<td>For a first offence: maximum $2,000; no minimum</td>
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<td></td>
<td></td>
<td>Body Corporate: Maximum $20,000; minimum $800</td>
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<td></td>
<td>For a first offence: maximum $10,000; no minimum</td>
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<tr>
<td>Causing or permitting a breach of the requirements</td>
<td>As for the values for the applicable breach</td>
<td></td>
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<tr>
<td>Failing to comply with the direction of an officer</td>
<td>N/a</td>
<td>Individual: Maximum $20,000; minimum $800 and imprisonment up to 2 years</td>
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<tr>
<td></td>
<td>$500</td>
<td>For a first offence: maximum $10,000 and imprisonment of up to 2 years; no minimum</td>
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<tr>
<td></td>
<td></td>
<td>Body Corporate: Maximum $100,000; minimum $800</td>
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<tr>
<td></td>
<td></td>
<td>For a second or subsequent offence: maximum $50,000; no minimum</td>
<td></td>
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<tr>
<td>Failing to remain stationary when directed to do so by an officer</td>
<td>N/a</td>
<td>Individual: Maximum $20,000; minimum $800 and imprisonment of up to 2 years.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>N/A</td>
<td>For a first offence: maximum $10,000 and imprisonment of up to 2 years; no minimum</td>
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<tr>
<td></td>
<td></td>
<td>Body Corporate: Maximum $100,000; minimum $800</td>
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<tr>
<td></td>
<td></td>
<td>For a first offence: maximum $50,000; no minimum</td>
<td></td>
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</tbody>
</table>
5.4 Commercial benefits penalty

(1) A court may impose a commercial benefits penalty requiring the offender to pay an amount up to three times the amount calculated to be the commercial benefit that was, or would have been derived from the offence. (D)

(2) In calculating the commercial benefit that was or would have been derived from the offence, the court may take into account any relevant considerations including:

(a) the value per tonne/km of the particular goods;
(b) the distance over which the goods were carried, or were to be carried; and
(c) the benefit received or to be received for committing the breach.

5.5 Restitution orders

(1) A court should be entitled to make an order that an offender pays such restitution as the court considers appropriate to any person who has suffered injury or property damage as a result of the offence. (D)

5.6 A supervisory intervention order

(1) The supervisory intervention order should be included in the scheme. (D)

(2) This order may only be made on the application of an Authority.

(3) It is to be directed only at systematic or persistent offenders.

(4) The supervisory intervention order can be made in addition to any other penalty, other than an order prohibiting the offender from involvement in the road transport industry (see proposal 5.9 below). That is, it can not operate at the same time as a prohibition order.

(5) The order may direct the offender, at the person’s own expense and for a period not exceeding 1 year:

(a) to do things that the court considers will improve the offender’s compliance with the road laws, including appointing or removing staff to or from particular positions of influence or control, retraining and supervising staff, appointing an auditor, obtaining expert advice as to maintaining appropriate compliance, and implementing managerial or operational practices, systems or procedures;

(b) to report or disclose information relating to the offender’s compliance performance or the things done by the person to ensure that the failure by the offender to comply with road laws does not continue, and the results of those things having been done, to either the Authority, the court or the public generally, in the form, manner and frequency specified in the order;

(c) to do the things specified in the order subject to the direction of the Authority, or a person nominated by the Authority.

5.7 Suspension, cancellation and disqualification orders

(1) A court, in addition to any other penalty, may make an order affecting a heavy vehicle registration for an offence involving a severe risk breach. (E)
The option to impose this penalty for a minor or substantial risk breach is not considered essential, but is not discounted.

(2) An order affecting a heavy vehicle licence may also be made, but only for a severe risk offence. (E)

Again, the option to impose this penalty for a minor or substantial risk breach is not considered essential, but is not discounted.

(3) The above orders are discretionary, not mandatory.

5.8 An order prohibiting involvement in the road transport industry

(1) An order prohibiting an offender from involvement in the road transport industry should be available. (D)

(2) This order may only be made on the application of an Authority.

(3) It is to be directed only at systematic or persistent offenders.

(4) The prohibition order can be made in addition to any other penalty other than a supervisory intervention order (see Proposal 5.6 above). That is, it can not operate at the same time as a supervisory intervention order.

(5) The order may be used to prohibit the offender for the time specified in the order from;

(a) operating a heavy vehicle, a particular class of heavy vehicle or a heavy vehicle carrying a particular type of load; or

(b) being a director, secretary or high managerial agent of a body corporate that is involved in operating a heavy vehicle; or

(c) otherwise being involved in operating a heavy vehicle (except driving).
APPENDIX 1 DEVELOPMENT OF THE NRTC’S NATIONAL COMPLIANCE POLICIES RELEVANT TO HEAVY VEHICLE LOADING

Compliance Principles

Until the middle of 1994 the NRTC’s work focused on the development of national standards for heavy vehicles.

In June 1994 the NRTC released a paper entitled Compliance with the Road Transport Law – Principles, Objectives and Strategies which set out for discussion principles, aims and approaches for road law compliance and enforcement.

The NRTC held meetings in all capital cities in Australia to discuss the issues raised by that paper and, from comments generated by those issues, developed a national Compliance and Enforcement Proposal in mid 1995.

1995 Compliance and Enforcement Proposal

The 1995 Proposal set out a draft general enforcement model for the national Road Transport Laws and put forward a number of proposals specific to the Mass and Loading Regulations and the Restricted Access Vehicles Regulations.

The overall response to the mass and loading section of the 1995 Proposal was support for the NRTC’s approach, with concerns about many of the specific proposals.

However, the 1995 Proposal did not purport to resolve all compliance and enforcement issues facing the national road transport laws and, indeed, in the areas of mass, dimension and load restraint, the 1995 Proposal probably raised more questions than solutions. It also exposed many of the complexities of forming satisfactory legislative structures to deal with matters such as an equitable and workable chain of responsibility for the mass, dimension and load restraint laws.

General Compliance and Enforcement Provisions

A draft Road Transport Reform (Compliance and Enforcement) (General) Bill followed in early 1997 that attempted to bring together a number of core compliance and enforcement provisions applicable to all operational areas of the national road transport law. The general provisions cover the appointment of authorised officers and their powers, common evidentiary provisions, and procedural matters.

At this stage, the policies underpinning the draft bill have not been endorsed, let alone the draft provisions themselves. It is intended that there be considerable consultation and discussion on necessary general provisions before any final proposals are made.

42 The 1995 Compliance and Enforcement Proposal did not touch on the consequential changes that might be made to the Oversize and Overmass Vehicles Regulations.
Appendix 1

Refinement of Policies Specific to Mass and Loading Compliance

The NRTC’s proposals for a compliance and enforcement policy for mass, dimension and load restraint have been progressing separately, but alongside these general provisions.

In the process of considering comments on the mass, dimension and load restraint aspects of the 1995 Compliance and Enforcement Proposal, the NRTC revised many of the propositions advanced in the proposal for those aspects.

To resolve the particular difficulties of developing an effective and equitable enforcement framework in the areas of mass, dimension and load restraint, NRTC officers visited a range of loading operations to gain a first hand appreciation of loading practices, stages and processes. Officers viewed all aspects of these loading operations - from the vehicles and loading technology to the accompanying shipping documentation and associated administrative systems.

Included were visits to interstate bulk liquid transporters, international import/export wharf carriers, bulk produce loaders and transporters, and interstate line haulers and freight handlers.

NRTC officers also visited road transport industry associations, primary industry associations, and enforcement agencies in several jurisdictions. The views of the New South Wales branch of the Transport Workers’ Union were also obtained.

Early versions of this proposal have also been floated informally at meetings with industry, at officer level meetings and with the AUSTROADS Overweight Container Working Party. Through these visits and consultations, the issues requiring resolution for mass, dimension and load restraint that were raised by the 1995 Compliance and Enforcement Proposal were further defined and examined.

Penalties for Gross (Severe Risk) Overloading

In response to a request from Australian Transport Ministers at their November 1997 meeting, the NRTC has also given consideration to a penalties and sanctions framework that might apply specifically to gross (now described as severe risk) overloading.

The NRTC’s December 1997 discussion paper, Increased Mass Limits, Compliance and Enforcement Issues, prepared in response to the Ministers’ request for strong sanctions for gross overloading, included tentative proposals for the conventional enforcement of increased mass limits. Comment on the discussion paper reflected general support for the conventional enforcement proposals, and, in particular, there was strong support for nationally consistent penalties, the strengthening of existing penalties and a penalty structure that escalated with increasing excess mass.

Following the December 1997 discussion paper, the penalty structure was refined into a national range of proposed penalties for gross (or severe risk) overloading. These proposed penalties were submitted to Ministers at their December 1998 and have since been developed further within the present package of complete compliance provisions for mass, dimension and load restraint requirements.

Compliance and Enforcement Provisions in Other NRTC Reforms

More complete compliance and enforcement provisions have been included within the following provisions developed by the NRTC:
• the Road Transport Reform (Driving Hours) Regulations 1998;
• the Road Transport Reform (Dangerous Goods) Act 1995 and the Road Transport Reform (Dangerous Goods) Regulations 1997;
• the Australian Road Rules; and
• the Speeding Heavy Vehicles policy.
APPENDIX 2 CONSULTATIVE PROCESSES

1994

Series of workshops held in all capital cities.

1995
More workshops.


1996

1997
Release of draft Road Transport Reform (Compliance and Enforcement) (General) Bill.


1998
Series of site visits by NRTC to loading operations, including:

- interstate shipping businesses;
- international shipping terminals;
- container parks;
- transport operators’ premises;
- rail freight operators;

Series of informal discussions on various aspects of the draft proposal, including with:

- primary industries representatives (in Qld);
- NSW Road Transport Association;
- Qld Road Transport Association;
• New South Wales Roads and Traffic Authority;
• VicRoads;
• Queensland Transport;
• Western Australian Department of Transport;
• Tasmania Department of Transport; and
• attendees at Turners Transport Convention in Penrith, NSW.

Release of NRTC policy proposal on Penalties for Gross Overloads (‘Severe Risk’ Overloads).

1999
Informal feedback sought from:
• Overweight Containers’ Working Party (AUSTROADS);
• Tasmanian Department of Transport Penalty Review Committee;

Release of draft model penalty provisions for severe risk overloads.

National circulation of April 1999 Compliance and Enforcement: Mass, Dimension and Load Restraint draft policy proposal for 2 month consultation period.

Seminars conducted in each jurisdiction.

National focus group workshop on 21 and 22 July 1999.

Recommendations of sub-groups of focus group on particular issues, 8 October 1999.

Further meeting of focus group 22 October 1999 to resolve residual issues.

Circulation of November 1999 Compliance and Enforcement: Mass, Dimension and Load Restraint revised policy proposal and draft preliminary Regulatory Impact Statement to:
• Transport Agencies Chief Executives;
• Focus Group Members;
• Industry Advisory Group;
• Bus Industry Advisory Group;
• Executive Directors of road transport associations;
• Transport Workers Union; and
• all others who commented on the April 1999 paper.

2000

Consultation with individual agencies on residual issues of concern.

Circulation of summary of comments on the revised policy proposal and draft preliminary Regulatory Impact Statement and the proposed NRTC responses to focus group members, Transport Agency Chief Executives observers and all others who had provided comments on the November 1999 documents.

Circulation of pre-ATC final draft policy proposal and draft Regulatory Impact Statement to Transport Agency Chief Executives for any final comments.

August 2000 submission of the final policy proposal and Regulatory Impact Statement to Transport Agency Chief Executives for in-principle approval.
APPENDIX 3  DRAFT PROJECT BRIEF: MASS, DIMENSION AND LOAD RESTRAINT COMPLIANCE GUIDELINES  
(AUSTROADS PROJECT: C.RUM.HV.159)

DRAFT PROJECT BRIEF

MASS, DIMENSION and LOAD RESTRAINT COMPLIANCE GUIDELINES

PROJECT PURPOSE
To develop guidelines for road managers and enforcement agencies to assist them to maximise compliance with the mass, dimension and load restraint laws that apply to heavy vehicles.

BACKGROUND
Nationally consistent mass and dimension limits and load restraint laws, and penalties for non-compliance are getting close to a reality. These will need to be complemented by guidelines on how to manage compliance with the law.

AUSTROADS and the NRTC agreed in 1998 to jointly fund a project, RUM.HV.130, to progress part of this issue. The project was to provide a uniform set of guidelines for registration, permit and enforcement officers to enforce the vehicle dimension and mass limits as specified in the national road transport law. No progress has been made as it is now felt that this scope was too narrow.

The NRTC is currently developing a comprehensive set of compliance and enforcement provisions for mass, dimension and load restraint. These provisions include ‘chain of responsibility’ and model penalties that are, in many cases, considerably higher than those which apply currently. It is anticipated that if approved by Ministers, the approach and penalties will be applied across Australia.

Key road transport groups such as the Australian Trucking Association are acutely aware of the problems that arise when operators do not comply with mass, dimension and load restraint laws. The need for more action by road managers and enforcement agencies in this regard was a consistent theme at their Conference in Adelaide in early 1999. This sector of the industry wants compliance requirements more thoroughly administered.

One of the conference resolutions at the June 1999 Remote Areas Conference in Alice Springs was the need for improvements in the level of compliance with road transport law.

There is only one national guideline presently available in this area. The Weighing of Vehicles Guideline document produced by NAASRA in 1987 is narrow in scope and makes no attempt to be an all encompassing approach to compliance with mass, dimension and load restraint requirements.
ISSUES

- There is a lack of consistency between states when it comes to compliance management.
- Law abiding operators believe the level of enforcement is too low and that enforcement is too easy to avoid.
- Law abiding operators believe they are at a commercial disadvantage when compared to ‘cowboy’ operators.
- The more professional parts of the trucking industry are acutely aware of the need to be seen as good law-abiding citizens. They understand that future concessions will only be gained if the industry can demonstrate that they are good citizens.
- Ministers (eg South Australia) have made it clear to the trucking industry that further concessions will not be gained unless the industry ‘gets its act together’.
- National best practice guidelines on compliance management do not exist – with the exception of the Weighing of Vehicles Guidelines.
- Self-regulation schemes have been introduced in some states. Compliance with these is not well known.
- Performance management principles have been successfully introduced to many areas of road management. Mass, dimension and load restraint compliance may benefit from the same approach.
- Increased concern over the application of duty of care requirements under occupational health and safety legislation are increasing the need to remove current ‘grey’ areas from enforcement of road transport law.

PROJECT OBJECTIVE

To establish an AUSTROADS guidelines document to assist enforcement agencies in maximising compliance with the law relating to mass, dimension and load restraint for heavy vehicles.

PROJECT SCOPE

- Mass, dimension and load restraint guidelines for heavy vehicles; including:
  - guidelines to accompany breakpoints for load restraint offence categories;
  - guidelines to determine severity of breach taking into account regional/zonal and distance considerations;
  - guidelines for use of the inspection/test/search/seize/notice to produce/search with warrant powers;
  - guidelines for when to issue a formal warning or infringement notice and when to institute a prosecution;
  - guidelines for when to pursue other parties in the chain and when to use the driver or carrier as the sole target for enforcement action;
  - guidelines for who is a ‘systematic and persistent’ offender.
- Mutual recognition procedures for cross-border travel/permits, etc
- Guidelines for the development and endorsement of industry specific Loading Codes
- Compliance Strategy, Planning, Programming and Evaluation
- Development of common enforcement data collection systems
- Development of common set of enforcement monitoring criteria
- Systems for ongoing collection of formal warnings/infringement notices/prosecutions/sentencing statistics
- Education and training of stakeholders
- Compliance mechanisms – self regulation, auditing, visual reminders, random field checks, road blocks, automatic measurement, etc
- Measurement techniques
- Performance measures

PROJECT STAGING

The project will be undertaken in two stages.

Stage 1  A workshop to establish what is needed in the guidelines. Participation from road management and enforcement agency people - policy and operations, the NRTC, industry, police, and analogous areas such as road safety. Presentations on current practice from road management and enforcement people. Consultant to draw together the findings from the workshop into a framework for the national guidelines, and to recommend a program of activities to produce and implement the guidelines.

Stage 2  Produce guidelines and undertake training in their application.

OUTPUTS AND TIMETABLE

Stage 1  A report detailing the structure and content of the guidelines and a recommended program of activities to develop and implement the guidelines. Commence in February 2000 and be completed by June 2000

Stage 2  Mass, dimension and load restraint compliance guidelines; and training in their use. Commence in August 2000 and be completed by July 2001

RELATED PROJECTS

- Compliance and Enforcement: Mass, Dimension and Load Restraint  ... NRTC
- RUM.HV.117B – Methods of Measurement ...

PROJECT MANAGEMENT

Project Manager:  Robin Ide (Stage 1)
APPENDIX 4  CHAIN OF RESPONSIBILITY IN THE 1995 COMPLIANCE AND ENFORCEMENT PROPOSAL

Practical difficulties with a driver-operator-consignor chain

In submissions on the 1995 Compliance and Enforcement Proposal, there was extensive support for the notion of a chain of responsibility which can implicate others in an offence which might otherwise have been assigned only to the driver, owner or operator, but there was concern about how the proposed chain might actually work.

Some industry submissions raised the concern that the proposed chain of responsibility provisions might lead to unfair consequences, such as where a corporation lacks knowledge of the offence or lacks control over the situation. Enforcement agencies queried how the chain of responsibility would operate in prosecutions; particularly whether or not a principal offender must be successfully prosecuted before a person further up the chain can be prosecuted. For example, is prosecution of a driver a prerequisite for the prosecution of the operator? The 1995 Compliance and Enforcement Proposal was not clear on these matters.

Operator definition was still problematic

A further concern stated in the submissions on the 1995 Compliance and Enforcement Proposal related to the definition of the key term ‘operator’. In that paper the NRTC suggested a revised version of the existing definition of operator found in the Oversize and Overmass Vehicles Regulations and the Restricted Access Vehicles Regulations:

‘The operator of a vehicle in relation to an offence is the person who controls the condition or use of the vehicle at the relevant time’.

However, this new definition was still considered to be insufficiently precise to afford effective prosecution.

From a re-examination of the definition, it became clear there are at least two possible concepts of operator depending upon whether the wrongdoing relates to the condition or status of a vehicle (for example, its registration), or to its use (for example, the way it is loaded or driven).

When the wrongdoing relates to the condition of the vehicle, it is arguable that operator responsibility should include the ‘registered operator’ as defined in the Road Transport Reform (Heavy Vehicles Registration) Act 1997; that is, the person recorded on the heavy vehicles register as the person responsible for the vehicle. In many cases, but not all cases, this person will also be the owner of the heavy vehicle.

When the wrongdoing relates to the use of a vehicle, operator responsibility should lie with the person who actually controls or is responsible for the use of the vehicle - who may be someone quite different from the registered operator, but with the registered operator, if different, to be accountable for non-compliance if the vehicle, excluding load, is in breach.

Breaches of mass, dimension and load restraint requirements primarily relate to use, rather than condition; that is, it is the way the vehicle is loaded or used that is the essence of the wrongdoing, not the status or condition of the vehicle.
Thus, the operator who is responsible for, or who actually controls the use of, the vehicle is the one who is most relevant to mass, dimension and load restraint. However, a useful form of operator definition in this context has, to date, proven elusive. Primarily, this is because it is not necessarily appropriate to cast mass, dimension and load restraint offences in terms of a failure or omission in the exercise of responsibility for the vehicle. It will not always be fair that someone who happens to have responsibility for the vehicle will be deemed responsible for the load or for the loading.

Thus, the definition of operator in the 1995 Compliance and Enforcement Proposal cannot advance the resolution of the problem any further than the definition used by the NRTC in the Oversize and Overmass Vehicles Regulations and the Restricted Access Vehicles Regulations, and the definition is no longer of use for mass, dimension and load restraint.

Only limited liability imposed on consignor

In addition to leaving the practical difficulties of applying such a chain unresolved, and not presenting a workable definition of operator, the 1995 Compliance and Enforcement Proposal’s consignor - operator - driver chain would not have adequately addressed the inequities seen to be associated with the current imposition of liability only on drivers, owners or operators.

The limited liability of a consignor put forward in the 1995 Compliance and Enforcement Proposal only applied when the consignor understated the weight of a container in shipping documentation. For any freight other than loads in containers and in any circumstances other than understating shipping documents, consignor liability would not apply.

Further, others in the chain, such as packers, loader and consignees or those who paid for goods delivered in non-complying vehicles, were essentially immune from primary liability even when their actions directly caused a breach of the requirements.

Aiding and abetting ‘catch-all’ was not adequate

An aiding and abetting ‘catch-all’ provision was proposed in the 1995 Compliance and Enforcement Proposal; however, this was a restatement of the common law and was restricted to circumstances where a person could be proven to have intended that his or her conduct would aid or abet an offence committed by another. An aiding and abetting provision does not address the need for a defined chain of responsibility and does not allow the parties to know what their duties are from the outset. Similarly, cause or permit offences can not be a true reflection of chain of responsibility or duty of care principles.
APPENDIX 5 CONSIDERATIONS OF INJUSTICE TO THE OFFENDER IN MASS BREACHES

The inability of various loading systems to achieve accurate mass

There is a vast number of different types of loading systems - as many as the number of different commodities that can be transported by road - from those which have tight mass controls to those which have virtually no mass controls. The type of loading control used to gauge mass (if one is used at all) will depend on the type of load and the loading environment as well as the type of vehicle. The law should provide some latitude to those who make every effort to comply with the mass requirements but who cannot physically achieve mass precision due to factors beyond their control (associated with the type of product, loading equipment and loading conditions).

Systems capable of achieving a high degree of mass accuracy

At one end of the spectrum, there is a range of systems that are capable of achieving a high degree of mass accuracy, thereby optimising carrying capacity within the legal limits.

Of all the operations visited by NRTC officers, bulk petroleum appeared to have the most accurate system. The petroleum loading systems that were observed are sophisticated and accurate. In one advanced system, contract managers, employed by the transport operator, schedule vehicles on the basis of the quantity, density and temperature of the product to be transported as well as the tare mass and axle weight requirements of individual vehicles. The data is fed into a computer loading system that matches the required loads to the appropriate vehicles and destinations. Drivers simply pull into loading bays at the terminal and loading takes place by computer controlled meter, leaving almost no room for driver error. Loads may also be manually checked using a dipstick in the event of a suspected problem with the meter.

Another accurate operation that NRTC officers witnessed was the loading of bulk fertiliser. Empty trucks are first weighed at a weighbridge where the weighbridge operator determines the maximum gross load allowable on that vehicle. Loading occurs through an overhead chute that is preset to the required amount and which cuts out near the end, enabling an accuracy of within 20 kilograms. Liquid fertilisers are weighed at the weighbridge, not metered, to ensure compliance with mass requirements.

Systems less capable of achieving mass accuracy

At the opposite end of the spectrum are activities such as loading gravel with a front-end loader, or loading cane from a harvester. In such examples, it is up to the judgment of the driver or loader as to whether or not the mass limits are being observed. Where the loader or driver are inexperienced in assessing the mass of their loads or where there are variations in the weight of the constituents of the load, this loading method will be less reliable.

In the case of gravel or building rubble, it is often very difficult for the loader and driver to judge the precise mass of loads that might comprise all manner of different materials.

Similarly, with cane harvesting and a range of other primary products, individual truck loads can vary significantly. This is because cane does not pack down to ensure an even, consistent
load, and because of different widths and sometimes, different lengths of cane, and different quantities of leaf material in each load. The mass of a load of cane can even be influenced by whether the cane is harvested in the morning or the afternoon, as sun exposure will affect the water content of cane.

If the degree of overloading is small, the driver may not be aware of an overloading until the vehicle is weighed at a weighbridge or if stopped by an enforcement officer. In the case of cane transporting, this is usually at the very end of the vehicle’s journey, at the cane mill itself.

Clearly, it is not equitable that a responsible carrier or driver, who has taken reasonable steps to prevent a contravention of the mass limits but whose load is affected by, for instance, an unforeseeably high moisture content, or whose load can be determined with reasonable but not precise accuracy should be treated identically to the carrier or driver whose load can be determined with precision but who chooses to breach the limits out of negligence or intent.

Nor is it fair that those who know precisely what their load weighs should be able to obtain an advantage by utilising any margins available over those who have genuine difficulties in achieving accuracy.

**Freight containers**

The transport of freight containers is a category of activity that is capable of achieving a very high degree of mass accuracy yet has a reputation of frequent overloading and mass inaccuracy.

The major concerns associated with the transport of freight containers were identified as the misdescription of shipping documentation or unevenly distributed freight within containers.

Overweight containers place an unfair burden on drivers and carriers when they are accompanied by shipping documentation that understates their weight. The driver and carrier

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43 Reasons for these inaccuracies are:

- shipping documentation accompanying containers might contain errors in the weight of the commodity being shipped, as a result of packers and shippers using unsophisticated handling and weighing systems;
- shipping documentation may also fail to declare that the distribution of weight is not uniform along a container’s length or across its breadth;
- shippers and packers may not even have the facilities to weigh goods for the purposes of accurate mass declaration and might just rely on estimates;
- it may not be clear whether marked weights include the tare weight of the container;
- shipping companies and freight forwarders tend to charge per container; therefore providing a commercial incentive for the customer to try to pack in more weight per container. Wharf charges are also reduced with less containers;
- the practice of ‘slipsheeting’ - replacing pallets with slipsheets - means that more product can be loaded in each container than ever before;
- when shipping documents understate container weights, there is a cumulative effect upon the aggregate load carried by an unwary driver and carrier if more than one container with an understated mass is being transported on that vehicle or combination.
may only first become aware of the problems when the container is actually placed on the
vehicle or when the vehicle is weighed at a weighbridge.

The overweight container issue has been considered to be of sufficient gravity to warrant the
establishment of an AUSTROADS project, managed by the NRTC, to work on a national
multi-modal strategy to address the problem.

The aim of this project is to deliver a strategy of practical measures that will draw on work
already undertaken by the AUSTROADS Overweight Containers Working Group and the
efforts of a working group chaired by the New South Wales WorkCover Authority.

The United States has enacted the Intermodal Safe Container Transportation Act that requires
a paper trail to accompany the movement of freight containers and provides for the seizure of
overmass containers to deal with this problem.

The Act requires that any container or trailer tendered by a shipper to a highway carrier with a
declared gross weight exceeding 10,000lb. [4,536kg] be accompanied by a written
certification of the weight and description of the cargo. This certification must accompany
the container and be passed to each carrier. Carriers are prohibited from accepting a container
or trailer which does have the required certificate. If a certificate understates the mass of the
cargo, the road carrier has the right to place a lien on the cargo seized against the consignor,
owner or beneficial owner to satisfy any fines or penalties assessed. The Act also empowers
Authorities to seize trailers or containers which are overweight until the required fines and
penalties are paid. However, the US experience to date has been that the Act is too difficult to
apply and so the expected benefits from what were intended to be provisions with ‘teeth’ have
not been realised.

The NRTC’s Road Transport Reform (Dangerous Goods) Regulations provide another
possible model for legislative requirements for a documentary trail. Part 11 of the
Regulations makes it a general offence to include false or misleading information in shipping
documentation, then imposes a special duty on the consignor to pass on shipping
documentation to the prime contractor or driver and a special duty on the part of the driver to
carry that documentation and produce it to authorised personnel on request.

Whilst the national Dangerous Goods Regulations and the US Intermodal Safe Container Act
provide potentially useful models for imposing and enforcing a formal paper trail to facilitate
enforcement of the mass limits in the case of freight containers, nevertheless there is a number
of countering factors which also need to be considered.

1. Due to the high risks associated with incidents, the loading and transport of dangerous
goods are activities that are often considered to require prescriptive regulation. The
argument for a prescriptive documentary trail is not as strong in the context of loading
non-dangerous freight.

2. Preferably, the law should utilise existing commercial documentation rather than require
the production and maintenance of documents purely for enforcement purposes.

3. Without the inclusion of the type of seizure powers laid down in the US Intermodal Safe
Container Act, the paper trail requirements may be largely unenforceable.

4. It may well be that the NRTC’s draft proposal (which provides, amongst other things, that
the consignor who understates the mass in shipping documentation is guilty of an offence
and enables the nominated Australian representative of the consignor to be held liable)
will go some way towards addressing the problem of containers that have minor overloads.

**Weighing device and weighing method inaccuracies**

Weighing *devices* may vary significantly in their capability to record the mass of the imposed load. Different weighing *methods* will also produce different results: fixed weighbridges, end-on-end weighing (only part of the vehicle on the weighbridge at any one time) and weighing by portable scales without ‘blocking’ all wheels, or on a slope, may produce slightly different recorded masses due to the physical forces acting on the vehicle.

Assurances are therefore required that appropriate procedures have been used and adjustments have been made in arriving at readings to be used for prosecution purposes. The jurisdictions have differing legal mechanisms and controls for providing allowances, against use of mass measurements that would overstate any mass for a breach action. The intention is not to interfere with the legal mechanisms used so long as there is no disadvantage in respect of the actual mass, while encouraging nationally consistent practices where direct interaction is involved (for example, blocking for portable scales).
APPENDIX 6    EXCERPTS FROM THE DRAFT ROAD TRANSPORT REFORM (COMPLIANCE AND ENFORCEMENT) (GENERAL) BILL 1997

(These are excerpts from the National Road Transport Commission’s draft Road Transport Reform (Compliance and Enforcement)(General) Bill 1997, that was circulated to enforcement agencies and industry for comment in February 1997. The draft Bill has not been finalised and the excerpts presented here are for illustrative purposes only.)

Division 2 – General powers of members of the police force and authorised officers

17    Stopping a heavy vehicle or heavy combination

1) A member of the police force or an authorised officer may, for the purpose of exercising powers under the road laws, direct the driver of a heavy vehicle or heavy combination to stop the vehicle or combination or to keep it stationary.

2) A person who fails to comply with a direction under subsection (1) is guilty of an offence.

   Penalty: Penalty level 2.

3) The offence is an offence of strict liability.

18    Direction to move a heavy vehicle or heavy combination

1) A member of the police force or an authorised officer may, to find out whether the road laws are being complied with, direct the driver of a heavy vehicle or heavy combination to move it to a suitable location specified by the member or officer.

2) If a member of the police force or an authorised officer believes on reasonable grounds that a heavy vehicle or heavy combination is causing a danger or obstruction to traffic, the member or officer may direct the driver of the vehicle or combination to move it to the extent necessary to avoid the danger or obstruction.

3) A driver who fails to comply with a direction under subsection (1) or (2) is guilty of an offence.

   Penalty: Penalty level 2.

4) The offence is an offence of strict liability.

19    Moving an unattended heavy vehicle or heavy combination

1) If a member of the police force or an authorised officer believes on reasonable grounds that a heavy vehicle or heavy combination:

   (a) is unattended by a qualified driver; and
(b) is causing a danger or obstruction to traffic;

the member of officer may enter the vehicle or combination and move it (by driving it), or cause it to be moved, to the extent necessary to avoid the danger or obstruction.

2) The member or officer may use reasonable force to enter the vehicle or combination.

3) However, the member or officer may drive the vehicle or combination only if the member or officer holds an Australian driver licence of the appropriate class to drive the vehicle or combination.

4) A heavy vehicle or heavy combination is taken to be unattended by a qualified driver if:

(a) there is no person in or in the vicinity of the vehicle or combination who appears to be a driver of the vehicle or combination or to be in charge, or apparently in charge of the vehicle or combination; or

(b) if there is such a person in or in the vicinity of the vehicle or combination, the person has not satisfied the member or officer that the person holds an Australian driver licence of the appropriate class to drive the vehicle combination.

20 Inspecting a heavy vehicle or heavy combination

1) A member of the police force or an authorised officer may inspect a heavy vehicle or heavy combination to find out whether the road laws are being complied with.

2) An inspection may include weighing, testing or measuring any part of the vehicle or combination or its equipment or load. However, this section does not authorise the member or officer to enter the vehicle or combination.

21 Inspecting a garage address

1) A member of the police force or an authorised officer may enter the garage address of a heavy vehicle and inspect the premises and any heavy vehicle or heavy combination at the premises to find out whether the road laws are being complied with.

2) The entry may be made at any time during the usual operating hours at the garage address.

3) An inspection may include weighing, testing, measuring or taking photographs of any part of a heavy vehicle or heavy combination at the premises or its equipment or load. However, this section does not authorise the member or officer to enter a vehicle or combination.

22 Production and inspection of documents, records and devices

1) A member of the police force or an authorised officer may, to find out whether the road laws are being complied with, direct:
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(a) the driver of a heavy vehicle or heavy combination, or a person in charge or apparently in charge of a heavy vehicle or heavy combination; or

(b) the person in charge or apparently in charge of the garage address of a heavy vehicle;


to produce to the member or officer documents, records, devices or things that relate to the use of the heavy vehicle or heavy combination.

2) A person who fails to comply with a direction under subsection (1) without reasonable excuse is guilty of an offence.

Penalty: Penalty level 2.

3) The member or officer may:

(a) inspect documents, records, devices or things that are produced; or

(b) make copies of, or take extracts from, documents, records or devices that are produced; or

(c) seize and remove documents, records, devices or things that are produced that the member or officer believes on reasonable grounds provide evidence of a road law offence.

5) If a document, record, device or thing is seized and removed, the member or officer must:

(a) give a receipt for it to the person from whom it is seized and removed; and

(b) if practicable, allow the person who would normally be entitled to possession of it reasonable access to it.

23 Notice to produce documents, records or devices

1) A member of the police force or an authorised officer may, to find out whether the road laws are being complied with, give a written direction to a person who is in charge or apparently in charge of a heavy vehicle or heavy combination to produce, within a specified time, documents, records, devices or things that relate to the use of the vehicle or combination that may help the member or officer.

2) A member of the police force or an authorised officer may, to find out whether road laws are being complied with, leave at the garage address of a heavy vehicle a written direction requiring the person in charge or apparently in charge of the garage address to produce, within a specified time, documents, records, devices or things that relate to the use of the vehicle or a combination that includes the vehicle that may help the member or officer.

3) A person who fails to comply with a direction under subsection (1) or (2) without reasonable excuse is guilty of an offence.

Penalty: Penalty level 2.
24 **Requiring name and address**

1) A member of the police force or an authorised officer may direct:

   (a) the driver of a heavy vehicle or heavy combination, or a person in charge or apparently in charge of a heavy vehicle or heavy combination; or

   (b) the person in charge or apparently in charge of the garage address of a heavy vehicle;

   to state the person’s name and address.

2) When giving the direction, the member or officer must warn the person that it is an offence to fail to state the person’s name and address.

3) A person who:

   (a) fails to comply with a direction under subsection (1); or

   (b) provides a false name or address;

   is guilty of an offence.

   Penalty: Penalty level 2.

4) The offence is an offence of strict liability.

25 **Requiring identity of registered operator or operator**

1) A member of the police force or an authorised officer may direct:

   (a) the driver of a heavy vehicle or heavy combination, or a person in charge or apparently in charge of a heavy vehicle or heavy combination; or

   (b) the person in charge or apparently in charge of the garage address of a heavy vehicle;

   to identify the registered operator or operator of the vehicle or combination.

2) A person who fails to comply with a direction under subsection (1) without reasonable excuse is guilty of an offence.

   Penalty: Penalty level 2.

26 **Requiring reasonable assistance**

1) A member of the police force or an authorised officer may, for the purpose of ensuring a power under this Division can be exercised safely and effectively, direct:

   (a) the driver or operator of a heavy vehicle or heavy combination, or a person in charge or apparently in charge of a heavy vehicle or heavy combination; or
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(b) a person in charge or apparently in charge of the garage address of a heavy vehicle, or premises that the member or officer has entered under section 28;

to give assistance to the member or officer in exercising the power.

2) The assistance may include helping the member or officer:

   (a) to find and gain access to electronically stored material; or

   (b) to unload a heavy vehicle or heavy combination.

3) A person who fails to comply with a direction under subsection (1) is guilty of an offence.

   Penalty: Penalty level 2.

4) The offence is an offence of strict liability.

5) It is a defence if the direction was unreasonable.

27 Entering and searching heavy vehicles and heavy combinations

1) This section applies to a heavy vehicle or heavy combination if a member of the police force or an authorised officer believes on reasonable grounds that the vehicle or combination has been used in the commission of a road law offence.

2) The member or officer may enter the vehicle or combination and:

   (a) search, weigh, test, measure or photograph the vehicle or combination or any part of the vehicle or combination or its equipment or load, including, if necessary, by unloading, or causing the unloading of, the vehicle or combination; or

   (b) inspect documents, records, devices or things in the vehicle or combination; or

   (c) make copies of, or take extracts from, documents, records or devices in the vehicle or combination; or

   (d) seize and remove documents, records, devices or things in the vehicle or combination that the member or officer believes on reasonable grounds provide evidence of the offence.

3) The member or officer may use reasonable force to exercise the powers specified in subsection (2).

4) If a document, record, device or thing is seized and removed, the member or officer must:

   (a) give a receipt for it to the person from whom it is seized and removed; and
Appendix 6

(b) if practicable, allow the person who would normally be entitled to possession of it reasonable access to it.

31 Search and seizure – other evidence

If, in the course of searching under this Act, a member of the police force or an authorised officer finds documents, records, devices or things (other than things relevant to the offence to which the search relates) that the member or officer believes on reasonable grounds:

(a) would constitute evidence of some other road law offence; and

(b) would be concealed, lost or destroyed, or used in committing an offence, if the officer did not seize them;

the member or officer may:

(c) seize the documents, records, devices or things; or

(d) do whatever is necessary to preserve the evidence, including placing a seal, lock or guard.

Division 4 – Obstructing, hindering or impersonating

33 Obstructing or hindering members of the police force or authorised officers

1) A person who obstructs or hinders a member of the police force or an authorised officer who is exercising a power under a road law is guilty of an offence.

Penalty: Penalty level 2.

2) The offence if an offence of strict liability.

34 Impersonating authorised officers

1) A person who impersonates an authorised officer is guilty of an offence.

Penalty: Penalty level 3.

Part 5 – General evidentiary provisions

40 Averments

1) In a prosecution for a road law offence, a statement or allegation in a complaint or charge made by the person bringing the proceedings that, at a specified time or during a specified period:

(a) a specified vehicle or combination was a heavy vehicle or heavy combination; or
(b) a specified vehicle or combination was a particular class of heavy vehicle or heavy combination; or

(c) a specified person is or was the registered operator of a heavy vehicle; or

(d) a specified location was a road, an area that divides a road, a footpath or nature strip adjacent to a road or an area that is not a road and that is open to or used by the public for driving or parking vehicles; or

(e) a specified location was an area that is open to or used by the public and that has been declared in accordance with the Road Transport Reform (Vehicles and Traffic) Act 1993 or the Road Transport Reform (Heavy Vehicles Registration) Act 1997 to be an area to which that Act applies;

is, in the absence of evidence to the contrary, proof of that matter.

2) In a prosecution for a road law offence, a statement or allegation in a complaint or charge made by the person bringing the proceedings that the offence was committed in a specified place is, in the absence of evidence to the contrary, proof of that matter.

41 Evidence of information in the possession of Authority

1) A statement in a certificate purporting to have been issued by the Authority or by a corresponding authority as to any matter that appears in or can be calculated from records kept or accessed by the Authority or the corresponding authority is admissible in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated.

2) Without limiting subsection (1), a statement in such a certificate that, at a specified time or during a specified period:

(a) a specified person was or was not the registered operator of a heavy vehicle; or

(b) a specified vehicle was or was not registered; or

(c) a specified person was or was not the holder of an Australian driver licence of a particular class to drive a vehicle or combination, or a vehicle or combination of a particular class; or

(d) a specified person was or was not the holder of a permit to drive or operate a particular vehicle or combination or a vehicle or combination of a particular kind or of a particular class; or

(e) a penalty, fee or charge is or was payable under a road law (or the Road Transport Charges (Australian Capital Territory) Act 1993); or

(f) a specified person has not paid an infringement penalty; or
(g) a specified person, vehicle or combination was or was not subject to an exemption, permit or notice in the Gazette; or

(h) a specified person had not notified a change of address; or

(i) a specified document was or was not lodged, or a fee was or was not paid; or

(j) an infringement notice issued for a specified person, vehicle or combination under a road law has or has not been withdrawn; or

(k) a specified person was or was not an authorised officer; or

(l) a specified registration, licence, permit or exemption has been varied, suspended, cancelled or revoked;

is admissible in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated.

42 Service of certificates

If the Authority proposes to use a certificate under this Part in a prosecution for a road law offence, the Authority must give a copy of the certificate to the defendant at least 10 working days before the day on which the matter is set down for hearing.

43 Notice of intention to challenge certificate

A defendant who wishes to give evidence challenging a statement in a certificate under this Part must give notice in writing to the member of the police force or authorised officer who brought the proceedings at least 5 working days before the day on which the matter is set down for hearing.

Part 6 – Sanctions and infringements

44 Formal warnings

1) A member of the police force or an authorised officer may, instead of taking proceedings against a person for a contravention of a road law, formally warn the person if the member or officer believes:

   (a) the contravention was committed inadvertently; and

   (b) the contravention was of a minor nature; and

   (c) the member or officer has no reason to believe that the person has committed more than 2 road law offences in the previous 2 years (whether they resulted in proceedings against the person or the issue of a formal warning); and
(d) the contravention is appropriate to be dealt with by a formal warning under this section.

2) If a member of the police force or an authorised officer formally warns a person, he or she must make a record of the warning and give it to the Authority.

3) However, if after a person has been formally warned, the Authority finds out that the person had committed more than 2 road law offences in that previous 2 years (whether they resulted in proceedings against the person or the issue of a formal warning), the Authority may withdraw the warning and take proceedings against the person for the contravention.

4) In this section:

proceedings includes proceedings by way of an infringement notice.
### APPENDIX 7  RECENT ADMINISTRATIVE ENFORCEMENT MODELS

**AUSTROADS**

AUSTROADS provided the following enforcement grid in the 1992 AUSTROADS Report to the National Road Transport Commission on ‘National Registration and Regulation of Heavy Vehicles’; ‘Business Rules for Management of Mass Limits’:

<table>
<thead>
<tr>
<th>Axles</th>
<th>Permissible Load (Option C Limit)</th>
<th>Breached and allowed to proceed (Column 1)</th>
<th>Breached and required to legalise load (Column 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steer Axle</td>
<td>6.0 t</td>
<td>6.25 t</td>
<td>6.7 t</td>
</tr>
<tr>
<td>Twin Steer NLS</td>
<td>10.0 t</td>
<td>11.0 t</td>
<td>12.0 t</td>
</tr>
<tr>
<td>Twin Steer LS</td>
<td>11.0 t</td>
<td>12.0 t</td>
<td>13.0 t</td>
</tr>
<tr>
<td>Single Axle</td>
<td>9.0 t</td>
<td>9.5 t</td>
<td>11.0 t</td>
</tr>
<tr>
<td>Tandem Group</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dual Tyres</td>
<td>15.0 t (Pig Trailer)</td>
<td>16.0 t</td>
<td>17.0 t</td>
</tr>
<tr>
<td>Tandem Group</td>
<td>16.5 t</td>
<td>17.5 t</td>
<td>18.5 t</td>
</tr>
<tr>
<td>Single and Dual</td>
<td>13.0 t</td>
<td>14.0 t</td>
<td>15.0 t</td>
</tr>
<tr>
<td>Tandem Axle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single Tyres</td>
<td>11.0 t</td>
<td>12.0 t</td>
<td>13.0 t</td>
</tr>
<tr>
<td>wide tyres 375mm</td>
<td>13.3 t</td>
<td>14.3 t</td>
<td>15.3 t</td>
</tr>
<tr>
<td>wide tyres 450mm</td>
<td>14.0 t</td>
<td>15.0 t</td>
<td>16.0 t</td>
</tr>
<tr>
<td>Triaxle Dual</td>
<td>20.0 t</td>
<td>21.0 t</td>
<td>24.0 t</td>
</tr>
<tr>
<td>Triaxle Wide</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tyres</td>
<td>20.0 t</td>
<td>21.0 t</td>
<td>24.0 t</td>
</tr>
<tr>
<td>Pig Trailer</td>
<td>18.0 t</td>
<td>19.0 t</td>
<td>22.0 t</td>
</tr>
</tbody>
</table>

AUSTROADS recommended that vehicles with loads *not* exceeding the load limits shown in Column 1 should be breached, but allowed to proceed to their destination by permit (no fee) - provided the GVM or GCM ratings are not exceeded by more than 5% - subject to rate restrictions, ie mass limited bridges.

AUSTROADS also recommended that vehicles with loads not exceeding the load limits shown in Column 2 should be allowed to proceed via the routes nominated by an authorised person to the nearest place which has an area suitable for legalising the load, provided the allowable GVM or GCM is not exceeded by more than 10%.

Subject to certain exceptions, vehicles with loads which exceed those in Column 2 or exceed the allowable GVM or GCM ratings by more than 10% should only be allowed to proceed to the nearest safe place where the vehicle can be parked and have its load legalised without creating a hazard.
This model provides for a degree of latitude to be given to industry for minor breaches and increasingly onerous steps to be taken for more serious breaches. Essentially, the levels proposed by AUSTROADS correspond with minor, substantial and severe categories of breach.

This model found favour with enforcers and industry and was nationally endorsed by Ministers, although it was not implemented by all jurisdictions.

**Queensland Model**

Another model that has since been proposed by Queensland in its 1999 ‘Managing Unsafe Overloading in Queensland’ policy paper (a revision of the 1997 ‘Managing Gross Overloading in Queensland’ paper) is as follows:

(a) Overloaded up to, but not exceeding, the manufacturer’s GVM (up to 120%).

In this category, the vehicle is entitled to proceed and the only enforcement action is the issue of an infringement notice. The rationale expressed for this is that in this overload category, the main issue is unrecovered road wear and a ‘user pays’ penalty imposed through the infringement notice system is stated to be sufficient to address this issue.

(b) Overloaded beyond the manufacturer’s GVM but not exceeding the weight of a double payload (between 120-160% overloaded).

In this category, there are road wear and public safety implications and the offender will be prosecuted. The load must be adjusted or reduced to the legal mass limits before proceeding.

(c) Overloaded by an amount equal to the payload (overloaded by 160% or more).

In this category, infrastructure damage is extremely high and safety has been grossly compromised. The Queensland proposal is that the penalty be court determination of fine and/or forfeiture of the vehicle.

Whilst the results of the NRTC’s consultations in the development of a national conventional compliance scheme for mass, dimension and load restraint suggest that the forfeiture sanction proposed in the Queensland model would not find favour nationally at this stage, the three-tiered approach that has been put forward by Queensland is quite consistent with both the AUSTROADS and the NRTC models and follows a similar approach to linking degrees of offences to enforcement actions and sanctions.
APPENDIX 8

DRAFT MODEL PENALTY PROVISIONS FOR ‘SEVERE RISK’ OVERLOADS

The following model provisions were developed by the National Road Transport Commission in 1999 to enable early implementation, in conjunction with higher mass limits, of the sanctions and penalties framework that the NRTC prepared for gross (severe risk) overloading and submitted to Ministers in December 1998. These provisions are presented here for information only. They should be considered in the context of the various refinements to the sanctions and penalties that are contained in the proposals in this paper.

Part 1 - Preliminary

1 Purpose

(1) The purpose of this legislation is to implement, as part of a system of nationally consistent road transport laws, a policy agreed by the Commonwealth government and the governments of the States and Territories-

(a) to impose higher or additional penalties in respect of offences involving the movement of overloaded heavy vehicles on roads where the overloading is so excessive that it poses a severe risk to people, property (including roads and works associated with roads) or the environment; and

(b) to provide for additional measures that may be taken in respect of offenders whose vehicles are regularly found to be overloaded to such an extent.

(2) It is intended that the measures that may be taken in accordance with subclause (1)(b) are to be in addition to any other penalties to which any person may be subject by virtue of the fact that a heavy vehicle was on a road while overloaded.

2 Application

(1) This legislation applies to-

(a) a motor vehicle with a GVM over 4.5 tonnes; and

(b) a combination which includes a vehicle referred to in paragraph (a), and

(c) any vehicle included in a combination referred to in paragraph (b), and in this legislation ‘vehicle’ is to be construed accordingly.

3 Interpretation

(1) In this legislation-

‘Authority’, means the (name of appropriate Authority and short title of Act under which it was established);

‘authorised officer’ means an authorised officer appointed under (short title of Act under which authorised officers are appointed);

‘carrier’, in respect of a vehicle, means a person who controls or directs the operations of the vehicle or who is otherwise responsible for the use of the vehicle;
‘combination’ means a group of vehicles consisting of a motor vehicle connected to one or more vehicles;

‘GCM’ (gross combination mass), in respect of a motor vehicle, means the greatest possible sum of the maximum loaded masses of the motor vehicle and of any vehicles that may be towed by it at one time-

(a) as specified by the motor vehicle’s manufacturer; or

(b) as specified by the Authority if-

(i) the manufacturer has not specified the sum of the maximum loaded masses; or

(ii) the manufacturer cannot be identified; or

(iii) the vehicle has been modified to such an extent that the manufacturer’s specification is no longer appropriate;

‘GVM’ (gross vehicle mass), in respect of a vehicle, means the maximum loaded mass of the vehicle-

(a) as specified by the vehicle’s manufacturer; or

(b) as specified by the Authority if -

(i) the manufacturer has not specified a maximum loaded mass; or

(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;

‘officer’ means an authorised officer or a police officer;

‘police officer’ means-

(a) a member or special member of the Australian Federal Police; or

(b) a member (however described) of a State or Territory police force or service; or

(c) a service police officer within the meaning of the Defence Force Discipline Act 1982 of the Commonwealth;

‘Prohibition Order’ means an order made by a court under clause 13;

‘road’ means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles;

‘severe risk overloaded’, in respect of a vehicle, means that the vehicle is overloaded to such an extent that it poses a risk referred to in clause 4(1);

‘severe risk overloading offence’ means an offence where-

(a) the fact that a vehicle is overloaded constitutes an element of the offence; and
(b) the overloading is severe risk overloading;

‘Supervisory Intervention Order’ means an order made by a court under clause 12.

Part 2 – Severe risk overloading

4 Severe risk overloading

(1) Severe risk overloading of a vehicle occurs if the overloading of the vehicle is so excessive that its use on a road is such that there is a propensity for -

(a) injury to people (whether or not road users); or

(b) severe damage to property (including the structure of the road or to works associated with the road) or to the environment.

(2) The circumstances referred to in subclause (1) must be taken to exist in respect of an overloaded vehicle if the overloading is such that-

(a) the mass on the vehicle is greater by 20 percentage points or more than the vehicle’s GCM or GVM; or

(b) the mass on-

(i) a single axle on the vehicle; or

(ii) an axle group on the vehicle,

is greater by 20 percentage points or more than the maximum mass permitted on the axle or axle group by any legislation; or

(c) the gross mass of the vehicle is greater by 20 percentage points or more than the maximum gross mass permitted on the vehicle by any legislation.

5 Common law right, etc. to operate vehicles on roads limited

(1) Any right a person may have at common law or otherwise to operate or drive a vehicle on a road is by this clause expressly limited not to include the right to operate or drive on the road a vehicle that is severe risk overloaded.

6 Powers of officers to prohibit the movement of severe risk overloaded vehicles

(1) If an officer has reasonable grounds to believe that a vehicle is severe risk overloaded the officer may issue a notice prohibiting its movement on a road.

(2) A notice issued under subclause (1) may be issued-

(a) by giving it to the driver or carrier of the vehicle; or

(b) by affixing it to a part of the vehicle where it may be readily seen by any person intending to drive or move the vehicle.

(3) A notice issued under subclause (1) must state-

(a) that in the opinion of the officer issuing the notice the vehicle is severe risk overloaded;
(b) the nature of that overloading;

(c) that the vehicle must not be moved-
   (i) without the written approval of an officer given in accordance with clause 7; or
   (ii) until the vehicle has been sufficiently unloaded so that its movement on a road is not an offence; and

(d) the penalties to which a person becomes liable if the person-
   (i) moves the vehicle contrary to the notice; or
   (ii) covers or defaces the notice without the approval of an officer; or
   (iii) removes the notice without the approval of an officer.

(4) A notice issued under subclause (1) must also contain a means by which the officer issuing the notice may be identified by the Authority.

(5) A person must not move or cause or permit a vehicle to be moved contrary to the terms of a notice issued under subclause (1).

**Penalty:** Fine not exceeding $10,000 or imprisonment for a term not exceeding 4 years, or both.

(6) It is not a defence for a person charged with an offence under subclause (5) to show that at the time of the offence the person had no knowledge that the vehicle was severe risk overloaded if the court is satisfied that at the time of the alleged offence—
   (a) a notice was affixed to the vehicle in accordance with subclause (2)(b); and
   (b) the notice had not been defaced.

(7) A person must not cover, deface or remove a notice affixed to a vehicle in accordance with subclause (2)(b) except with the approval of an officer.

**Penalty:** Fine not exceeding $5,000
7 Severe risk overloaded vehicle may be moved with approval of officer

(1) A vehicle that is severe risk overloaded may be moved on a road with the written approval of an officer.

(2) An officer must not give approval for the purpose of subclause (1) unless-

(a) the officer is satisfied that if the vehicle remains in its present position there is a propensity for-

(i) injury to people (whether or not a road users); or
(ii) severe damage to property (including the road or any works associated with the road) or to the environment,

and that that the risk of that happening is greater than the risks posed to people, property and the environment by moving the vehicle to a place where it does not pose such a risk; or

(b) the officer is satisfied that by virtue of the nature of the cargo on the vehicle (for example, livestock, dangerous goods, perishable or frozen products) or for any other reason it is more in the public interest that the vehicle should be moved to a place where it severe risk overloading can be corrected than that it should wait to be corrected at the place where it is situated.

(3) An officer may when giving approval to move a severe risk overloaded vehicle to a place where it may safely stand or its severe risk overloading be corrected give that approval subject to conditions in respect of-

(a) the route to be taken by the vehicle;
(b) the times when the vehicle may be moved; and
(c) any other matter the officer considers relevant to the safe movement of the vehicle.

(4) A person must not when moving a severe risk overloaded vehicle with the approval of an officer fail to comply with any conditions subject to which that approval was given.

Penalty: Fine not exceeding $10,000 or imprisonment for a term not exceeding 4 years, or both.

8 Penalties for severe risk offences

(1) If an individual is convicted or found guilty of a severe risk overloading offence the court may-

(a) if the individual has no previous conviction in Australia for a severe risk overloading offence - impose a fine not exceeding $2,000 plus an additional amount of $200 for each additional percentage point (or part thereof) by which any mass of that vehicle as specified in clause 4(2) exceeded the 20 percentage point excess overloading minimum specified in that clause in respect of that mass; or

(b) if the individual has one or more previous convictions in Australia for severe risk overloading offences - impose a fine that-
(i) is not less than the maximum fine that could have been imposed by virtue of paragraph (a) if the individual had had no previous conviction in Australia for a severe risk overloading offence; and

(ii) is not more than double that fine.

(2) If a body corporate is convicted or found guilty of a severe risk overloading offence the court-

(a) may impose a fine that is not more than 5 times the maximum fine that could by virtue of subclause (1) be imposed on an individual; and

(b) where a minimum fine would have applied in respect of an individual, must impose a fine that is not less than 5 times that minimum fine.

(3) Where in respect of a severe risk overloading offence more than one mass of the vehicle involved in the offence exceeded the 20 percentage point excess overloading minimum specified in clause 4(2) the mass (and no other) which exceeded that number of percentage points by the greatest number of percentage points is to be used for the purpose of calculating the maximum fine that may be imposed by virtue of subclause (1).

(4) This clause has effect in respect of a severe risk overloading offence despite the terms of any other legislation except that where by virtue of other legislation a greater maximum fine could be imposed or a greater minimum fine must be imposed in respect of the offence those greater fines apply.

9 Court may impose a commercial benefit penalty

(1) If a person has been convicted or found guilty of a severe risk overloading offence and the court that convicted or found the person guilty is satisfied on its own volition or on the application of the Authority that-

(a) had the offence not been detected the person would have obtained a substantial commercial benefit that the person would not have obtained had the offence not been committed; and

(b) that commercial benefit would have been greater than any penalty the court could have imposed by virtue of this or any other legislation,

the court may impose a penalty not exceeding an amount that is equal to 3 times the value of the commercial benefit that would have been so obtained.

(2) The court may admit evidence to help it to determine -

(a) if such a commercial benefit would have been obtained; and

(b) if it would, the value that benefit would have had.

(3) In calculating the value a commercial benefit would have had the court may take into account all relevant information including-

(a) the value of the goods;

(b) the distance the goods was intended to be carried; and

(c) any other benefit, whether or not in money or money’s worth, that the person who committed the offence could have received.
10 Court may order suspension or cancellation of driver licence

(1) If a court convicts a person of a severe risk overloading offence which involved that person driving the vehicle the subject of the offence the court may in addition to any other penalty it imposes in respect of the offence under this or any other legislation order-

(a) that any driver licence issued to the person be suspended or cancelled to the extent that it authorises the person to drive motor vehicles to which this legislation applies for a period not exceeding 5 years; and

(b) that during that period the person be disqualified from obtaining a driver licence in Australia that authorises the person to drive motor vehicles to which this legislation applies.

(2) A court must not make an order under subclause (1) unless it is satisfied that it was the deliberate intention of the person to commit the offence or that the person connived in its commission and for this purpose it is not sufficient merely to show that the person knew or ought reasonably to have known that the vehicle was severe risk overloaded.

(3) This section does not affect a power or obligation under another law to vary, suspend or cancel a driver licence.

11 Court may order cancellation of registration

(1) If a court convicts a person of a severe risk overloading offence and the person is the carrier in respect of the vehicle involved in the offence the court may in addition to any other penalty it imposes in respect of the offence under this or any other legislation order-

(a) that the registration of all vehicles to which this legislation applies of which that person is the registered carrier be suspended or cancelled; and

(b) that the person be disqualified from becoming the registered in respect of a vehicle to which this legislation applies in Australia for a period not exceeding 5 years.

(2) This section does not affect a power or obligation under another law to vary, suspend or cancel the registration of a vehicle.

12 Court may impose Supervisory Intervention Order

(1) If a court convicts a person of a severe risk overloading offence and the person is the carrier in respect of one or more vehicles to which this legislation applies it may on the application of the Authority make an order (called a Supervisory Intervention Order) in respect of the person.

(2) The court must not make a Supervisory Intervention Order in respect of a person unless it is satisfied-

(a) that the person when operating vehicles to which this legislation applies has been a systematic or persistent road transport offender; and

(b) that having regard to-
(i) the person’s record as a systematic or persistent road transport offender; and

(ii) any other evidence relevant to the person’s conduct when operating vehicles to which this legislation applies,

the result of such an order being made in respect of the person would be to improve the person’s ability and willingness to comply with road and transport laws.

(3) The court may admit evidence to help it to determine all or any of the matters referred to in subclause (2).

(4) A Supervisory Intervention Order made in respect of a person may-

(a) direct the person, at the person’s own expense, to do anything that the court considers will improve the person’s compliance with road transport laws and may, in particular, direct the person-

(i) to appoint or remove an employee to or from a particular position of influence or control; and

(ii) to appoint an auditor; and

(iii) to obtain expert advice on how to maintain appropriate compliance; and

(iv) to implement managerial or operational practices, systems or procedures; and

(b) direct the person, at the person’s own expense, to report or disclose information relating to-

(i) the person’s compliance with the road and transport laws;

(ii) anything done to ensure that any failure by the person to comply with those laws does not continue; and

(iii) the results of those things having been done, to-

(iv) the Authority; or

(v) an officer nominated by the Authority; or

(vi) the public generally;

in the form, manner and frequency specified in the order; and

(c) direct the person to do the things specified in the order subject to the direction of the Authority, or a person nominated by the Authority.

(5) The court may terminate a Supervisory Intervention Order on the application of-

(a) the person in respect of whom the order was made; or

(b) the Authority,

on the grounds that-

(c) the order has fulfilled its purpose; or
(d) the order has failed to fulfil its purpose and is not likely to do so; or

(e) that the person has ceased to be involved in any aspect of the road transport industry.

(6) The court may make a Supervisory Intervention Order in addition to or in substitution for any other penalty (other than a Prohibition Order) that may be imposed in respect of a severe risk overloading offence.

(7) Any other penalty imposed in accordance with subclause (6) in respect of a severe risk overloading offence may be expressed not to take effect except on non-compliance with a requirement of the Supervisory Intervention Order.

(8) A person must not fail to comply with a requirement of a Supervisory Intervention Order.

**Penalty**: Fine not exceeding $10,000

(9) It is a defence to a charge of failing to comply with a requirement of a Supervisory Intervention Order to show-

(a) that to comply fully with the requirement of the Order would be contrary to another law; and

(b) that such action as it was possible or permissible to take under the law in an attempt to comply with the requirement was taken.

(10) The offence created by subclause (8) is in addition to any other action that may be brought against the person (whether civil or criminal)-

(a) for failing to comply with an order of a court; or

(b) to secure compliance with the Supervisory Intervention Order.

13 **Court may impose Prohibition Order**

(1) If a court convicts a person of a severe risk overloading offence and the person is the carrier in respect of one or more vehicles to which this legislation applies it may on the application of the Authority make an order (called a Prohibition Order) in respect of the person.

(2) The court must not make a Prohibition Order in respect of a person unless it is satisfied-

(a) that the person when operating vehicles to which this legislation applies has been a systematic or persistent road transport offender; and

(b) that the person should not continue to do all or any of the things that a person may be prohibited from doing by a Prohibition Order; and

(c) that having regard to-

(i) the person’s record as a systematic or persistent road transport offender; and

(ii) any other evidence relevant to the person’s conduct when operating vehicles to which this legislation applies,

(iii) it would not be appropriate to make a Supervisory Intervention Order.
(3) The court may admit evidence to help it to determine all or any of the matters referred to in subclause (2).

(4) A Prohibition Order may prohibit a person from-

(a) operating-

(i) a vehicle to which this legislation applies or a particular class of vehicle to which this legislation applies; or

(ii) a vehicle to which this legislation applies carrying a particular type of load specified in the order; or

(b) being a director, secretary or high managerial agent of a body corporate that is involved in operating a vehicle to which this legislation applies; or

(c) otherwise being involved in operating a vehicle to which this legislation applies (except as a driver).

(5) The court may terminate a Prohibition Order on the application of

(a) the person in respect of whom the order was made; or

(b) the Authority,

(6) The court may make a Prohibition Order in addition to or in substitution for any other penalty (other than a Supervisory Intervention Order) that may be imposed in respect of a severe risk overloading offence.

(7) If a person has been convicted or found guilty of failing to comply with a requirement of a Supervisory Intervention Order the court is entitled to be satisfied for the purposes of an application for a Prohibition Order that a further Supervisory Intervention Order would not be appropriate.

(8) A person in respect of whom a Prohibition Order is in force must not carry on any activity prohibited by that order.

Penalty: Fine not exceeding $10,000

(9) The offence created by subclause (8) is in addition to any other action that may be brought against the person (whether civil or criminal)-

(a) for failing to comply with an order of a court; or

(b) to secure compliance with the Prohibition Order.

14 Interpretation in respect of Supervisory Intervention Orders and Prohibition Orders

(1) For the purposes of an application for a Supervisory Intervention Order or a Prohibition Order the following may be taken into account as evidence that the person is a systematic or persistent road transport offender, namely-

(a) a pattern of misconduct by the offender in respect of severe risk overloading offences to which this legislation applies;

(b) the person’s previous road transport offences;

(c) any previous road transport offences in respect of vehicles operated by the person or by employees, subcontractors or agents of the person;
(d) any indication that any offence referred to in (a), (b) or (c) was of an intentional or planned nature;

(e) any other evidence relevant to the wrongful conduct of the person in relation to road transport.

(2) A reference to offences in subclause (1) means offences committed anywhere in Australia and includes offences dealt with by infringement notices (being a notice giving a person alleged to have committed an offence the option of paying an amount instead of being charged with the offence).

15 Order under section 12 or 13 relating to bodies corporate

If the person who committed the overloading offence is a body corporate, an order under section 12 or 13 may be directed to the body corporate or a director, secretary or high managerial agent of the body corporate.

Part 3 – ‘Three Strikes and you are out’ provisions

Division 1 - Preliminary

16 Purpose of Part

(1) The purpose of this Part is to discourage the severe risk overloading of vehicles resulting from–

(a) a lack of adequate control by their carriers; or

(b) an intention by their carriers to gain a commercial advantage.

(2) This purpose is to be achieved by providing if a vehicle is involved in 3 severe risk overloading offences during any period of 3 years its registration is liable to be suspended for 3 months or, in exceptional cases, restricted.

17 Interpretation - Part 3

(1) In this Part -

‘appeal’ means an appeal under clause 40(1);

‘corresponding legislation’ means legislation of the Commonwealth or of a State or Territory which contains provisions corresponding to the provisions of this Part;

‘corresponding register’ means a register of severe risk overloading incidents-

(a) kept by a registration authority in accordance with corresponding legislation; and

(b) to which the Authority has access in accordance with that legislation;

‘recorded’, in respect of a severe risk overloading incident, means recorded in the Register or in a corresponding register;

‘Register’ means the Register of Severe Risk Overloading Incidents maintained by the Authority in accordance with clause 18;
‘registration authority’ mean an authority responsible for registering vehicles in this or any other State or Territory and includes the Authority;

‘registered carrier’, in respect of a vehicle, means the person recorded as the person responsible for the vehicle on the register of vehicles maintained by the registration authority;

‘severe risk overloading incident’, in respect of a vehicle, means an incident in which-

(a) a person has been convicted or found guilty of a severe risk overloading offence; and

(b) the vehicle, or a combination of which the vehicle formed part, was the overloaded vehicle or was one of the overloaded vehicles involved in the offence;

‘Severe Risk Overloading Incident Notice’ means a notice served in accordance with clause 22(1)(c) or corresponding legislation;

(2) For the purposes of this Part, if the registration of a vehicle has expired and has not been renewed-

(a) the registration authority for the vehicle is to be taken to be-

   (i) the registration authority which last registered it; or

   (ii) if at the time of a severe risk overloading incident the vehicle was authorised to be used on the road by a different registration authority - that registration authority; and

   (iii) the registered carrier is to be taken to be the last person to be recorded as the person responsible for the vehicle by the registration authority.

(3) For the purposes of this Part, if a vehicle has never been registered but at the time of its involvement in a severe risk overloading offence it was authorised to be used on the road by a registration authority-

   (i) that registration authority is to be taken to be the registration authority for the vehicle; and

   (ii) the registered carrier is to be taken to be-

   (iii) the last person recorded by that registration authority as the person responsible for the vehicle; or

   (iv) if there is no such person – the owner of the vehicle.

(4) For the purposes of this Part a period of suspension of the registration of a vehicle is to be taken as applying or as continuing to apply in respect of a vehicle although the vehicle is not registered because-

   (i) the period of registration of the vehicle had expired before the start of the period of suspension; or

   (ii) the period of registration of the vehicle expired during the period of suspension,
and the registration of the vehicle has not been renewed.

**Division 2 - Register of Severe Risk Overloading Incidents**

18 Authority to maintain Register of Severe Risk Overloading Incidents

(1) The Authority must maintain a Register of Severe Risk Overloading Incidents.

(2) The Authority is to be taken to have complied with subclause (1) if it maintains the Register in co-operation with another registration authority; and

(b) whether the Register is maintained in the State (or Territory) or elsewhere.

(3) The Register must be in a form in which the information it contains may be accessed by another registration authority.

(4) The Authority must permit another registration authority to have access to the Register.

19 Deletion of entries from Register of Severe Risk Overloading Incidents

(1) An entry in the Register in respect of a vehicle is to be taken to have been deleted-

(a) if the vehicle is registered in the name of a different registered carrier whether by the Authority or by another registration authority;

(b) on the termination of a period of suspension or restriction of the registration of the vehicle imposed under this or corresponding legislation;

(c) if an appeal against the offence which gave rise to the entry is successful.

(2) The Authority must amend the Register accordingly.

**Division 3 - Control of severe risk overloaded vehicles**

20 Severe risk offences to be reported to the Authority

(1) The Clerk of a court by which a person is convicted or found guilty of a severe risk overloading offence must give the Authority notice of the offence.

(2) The notice must include-

(a) the name and address of the person who was convicted or found guilty;

(b) details of the conduct that constituted the offence;

(c) details of the vehicle involved in the offence sufficient to enable the registration authority to identify it and its registered carrier;

(d) details relevant to the offence including-

(i) the date of the offence;

(ii) the locality and (if known) the time of the offence;

(iii) the manner in which the offence was detected;
(iv) the name of any driver of the vehicle at the time of the offence; and

(v) the identity of the police officer or authorised officer who detected the offence.

(3) The Clerk of a court that upholds an appeal against a conviction for a severe risk overloading offence must give the Authority notice of the appeal.

(4) The notice must include-

(a) the name and address of the person who brought the appeal; and

(b) details of the conviction appealed against.

21 Severe risk overloaded vehicle registered elsewhere

(1) This clause applies if a notice given to the Authority in accordance with clause 20(1) shows that a vehicle registered by another registration authority has been involved in a severe risk overloading incident.

(2) If this clause applies the Authority must give that other registration authority a copy of the notice and also a copy of any notice subsequently given to the Authority under clause 20(3) in respect of that offence.
22 Overloading by registered vehicle

(1) If the Authority is notified by-

(a) the Clerk of a court; or

(b) another registration authority acting in accordance with corresponding legislation,

(c) that a vehicle registered by the Authority has been involved in a severe risk overloading incident the Authority must within 14 days of receiving the notification-

(i) serve a Severe Risk Overloading Incident Notice on the registered carrier in respect of the vehicle; and

(ii) enter details of the severe risk overloading incident in the Register.

(2) The details must include-

(a) details of the vehicle sufficient to enable the Authority or any other registration authority to identify it (whether or not it is registered); and

(b) details of its registered carrier at the time of the offence; and

(c) in respect of the offence-

(i) the date of the offence;

(ii) the mass that constituted the offence;

(iii) the locality and (if known) the time of the offence.

Division 4 - Severe Risk Overloading Incident Notices

23 Severe Risk Overloading Incident Notices

(1) A Severe Risk Overloading Incident Notice must inform the registered carrier upon whom it is served-

(a) that an entry of the severe risk overloading incident has been made in the Register; and

(b) that the carrier may, within 14 days of the receipt of the notice, make representations to the Authority to have the entry deleted; and

(c) that if those representations are unsuccessful the carrier may appeal.

(2) A Severe Risk Overloading Incident Notice must also contain-

(a) details of the vehicle involved in the severe risk overloading offence sufficient to enable its registered carrier to identify it (whether or not it is registered);

(b) details of the severe risk overloading offence including-

(i) the date of the offence;

(ii) the mass that constituted the offence;
(iii) the locality and (if known) the time of the offence;
(iv) the manner in which the offence was detected; and
(v) the name of any driver of the vehicle at the time of the offence; and

(c) the warning prescribed by clause 24, 25 or 26, as the case may be.

24 Warning to be included in Severe Risk Overloading Incident Notice – no previous incident

(1) This clause applies if in respect of a vehicle involved in a severe risk overloading incident there is recorded no severe risk overloading incident in respect of a severe risk overloading offence that occurred during the 3 years immediately prior to the incident.

(2) If this clause applies the Severe Risk Overloading Incident Notice served in respect of the incident must inform the registered carrier that if the vehicle is involved in 2 more severe risk overloading offences within 3 years the registration of the vehicle will be liable to be suspended for 3 months.

25 Warning to be included in Severe Risk Overloading Incident Notice – one previous incident

(1) This clause applies if in respect of a vehicle involved in a severe risk overloading incident there is recorded one severe risk overloading incident in respect of a severe risk overloading offence that occurred during the 3 years immediately prior to the incident.

(2) If this clause applies the Severe Risk Overloading Incident Notice served in respect of the incident must inform the registered carrier that if the vehicle is involved in another severe risk overloading offence within 3 years of that previous offence the registration of the vehicle will be liable to be suspended for 3 months.

26 Warning to be included in Severe Risk Overloading Incident Notice – two previous incidents

(1) This clause applies if in respect of a vehicle involved in a severe risk overloading incident there are recorded 2 severe risk overloading incidents in respect of severe risk overloading offences that occurred during the 3 years immediately prior to the severe risk overloading offence that gave rise to the incident.

(2) If this clause applies the Severe Risk Overloading Incident Notice served in respect of the incident must inform the registered carrier that the registration of the vehicle is liable to be suspended for 3 months.

(3) It must also inform the carrier that if the carrier considers that there exist special circumstances that would cause disproportionately greater hardship to the carrier if the registration of the vehicle were to be suspended, the carrier may make representations to the Authority to have the registration of the vehicle restricted instead of suspended.

Division 5 - Suspension of registration
27 Application of Division

(1) This Division applies when the registration authority for a vehicle serves on the vehicle’s registered carrier a Severe Risk Overloading Incident Notice informing the carrier that the registration of the vehicle is liable to be suspended.

(2) However this Division ceases to apply if as a result of representations made to that authority under clause 39(1) or corresponding legislation the authority decides to restrict the registration of the vehicle instead of suspending it.

(3) Division 6 then applies.
28 Effect of pending suspension of registration

(1) During the period-

(a) starting when the registration authority for a vehicle serves on the vehicle’s registered carrier a Severe Risk Overloading Incident Notice informing the carrier that the registration of the vehicle is liable to be suspended; and

(b) ending when-

(i) any resulting period of suspension or restriction of registration starts; or

(ii) the registration authority informs the registered carrier that the entry in the Register or corresponding register in respect of the severe risk overloading incident is to be deleted; or

(iii) an appeal under this or any corresponding legislation is successful,

(c) the Authority must not-

(i) if the vehicle is registered with the Authority - register a change of the registered carrier in respect of the vehicle; or

(ii) if the vehicle is registered with another registration authority - register the vehicle.

29 Suspension of registration

(1) The Authority must serve on the registered carrier in respect of a vehicle a written notice suspending the registration of the vehicle for 3 months-

(a) if 14 days after the Authority has served a Severe Risk Overloading Incident Notice on the carrier informing the carrier that the registration of the vehicle is liable to be suspended the carrier has not made representations to the Authority-

(i) to have the entry made in the Register in respect of the severe risk overloading incident deleted; or

(ii) to have the registration of the vehicle restricted instead of being suspended; or

(iii) if the carrier does make either of those representations - 14 days after the Authority notifies the carrier that it has decided –

(iv) that the entry should not be deleted; or

(v) that it will not restrict the registration instead of suspending it; or

(b) if the registered carrier appeals - if the appeal is dismissed.

(2) A notice served in accordance with subclause (1) must-

(a) contain sufficient information to enable the registered carrier in respect of the vehicle to identify it; and

(b) specify the dates when the period of suspension of registration starts and ends.
30 Effect of suspension of registration

(1) During a period of suspension of the registration of a vehicle under this Part or any corresponding legislation-

(a) the vehicle is to be taken to be unregistered in the State (or Territory) or any other State or Territory; and

(b) the Authority must not-

(i) if the vehicle is registered with the Authority - register a change of the registered carrier in respect of the vehicle; or

(ii) if the vehicle is registered with another registration authority – register the vehicle; or

(iii) authorise the vehicle to be used on a road in the State (or Territory).

(2) The suspension of the registration of a vehicle does not alter the expiry date of the registration.

31 Exceptions

(1) Despite clause 28(1) and 30(1) the Authority may on an application made under this clause-

(a) register a change of carrier; or

(b) register the vehicle; or

(c) authorise the vehicle to be used on a road in the State (or Territory),

as the case may be, if the Authority is satisfied that a person other than its registered carrier would suffer a substantial and unjust disadvantage if it did not do so.

(2) If the Authority refuses an application made under subclause (1) it must inform the applicant of the right of appeal under clause 40(2).

Division 6 - Restriction of registration

32 Application of Division

This Division applies if after considering representations made under clause 39(1) the Authority decides to restrict the registration of a vehicle instead of suspending it.

33 Restriction of registration

A restriction under this Division may relate to all or any of the following-

(a) the maximum mass the vehicle may carry;

(b) the type of cargo the vehicle may carry;

(c) the type of vehicle the vehicle may be used in combination with;

(d) the type of journey the vehicle may undertake;
(e) the routes the vehicle may use;
(f) the days when the vehicle may be used
(g) the times when the vehicle may be used.

34 Effect of restriction of registration

(1) During a period of restriction of the registration of a vehicle under this Division or any corresponding legislation the Authority must not-
   (a) if the vehicle is registered with the Authority - register a change of the registered carrier in respect of the vehicle; or
   (b) if the vehicle is registered with another registration authority – register the vehicle; or
   (c) authorise the vehicle to be used on a road in the State (or Territory) otherwise than in accordance with the restriction.

(2) Despite subclause (1) the Authority may on an application made under this subclause-
   (a) register a change of carrier; or
   (b) register the vehicle; or
   (c) authorise the vehicle to be used on a road in the State (or Territory) otherwise than in accordance with the restriction,
   (d) as the case may be, if the Authority is satisfied that a person other than its registered carrier would suffer a substantial and unjust disadvantage if it did not do so.

(3) If the Authority refuses an application made under subclause (2) it must inform the applicant of the right of appeal under clause 40(3).

35 Offences of failing to comply with restriction

(1) This carrier in respect of a vehicle which has had its registration restricted under this Division or any corresponding legislation must not use or permit the vehicle to be used otherwise than in compliance with any restriction so imposed.

Penalty: Fine not exceeding $10,000

(2) The Clerk of the court by which a person is convicted or found guilty of an offence referred to in subclause (1) must give the Authority notice of the offence.

(3) The notice must include-
   (a) the name and address of the person who was convicted or found guilty of the offence;
   (b) details of the conduct that constituted the offence;
   (c) details of the vehicle involved in the offence sufficient to enable the registration authority to identify it and its registered carrier;
   (d) details relevant to the offence including-
Appendix 8

(i) the date of the offence;
(ii) the locality and (if known) the time of the offence;
(iii) the manner in which the offence was detected;
(iv) the name of any driver of the vehicle at the time of the offence; and
(v) the identity of the police officer or authorised officer who detected the offence.

(4) The Clerk of a court that upholds an appeal against a conviction for an offence referred to in subclause (1) must give the Authority notice of the appeal.

(5) The notice must include-
   (a) the name and address of the person who brought the appeal; and
   (b) details of the conviction appealed against.

36 **Offence in respect of vehicle with restricted registration registered elsewhere**

(1) This clause applies if a notice given to the Authority in accordance with clause 35(2) shows that a vehicle registered by another registration authority has been involved in an offence referred to in clause 35(1).

(2) If this clause applies the Authority must give that other registration authority a copy of the notice and also a copy of any notice subsequently given to the Authority under clause 31(4) in respect of that offence.

37 **Disregard of restriction by registered vehicle**

(1) If the Authority is notified by-
   (a) the Clerk of a court; or
   (b) another registration authority acting in accordance with corresponding legislation,
   (c) that a vehicle registered by the Authority has been involved in an offence of a type referred to in clause 35(1) the Authority must serve on the registered carrier in respect of the vehicle a written notice suspending the registration of the vehicle for 3 months.

(2) When the registration of a vehicle is suspended under subclause (1) clauses 29(2), 30 and 31 apply.

**Division 7 - Representations and appeals**

38 **Representations to the Authority to have entry in Register deleted**

(1) A registered carrier in respect of a vehicle upon whom a Severe Risk Overloading Incident Notice has been served may, within 14 days of the service of the notice, make representations to the Authority to have the entry in the Register in respect of the incident deleted.
(2) The Authority must consider the representations and then serve written notice on the registered carrier stating whether or not it intends to delete the entry.

(3) The notice must-

(a) if the Authority decides not to delete the entry - advise the registered carrier of the right of appeal against the decision; or

(b) if the Authority decides to delete the entry - advise the registered carrier that the warning contained in the Severe Risk Overloading Incident Notice served in respect of the severe risk overloading incident is of no effect.

(4) The Authority must delete the entry in the Register if it is satisfied -

(a) that it was not possible during the period and in the circumstances that led up to the vehicle being severe risk overloaded for the registered carrier to exercise any control over the manner in which the vehicle was loaded; or

(b) that the entry is incorrect in respect of a substantive matter recorded in it.

39 Representations to the Authority to restrict instead of suspending registration

(1) A registered carrier in respect of a vehicle upon whom a Severe Risk Overloading Incident Notice has been served stating that the registration of the vehicle is liable to be suspended may, within 14 days of the service of the notice, make representations to the Authority to have the registration of the vehicle restricted instead of suspended.

(2) The Authority must consider the representations and then serve written notice on the registered carrier stating whether or not it intends to restrict the registration of the vehicle instead of suspending it.

(3) The notice must-

(a) if the Authority decides not to restrict the registration of the vehicle instead of suspending it - advise the registered carrier of the right of appeal against the decision; or

(b) if the Authority decides to restrict the registration of the vehicle – advise the registered carrier of the nature of the restriction, when it will start and when it will cease and the result of failing to comply with the restriction.

(4) The Authority may restrict the registration of the vehicle instead of suspending it if it is satisfied that having regard to all the circumstances it would cause disproportionately greater hardship to the carrier in respect of the vehicle if the registration of the vehicle were to be suspended in accordance with Division 5 than the suspension of the registration of a vehicle would in general cause to other carriers.

40 Appeals

(1) A registered carrier may, within 14 days of being informed by the Authority that it has considered representations made by the carrier that an entry should be deleted from the Register but has decided against doing so, appeal against that decision to the Magistrates’ Court (or other external appeal body).

(2) A person aggrieved by a refusal of the Authority to-
(a) register a change of carrier in respect of a vehicle; or
(b) register a vehicle; or
(c) authorise a vehicle to be used on a road in the State (or Territory),
as the case may be, on an application made under clause 31(1) may, within 14 days of
being informed by the Authority of that refusal, appeal against the refusal to the
Magistrates’ Court (or other external appeal body).

(3) A person aggrieved by a refusal of the Authority to-

(a) register a change of carrier in respect of a vehicle; or
(b) register a vehicle; or
(c) authorise a vehicle to be used on a road in the State (or Territory) otherwise
    than in accordance with a restriction,
as the case may be, on an application made under clause 34(2) may, within 14 days of
being informed by the Authority of that refusal, appeal against the refusal to the
Magistrates’ Court (or other external appeal body).

(4) An appeal under subclause (1), (2) or (3) is of no effect unless within 14 days of
making the appeal the person making it gives written notice of the appeal to the
Authority.

(5) On an appeal under subclause (1), (2) or (3) the court (or other external body) may-

(a) re-determine the matter; and
(b) hear any relevant evidence tendered by the appellant or the Authority; and
(c) without limiting its discretion, take into account anything that the Authority
    ought to have considered.

(6) A determination by the Magistrates’ Court (or other external body) on an appeal
under subclause (1), (2) or (3) is final and conclusive and must be given effect to by
the Authority.
REFERENCES


