NATIONAL ROAD TRANSPORT COMMISSION

ROAD TRANSPORT REFORM (COMPLIANCE AND ENFORCEMENT) BILL

REGULATORY IMPACT STATEMENT

Approved by the Australian Transport Council

3 November 2003

Prepared by

Jaguar Consulting Pty Ltd
For the National Road Transport Commission

National Road Transport Commission

Road Transport Reform (Compliance and Enforcement) Bill – Regulatory Impact Statement

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Objectives:	To assess the likely impacts of the model Road Transport Reform (Compliance and Enforcement) Bill.
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Key Milestones:	The model Road Transport Reform (Compliance and Enforcement) Bill has been developed as a result of an extensive regulatory development process undertaken by the National Road Transport Commission in consultation with road transport and enforcement agencies, the road transport industry and many others. In 1995, the Commission released a national *Compliance and Enforcement Proposal* that put forward an initial legislative policy in relation to enforcing national road transport laws. Since then, the Commission has refined and extended its compliance and enforcement policies through such work as the development of draft general compliance and enforcement provisions (1997), proposals on the penalty structure for gross (or 'severe risk') overloading, (1998), detailed legislative proposals in the Commission's *Compliance and Enforcement: Mass, Dimension and Load Restraint Policy* (2000) and legislative proposals in the *National Implementation Plan for the Management of Overloaded Trucks Carrying Containers* (Austroads, February 2002). The model Bill is subject to assessment in this Regulatory Impact Statement (RIS). The Bill and RIS were released on 6 June 2002 for public comment. Following public consultation, the Bill was revised

and re-circulated for a further round of consultation in March 2003. The Bill and RIS were then further revised for submission to the Australian Transport Council.

Abstract: This RIS examines the model Bill in context and assesses its key aspects. The conclusions are that the benefits are likely to outweigh the costs, and the Bill meets the stated objectives in a preferable manner to other feasible options.

Key words: compliance, evaluation, fines, heavy vehicle, heavy vehicle driver, impact study, gross overloading, law enforcement, loader, offence, operator, penalty, permit, police, policy, road safety, responsibility, traffic regulations, vehicle weighing, vehicle mass, vehicle loading, vehicle dimension, vehicle stability.

FOREWORD

This Regulatory Impact Statement (RIS) examines the impacts of a model national Bill that aims to provide nationally consistent, best practice, legislative tools for securing compliance with the standards and requirements applicable to heavy vehicles (vehicles over 4.5 tonnes).

The Bill has been shaped by extensive consultations on the development of the National Road Transport Commission's compliance and enforcement policies from as early as 1994 and, in particular, by the expertise and assistance of representatives from road transport and enforcement agencies, the road transport industry and others on the Commission's specialist advisory groups – the Legislative Advisory Panel, Compliance Reference Group and Transport Agencies Compliance Committee.

The Bill comprises general compliance and enforcement provisions, as well as a set of provisions with specific application to heavy vehicle mass, dimension and load restraint breaches. The provisions will extend to all aspects of heavy vehicle regulation, other than the laws relating to the road transport of dangerous goods and the *Australian Road Rules* (both of which are self-sufficient in respect of appropriate compliance and enforcement provisions).

The general provisions in the Bill deal with such matters as the appointment and authorisation of enforcement officers, mutual recognition of administrative decisions and court orders of other jurisdictions, the powers to support chain of responsibility investigations and prosecutions, corporate and vicarious liability, and new national administrative and court-based sanctions and penalties.

The provisions specific to mass, dimension and load restraint breaches give effect to the legislative proposals in the Commission's *Compliance and Enforcement: Mass, Dimension and Load Restraint Policy*, approved by Australian Transport Ministers in November 2000. The Bill also gives effect to supplementary legislative proposals for the mandatory provision of accurate container weight declarations, developed by the Commission on behalf of Austroads in Project 1.1 of the Third Heavy Vehicle Reform Package *(National Implementation Plan for the Management of Overloaded Trucks Carrying Containers*) and agreed to by Austroads Council members in February 2002.

The Bill is intended to be read in the light of the November 2000 Policy which specified that certain elements should be regarded as desirable, rather than essential, to nationally consistent outcomes. The main non-essential elements identified in the Policy were the proposals relating to absolute liability coupled with a 'reasonable steps' defence, formal warnings, minimum fines for second and subsequent offences, commercial benefits penalties, compensation orders, supervisory intervention orders and prohibition orders.

If approved by Australian Transport Ministers, the provisions of the model Bill will be incorporated, with any necessary adaptations, within the regulatory frameworks of each State and Territory. The legislative provisions will be supported by the administrative and enforcement guidelines that are being developed through Austroads.

The conclusions of the RIS are that:

- the relatively small increase in enforcement costs expected to flow from implementation of the proposed scheme is most likely to be outweighed by the benefits of improved compliance; and

- the proposed Bill meets the stated objectives in a manner which is preferable to any feasible alternative.

The Commission is greatly indebted to New South Wales Parliamentary Counsel – especially Dennis Murphy QC - for undertaking the significant and complex drafting exercise of the model Bill on behalf of all of the States, Territories and the Commonwealth, within a lengthy national legislative development and consultative process.

The Commission is also very grateful to the many individuals and organisations who have been closely involved in the development of the Bill, and in particular, to the following:

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Tony Wilson
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SUMMARY

This Regulatory Impact Statement (RIS) discusses the expected impacts of the proposed model Road Transport Reform (Compliance and Enforcement) Bill. The Bill will apply to the operation of all heavy vehicles (over 4.5 tonnes) across Australia and will provide for the adoption, in all jurisdictions, of a nationally consistent, model set of provisions in relation to enforcement powers, sanctions options and liability and evidentiary provisions. It will also set out a range of specific provisions and establish offences in relation to mass and dimension limits and load restraint.

The Bill constitutes one element of a broader reorientation of regulatory responses to road transport breaches which will increasingly target compliance rather than simple enforcement issues, and will adopt broad-ranging and pro-active strategies to enhance compliance and ensure the accountability of all parties who exercise control over compliance-related activities. A recent National Road Transport Commission (NRTC) publication notes:

"The NRTC is developing compliance policies that will involve a suite of complementary strategies, including:

- conventional (sanctions-based) compliance strategies that enable accountability of all relevant parties;
- incentives-based compliance strategies, including the use of performance-based standards and codes of practice;
- privileges based strategies;
- education, training and communications based strategies;
- consistent and well-targeted enforcement practices;
- monitoring the effectiveness of compliance/enforcement outcomes; and
- ongoing research to identify new challenges and solutions[1]."

As well as having been developed within this broader policy framework, the current Bill is itself the product of an extensive regulatory development process, conducted under the auspices of the NRTC. The regulatory development process has incorporated substantial opportunities for industry and public consultation, commencing with the publication by the NRTC of the Compliance and Enforcement Proposal in June 1995[2].

The Bill has two distinct elements. First, it constitutes a general framework for compliance and enforcement activities in all areas of heavy vehicle regulation – other than for the road transport of dangerous goods and the Australian Road Rules[3], providing stronger enforcement powers, a range of innovative sanctions and penalties and clear evidentiary provisions. Second, it contains specific offence provisions in relation to mass, dimension and load restraint issues. The equivalent provisions in relation to other heavy vehicles issues (speeding, vehicle standards and driving hours) will continue to be found in other, existing legislation for the time being. However, in time, these other specific offence provisions will also be brought within the ambit of this model legislation, which will then constitute an integrated legislative structure with regard to heavy vehicles.

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[1] See McIntyre, K. *National Compliance Approaches.* Published in *Smart Compliance for the New Millennium,* NRTC, Melbourne, 2000, p41.

[2] National Road Transport Commission (1995). *National Road Transport Law: Compliance and Enforcement Proposal.*

[3] These regulations already contain comprehensive compliance and enforcement provisions.

This RIS, as required under the Council of Australian Governments' RIS requirements[4], includes a range of material sufficient to establish the need for and objective of the proposal and to demonstrate that the proposed Bill constitutes the best possible means of achieving that objective, from the perspective of society as a whole. It does this by analysing the expected benefits and costs of the proposed legislation and identifying and analysing the expected benefits and costs of all feasible alternative means of achieving the identified objective.

The Bill and the draft RIS were released by the NRTC for a two month period of public consultation from early June 2002 and a revised Bill was provided to key stakeholders for a further two month consultation period from early March 2003. In response to the comments received during this round of public consultation some limited further changes have been made to both the Bill and the RIS. However, the general conclusions of this final RIS are fully consistent with those of the draft RIS.

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[4] *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting bodies.* Council of Australian Governments, November 1997.

CONTENTS

1. INTRODUCTION

The current proposal forms a significant part of the larger project of establishing nationally consistent road transport laws, which has been proceeding since the establishment of the National Road Transport Commission (NRTC) in 1991. The general compliance and enforcement provisions that form the bulk of the Bill will provide the basis for the effective and consistent implementation of the national road transport laws as they evolve. They are based on "best practices" in existing State and Territory law and are also designed to enable innovative approaches to compliance to be implemented. The Bill also contains specific enforceable requirements for heavy vehicle mass, dimensions and load restraint, as well as and compliance and enforcement provisions that are specific to these areas.

2. NATURE AND EXTENT OF THE PROBLEM

Nationally consistent road transport laws are being developed in order to improve the safety and efficiency of the road transport sector and improve outcomes for road infrastructure and the environment. By creating consistency in legislative requirements it will enhance awareness and understanding of the laws. The removal of inconsistent requirements between jurisdictions will also ease compliance burdens on those operating in more than one State or Territory.

The practical implementation of nationally consistent legislation requires that compliance and enforcement arrangements also be made consistent. Moreover, the development of national road transport law seeks not only to achieve national consistency, but also to adopt substantive reforms such that best practice legislation is achieved.

The identified problems with existing compliance and enforcement arrangements are therefore twofold. Firstly, the States and Territories vary quite widely in terms of some aspects of their existing compliance and enforcement provisions. Secondly, there are important substantive problems with the existing provisions, which require major reform if legislative best practice is to be achieved.

The main substantive problems which the current proposal seeks to address are as follows:

Inadequate enforcement powers. Comparison of existing powers in the road transport law with other areas such as occupational health and safety and environmental laws indicates that the road laws contain substantially fewer enforcement powers. Particular areas in which powers are considered inadequate include powers to enter, inspect and search; powers to require information (including both basic name and address and the production of documents, records and devices); powers to stop, direct and move vehicles and powers to require parties to provide reasonable assistance.

Inadequate range of sanctions. The range of currently available sanctions is relatively narrow and is insufficient to enable an appropriate matching of infringements and sanctions across the range. A particular issue in this respect is that there is a widespread lack of proportionality between the seriousness of offences (in terms of the risks to the public presented, or the damage done to the road infrastructure) and the penalties able to be levied.

Inadequate responsibility. Existing laws focus in most cases on the driver and the transport operator. This constitutes a too narrow focus, given that a number of other players may bear significant responsibilities in relation to the commission of an offence.

Evidentiary and related problems. Difficulties involved in establishing evidentiary requirements impede the effective prosecution of offences in many cases, while there are also difficulties in terms of the specification of adequate defences in certain cases.

As a result of the combination of the above problems, many offences are not successfully prosecuted while, among those that are, penalties levied are often inadequate to provide appropriate punishment and sufficient disincentives to the behaviour in question. The

proposed Bill therefore seeks to remedy these major elements of the problem identified with the existing laws.

3. BACKGROUND – GENERAL RATIONALE FOR THE BILL

The following sets out the broader context surrounding the Bill, expanding on the need for the changes contained in the Bill in terms of the context in which the heavy vehicles industry operates. It considers this context in both static and dynamic terms.

3.1 Public acceptance of heavy vehicle traffic levels

Widespread public acceptance of the role and operation of the road freight industry is an essential objective of policy in this area. The general public must share the road system with heavy vehicles. The level of road freight activity has increased substantially in recent years and is predicted to see substantial further increases in the years to come. The need for heavy vehicles and other road users to co-exist harmoniously will become more acute as the road system becomes more congested over time.

A fundamental pre-requisite for public acceptance of the role and operations of the road freight industry is the appropriate regulation of that industry, in such a manner that high levels of safety and general good practice are achieved. An appropriate strategy to ensure high levels of compliance with the regulatory structure and to provide sound enforcement and deterrence practices where there is non-compliance is necessary to achieve these outcomes.

3.2 Unreasonable pressures on parties in the industry

The road transport industry is highly competitive and is characterised by low barriers to entry. There are many small operators and low profit rates are commonly found. In addition, there are substantial asymmetries between the demand and supply sides of the industry in many areas, with large numbers of relatively small suppliers of transport services often facing large demanders with substantial market power.

The combination of these factors with a stringent regulatory regime places considerable pressures on many parties within the industry. Effective and consistent enforcement is a pre-requisite if these pressures are not to lead to reduced levels of compliance and a consequent undermining of the regulatory objectives in relation to the safety of road users (including industry members) and the protection of roads and other assets from undue degradation. Effective enforcement must hold all responsible parties to account and must ensure that the range and extent of sanctions applied are proportionate to the offences involved and the incentives to commit offences. Thus, a central reason for the current Bill is to address identified shortcomings in this area.

3.3 Equity within the industry

Within the above context of the substantial competitive pressures operating within the industry, maintaining equity between industry players must be an important consideration with regard to compliance and enforcement. Inadequate or uneven enforcement of regulatory requirements can create a situation in which compliant companies and individuals suffer competitively in comparison with those who habitually flout the regulations. In addition to posing an equity problem, such problems create economic

distortions by reducing the efficiency of competition. That is, if more efficient operators are unable to compete due to unfair competition from those who do not comply with regulatory standards, the efficiency of the industry as a whole will suffer.

3.4 Road safety aspects

The mass, dimension and load restraint related elements of this Bill, in particular, are crucially related to road safety concerns. While the road safety performance of the heavy vehicle industry has improved substantially in recent years, in line with road safety performance generally, there remains scope for significant further gains. Moreover, the achievement of high levels of road safety performance is essential to the achievement and maintenance of public acceptance of the industry and its operations, as discussed above. The more general compliance and enforcement requirements of the Bill are also considered to be important contributors to improved road safety outcomes.

3.5 Infrastructure issues

Improved compliance is also needed to safeguard the substantial infrastructure investment made by the community in roads, bridges and other related assets. Most obviously, the risks of infrastructure collapse (eg, of bridge structures) due to gross overloading or non-compliance with dimension limits must be minimised. More generally, however, there is a need to avoid excessive road wear costs due to minor and moderate overloading, particularly as these costs are not recovered from those who are responsible for them. While, in the longer term, a reformed pricing structure may be a major element in addressing these issues, achieving a robust compliance and enforcement regime provides a sound basis for achieving improvements in this area.

3.6 Optimal standards

Achieving improved compliance can also be expected to contribute to the development of optimal regulatory standards over time by increasing confidence that the standards set will not be exceeded substantially. Where there are concerns regarding substantial overloading, the need to avoid catastrophic failures (eg, bridge collapses) and infrastructure damage will tend to have an effect in setting regulated standards at relatively conservative levels. Thus, a longer term benefit of an improved compliance and enforcement regime may be to allow greater flexibility in setting regulatory standards, with a view to more closely approaching an “optimum” standards structure.

4. OBJECTIVES OF THE PROPOSED BILL

A copy of the proposed Bill is attached to this RIS as Appendix A.

The proposed Bill contains five general objects. These are:

- to improve road transport safety;
- to minimise adverse impacts of road transport on roads, bridges and road infrastructure;
- to minimise adverse impacts of road transport on the environment;
- to minimise adverse impacts of road transport on the community; and
- to promote effective and efficient observance of requirements of road transport law.

These general objects are supplemented by a range of particular objects. These are:

- to provide a system that encourages effective and efficient compliance with requirements of road transport law;
- to provide a system that promotes improved outcomes for road safety, the environment, road infrastructure, traffic management and competitive equity through improved compliance with and accountability for requirements of road transport law;
- to provide an effective, efficient and equitable scheme for the enforcement of requirements of road transport law;
- to recognise a chain of responsibility of parties who have a role in the transport of goods or passengers by road and to make the parties accountable for their acts and omissions; and
- to confer powers to promote safety in the use of vehicles in road transport.

5. SUMMARY OF THE PROPOSED LEGISLATION

The following provides a general overview of the major provisions of the Bill.

5.1 Part 1: Preliminary

The preliminary part of the Bill is largely taken up with the specification of a wide range of definitions. Division 2 contains a range of definitions, including definitions in relation to goods, transport documentation, packaging and loads, as well as a range of persons with special duties who are, in essence, the different players in the heavy vehicles sector, such as drivers, vehicle operators, consignors and loaders.

5.2 Part 2: Enforcement officers

This part provides for the exercise of some or all of the powers contained in the Bill by both authorised officers, appointed pursuant to the Bill by a road transport Authority, and police officers. It also creates broad delegation powers in respect of the powers of the Authority and the Commissioner of Police under the Bill.

There are requirements that authorised officers must carry identification cards and produce them on request, either immediately, or, if it is not practicable to comply with the request immediately, as soon as practicable afterwards.

5.3 Part 3: General enforcement powers

This part specifies the general powers of authorised officers and police officers under the Bill. In broad terms, these include:

- the power to stop a vehicle in order to exercise other powers under the Bill;
- the power to direct that a vehicle be moved, in cases where it is causing obstruction or danger;
- the power to move unattended vehicles where they pose a danger or obstruction or to monitor compliance with the legislation;
- the power to enter and inspect vehicles and premises for the purpose of monitoring compliance;
- limited powers of entry, inspection and search, covering vehicles and premises, where an offence is suspected on reasonable grounds;
- the power to direct that documents, records or devices be produced, and that names and addresses be supplied and driver's licences be produced;
- the power to seize evidence and issue an embargo notice; and
- the power to direct responsible persons to provide reasonable assistance to an authorised officer or a police officer.

Offences are created in relation to obstructing, hindering or impersonating an authorised officer, including the making of false or misleading statements.

5.4 Part 4: Special provisions – mass, dimension and load restraint requirements

This part of the Bill contains specific provisions in relation to loads. The following are the major issues covered in this part:

- **Categorisation of breaches**. A three part classification of breaches is established, with breaches being defined according to the degree of risk involved. The three categories are termed minor risk, substantial risk and severe risk breaches. Thresholds are established for each category of risk With regard to mass and dimension breaches, the thresholds provided are specified in terms of a combination of absolute values and percentage values. With regard to load restraint, the thresholds are specified in terms of other, more subjective criteria – whether the load has shifted (or is likely to shift), whether there is a danger to the public and whether there is a danger of road damage.

- **Enforcement powers**. Specific enforcement powers available in respect of each category of offence (ie, minor risk, substantial risk and severe risk offences) are set out. The powers become stronger in proportion to escalating risk, and empower an enforcement officer to prevent a vehicle being moved until a breach is rectified and to direct that a vehicle be moved where there is a risk to public safety, the environment, road infrastructure or public amenity. There is also provision for guidelines to take into account risks to public safety, the environment, road infrastructure and public amenity, the nature of the goods comprising the load, the nature of the proposed route and the direction of travel preferred by the driver.

- **Liability.** Consignors of goods, loaders, operators and drivers are all guilty of an absolute liability offence where a breach of a mass, dimension or load restraint requirement occurs, but each of these groups has available to it a "reasonable steps" defence; however, the defence in its application to operators and drivers is limited to minor risk mass, dimension and load restraint breaches. This means that it is a defence if the person did not know and could not reasonably be expected to know of the breach and the person had taken all reasonable steps to prevent the breach occurring, unless there were no steps the person could reasonably be expected to have taken. Consignees of goods may also be liable for mass, dimension and load restraint breaches if they intentionally, recklessly or negligently induce or reward the commission of such breaches.

- **Sanctions.** Division 6 provides guidance and direction to the courts in determining the appropriate level of sanctions in connection with load offences.

- **Transport documentation.** Offences of providing false or misleading transport documentation are created.

- **Container weight declarations.** Also included are requirements for the provision of accurate container weight declarations and the liability of the various parties in respect of these declarations. A right to recover losses resulting from understated container weight declarations or the failure to provide container weight declarations is also created.

5.5 Part 5: General administrative sanctions

This part provides a range of administrative sanctions, that is, those that are able to be imposed by authorised officers or police. Part 6 of the Bill deals with court-based sanctions. Three administrative sanctions are provided, as follows:

- **Improvement notices**. An improvement notice can be issued where an authorised officer believes a road law is being contravened or is likely to be contravened. The notice requires the contravention to be remedied within a given period of time. Failure to comply with the improvement notice constitutes an offence.

- **Formal warnings**. A formal warning is provided as an alternative sanction to taking proceedings against a person for a contravention of a law in circumstances in which the person had taken all reasonable steps to prevent the contravention and was unaware of it and where the nature of the contravention is such that it makes a formal warning an appropriate response. Thus, this sanction cannot be used in relation to substantial risk or severe risk contraventions, as defined in the Bill. A formal warning may be withdrawn within 21 days and proceedings instituted in its stead. Again, there is no specific penalty associated with the issue of a formal warning.

- **Infringement notices.** Issue of an infringement notice requires the recipient to pay a set monetary penalty which, if paid, will expiate the offence and prevent any conviction being recorded in respect of it. That is, it is an "on the spot fine". An infringement notice would ordinarily not be used in cases of severe risk breaches, as defined in the Bill, although some jurisdictions may choose to apply infringement notices even to severe risk breaches.

5.6 Part 6: General court-based sanctions

Part 6 establishes six different types of sanction able to be applied by the courts. These are penalties within a fixed range, set out in Schedules 1 and 2 to the Bill; fines, commercial benefits penalties, compensation orders, licensing and registration sanctions, supervisory intervention orders and prohibition orders.

- **Fixed range penalties.** Schedules 1 and 2 set out a range of indicative financial penalties for specific offences, with Schedule 1 relating to the general offences in Part 3 and Parts 5–9 of the Bill and Schedule 2 relating to mass, dimension and load restraint offences in Part 4. The penalties generally include both maxima and minima, although minimum penalties only become relevant for second or subsequent convictions. .

- **Commercial benefits penalty.** A court may impose a penalty based on its estimate of the benefit that would have been derived from the commission of the offence. This penalty may be applied in addition to, or instead of, other penalties able to be imposed and may range up to a maximum of 3 times the expected benefit from commission of the offence.

- **Compensation orders.** The court may order that an offender pay a road authority an amount of compensation in respect of damage that occurred, or is likely to occur, to a

road infrastructure in consequence of the offence. Such a penalty may, again, be imposed in addition to or instead of other penalties. The court is given wide discretion in calculating the compensation payable.

- **Licensing and registration sanctions.** A court may cancel, modify or suspend the driver licence of an offender and disqualify the person from holding a licence for a period specified by the court. The court may also cancel or suspend the offender's heavy vehicle's registration, and may disqualify that person or an associate of the person from registering the vehicle for the period specified by the court. Again, these sanctions may be applied as well as or instead of other sanctions. These sanctions apply to all offences except load offences that are not classified as "severe".

- **Supervisory intervention orders.** The courts may make various orders in respect of "systematic or persistent" offenders, requiring that they accept supervision by an auditor, appointing or removing certain staff from particular positions, implementing training and supervision as required, installing monitoring, compliance management or operational equipment, implementing practices, systems or procedures, reporting to the road authority or court and conducting certain operations subject to the direction of the road authority.

- **Prohibition orders.** Also for "systematic or persistent" offenders the courts may order they be prohibited from having a particular role or responsibilities associated with vehicles or combinations or their operation other than driving or registering a vehicle.

5.7 Part 7: General compensation orders

This part enables a court to impose a compensation order on a person who is found guilty of a road law offence. The order is to be made in favour of a road authority in respect of damage to road infrastructure incurred as a consequence of the offence.

5.8 Part 8: General liability and evidentiary provisions

General provisions are set out in terms of determining liability for road laws offences, as well as specifying a range of evidentiary matters. Key elements are as follows:

Liability

Several of the liability provisions are concerned with the liability of different types of offender – for example directors and senior managers in respect of offences by corporations – and provisions in relation to proceedings against multiple offenders are included.

Other classes of offence specifically identified are "aiding and abetting", "causing or permitting" and "coercing, inducing or offering an incentive". The provisions also include a specific exclusion of double jeopardy for the same offence.

Special defences available to some groups are identified. The special defences include a defence for an operator where the vehicle is used by someone who is not legally

authorised to use the vehicle and where an operator's employee is acting outside the course of their employment, and a defence for a driver charged with an offence relating to the condition of either a vehicle or its equipment that has been maintained by another.

General evidentiary provisions

The Bill sets out what must be established in order for evidence of an offence to have been regarded as provided. The matters covered are as follows:

- **Vicarious admissions.** The matters that must be established in order for a corporation to be found to be guilty of an offence are detailed.
- **Averments.** Various statements by the person bringing the proceedings are to be taken as proof of certain specified matters, in the absence of evidence to the contrary.
- **Certificates of evidence.** Certificates obtained from an authority, setting out certain facts contained in its records, will be taken as proof of those facts in any proceedings, in the absence of evidence to the contrary.

5.9 Part 9: Miscellaneous

The last part of the Bill deals with a range of miscellaneous issues, including:

- a general indemnity from civil liability for authorised officers and persons authorised by authorised officers and police officers;
- mutual recognition of prescribed court orders and administrative actions of other jurisdictions;
- the ability to issue guidelines for industry codes of practice and to register codes that comply with the guidelines;
- anti-victimisation provisions (in respect of the reporting of breaches);
- confidentiality duties of those engaged in administering the Bill;
- offences of providing false or misleading statements or documents;
- provision for the making of regulations for a system of review of decisions of authorities; and
- a regulation-making head of power.

6. IDENTIFICATION AND ANALYSIS OF EXPECTED BENEFITS OF THE BILL

The primary benefits expected to derive from the adoption of the Bill, as indicated in the above statement of objectives, are those of increased road safety. These benefits can be measured in terms of reduced deaths and injuries due to road crashes, as well as reduced unrecovered road wear and property damage. A second, extremely important benefit will be increases in economic efficiency due to reductions in excessive road damage.

The Bill will achieve these benefits by ensuring more effective and efficient enforcement of road transport law. This is expected to generate higher compliance rates over time by increasing the disincentives for non-compliance. That is, by imposing duties on all relevant parties, increasing the likelihood of successful detection and prosecution of non-compliance and ensuring that adequate penalties are levied, it can be expected that the level of compliance will rise over time.

Three additional benefits should be noted. The first is that the proposed sanctions and penalties arrangements will better "internalise" the costs of non-compliance. That is, it will be possible to recover more of the costs to road authorities and society of non-compliance through the sanctions regime than is currently the case. Reducing these externalities will have the effect of reducing economic distortions that otherwise arise as a result of widespread non-compliance.

The second, and related, additional benefit is removing the unfair competitive advantages that may be enjoyed by those who engage in systematic non-compliance, vis-à-vis their more law abiding competitors, by ensuring that the commercial benefits of non-compliance are captured through the sanctions system.

The third additional benefit is that of increased accountability for breaches of the road law, which will be achieved by ensuring that a wider range of responsible parties is able to be prosecuted successfully in relation to breaches.

In relation to the provisions dealing with specific load offences, the adoption of a more appropriate penalty structure is also expected to contribute to improved compliance by providing greater disincentives toward non-compliance and a better matching of penalties with specific types of offence.

The changes to be implemented through the Bill that will contribute to these outcomes can be grouped into five types, as follows:

- powers of enforcement officers;
- chain of responsibility offences;
- liability and defences;
- risk-based determination of offence categories; and
- sanctions and penalties.

Each of these elements of the Bill is expected to contribute to the achievement of the benefits identified above, while there are also substantial inter-dependencies between these five elements in terms of the achievement of the overall outcomes sought. Each

element is discussed in turn in the following sections in order to clarify its expected contribution to the achievement of the benefits. The discussion is conducted in largely qualitative terms, given the indirect and mutually reinforcing nature of the expected impacts on road safety and road wear and the consequent degree of uncertainty as to the precise extent of the impacts involved. However, it is supplemented in the following section by the presentation of indicative quantitative data, which suggests in broad terms the likely magnitudes of these effects.

6.1 Powers of enforcement officers

The powers of enforcement officers currently vary substantially between jurisdictions. However, in general these powers are substantially less extensive than those available in respect of the enforcement of comparable areas of law such as occupational health and safety legislation and environmental legislation. Road authorities are of the view that inadequate powers in some cases compromise the ability of authorised officers to take immediate steps to address risks to public safety, as well as their ability to obtain necessary evidence on which to base successful prosecutions.

The enforcement powers contained in the Bill are of two broad types, reflecting these two different enforcement requirements. These are powers to stop and move vehicles and general investigative powers.

Powers to stop and move vehicles

The power to stop vehicles is provided "for the purpose of the exercise of other powers under the road laws"). In effect, this power allows a vehicle to be stopped where there is a suspected breach to check on compliance or to verify whether there is, in fact, a breach of the road laws. The power is therefore fundamental to monitor compliance, to ensure timely enforcement and also to ensure a suspected danger to the public to be ended immediately.

An important supplementary power is the power to move a vehicle where it is believed to pose a danger to the public in its current location. The power to move a vehicle extends also to the power to move unattended vehicles where they pose a public danger or where it is necessary in order to monitor compliance with the road laws.

These powers are essential to timely enforcement of the road laws and contribute directly to minimising the danger to the public where there is a breach by allowing immediate action to be taken to remedy that breach. While existing legislation generally includes powers to stop vehicles, the addition of the complementary power to move vehicles, whether attended or not, will ensure that the power to stop vehicles is not frustrated.

Thus, the proposed legislation in this regard is an important extension to the powers available in much existing legislation. It should be noted that the general power to move vehicles is supplemented by specific powers relating to breaches of load requirements. These powers, to direct that a vehicle be moved or not be moved, vary in their extent according to whether the breach of the load requirements is a minor, substantial, or severe risk breach. Thus, the extent of these powers has been carefully calibrated to be proportionate to the seriousness of the risks to which they are required to respond.

More generally, the purposes for which vehicles can be moved, as well as the extent to which they can be moved are clearly circumscribed by the Bill. Thus, the extent of these powers is the minimum necessary to ensure the specific object of allowing an authorised officer to act to remove a risk to public safety or to verify compliance with a road law.

General enforcement powers

The general enforcement powers are:

- entry, inspection and search of vehicles and premises, to monitor compliance or in the case of a suspected offence;
- direction to produce documents, records and devices, to state name and address and to produce drivers' licences;
- direction to identify parties;
- direction to provide reasonable assistance;
- application for a warrant; and
- search and seizure.

These powers are considered to be proportionate, given the important risks to public safety that can arise as a result of breaches of the road laws. The powers are equivalent to those provided under comparable legislation, such as that governing occupational health and safety.

It should be noted that the powers provided include powers to enter business premises of "responsible persons" during business hours and without either the consent of the occupier or a warrant. Under the Bill, the officers may not exercise the powers to enter premises without warrant or consent if the premises are either unattended or predominantly residential.

Where the purpose of entry is to investigate an offence suspected on reasonable grounds, the powers extend to searching for and seizing any evidence of an offence under the road laws.

Where the purpose is to simply monitor compliance, officers may inspect at the premises and vehicle, or any documents or things required to be kept by the person under the road laws. It may be argued that such a power of entry is unusual in the absence of a suspicion that an offence has been committed. However, the power is regarded as equivalent to those provided under other legislation governing similarly substantial risks to health and safety. For example, most occupational health and safety legislation provides similar powers of entry to workplaces to inspectors. The Victorian legislation allows inspectors to *"for the purpose of the execution of this Act or the regulations…enter inspect and examine…any workplace…"*.[5] Moreover, the power to inspect for the purpose of monitoring compliance is strictly limited to only those documents or things that are required to be kept under the road laws.

[5] *Occupational Health and Safety Act 1985. s39(1).* (Victoria).

By contrast, failure to provide adequate powers of entry and search would substantially compromise the ability to obtain evidence of breaches of the road laws, particularly in chain of responsibility investigations, and to monitor compliance. These difficulties would be compounded in inter-jurisdictional chain of responsibility investigations and proceedings, and compliance monitoring in respect of interstate parties. Thus, it is considered that these powers are both necessary and proportionate.

6.2 Chain of responsibility

Section 4, above, notes that existing legislation focuses almost exclusively on drivers and, to a lesser extent, vehicle owners, as being responsible for any breaches of the road law. This is considered an inadequate approach to enforcement as it fails to recognise that other parties often bear substantial responsibility for breaches. The proposed Bill would deal specifically with the duties of consignors, packers, loaders, vehicle operators and receivers as well as drivers. In addition, directors and senior managers of corporations involved in the use and operation of heavy vehicles will also be subject to liability for breaches of the road law.

This change will have benefits in two main areas:

- fairness will be improved, since prosecutions will be better able to target those chiefly responsible for breaches of the road laws; and
- effectiveness will be enhanced, since prosecution of all responsible parties, leading to the application of appropriate sanctions, can be expected to better deter law-breaking behaviour.

It can be expected that improved fairness will also have an indirect impact in improving compliance, since it will tend to lead to greater acceptance of the law and, hence, a higher level of "voluntary compliance".

While it is theoretically clear that the application of sanctions to responsible parties that have previously escaped prosecution will improve compliance, the extent of the expected improvement is necessarily difficult to calculate. One indicator of the possible size of the effect is given by considering differences between existing legislation and the differences between compliance rates across jurisdictions.

For example, Victoria has implemented certain enforcement procedures that are aimed at investigating heavy vehicle owners and operators, rather than drivers. When a breach is detected, a series of questions is asked of drivers to determine whether the owner or operator is more likely to be liable than the driver (a chain of responsibility checklist). If officers form the view this is the case, the owner or operator will be prosecuted. The statistics on overloading show that Victoria's incidence of overloading is 9.6%, compared with a national average of 13.8%[6].

A number of factors may affect the incidence of overloading. However, it is likely that the widespread use of enforcement action against owners and operators, who are likely to

[6] Koniditsiotis (1998).

be in a position of primary responsibility with respect to this offence, would be a significant contributor to such differences. Thus, it is likely that the adoption of the chain of responsibility will have an important impact in improving compliance, though the precise extent of this benefit cannot be calculated. As an indicator of the broad magnitude of the possible benefits, however, it can be noted that a fall in the Australia-wide level of non-compliance to Victorian levels would yield annual reductions in road wear costs of approximately $30 million (see Appendix).

6.3 Liability and defences

Once those who are to be included in the chain of responsibility have been identified, it is necessary to determine what form of liability should attach to each party and what defences will be made available to them.

The standard of liability adopted in the general criminal law requires that it be proven that the person who committed the offence did so either intentionally or recklessly. Thus, the "state of mind" of an offender must be established when prosecuting under this standard of liability. By contrast, in many regulatory areas an "absolute liability" standard is applied. This means that it is sufficient to prove that the offence has been committed for a conviction to be made. The effect of this is to remove the possibility of reliance on a defence based on a lack of intention or fault. That is, an absolute liability standard means that there is no need to prove that the breach of the law was committed intentionally.

The general approach adopted in the Bill is to apply absolute liability for offences committed. However, where a jurisdiction is unable to implement absolute liability due to its broader criminal justice policy considerations, strict liability is proposed as an alternative standard of liability.

Absolute liability is proposed for certain offences (the main ones being the mass, dimension and load restraint offences in Part 4 of the Bill), tempered by a special statutory reasonable steps defence. Absolute liability with the accompanying special reasonable steps defence is preferred to the alternative of strict liability with an accompanying honest and reasonable mistake of fact defence (the applicable defence whenever strict liability is the specified standard of liability). This is because under the absolute liability/reasonable steps defence approach, the defendant must actively consider what the appropriate steps to prevent an on-road breach from occurring – an honest and reasonable mistake will not necessarily suffice where reasonable steps to prevent the breach have not been taken.

It is considered appropriate to adopt absolute liability (or strict liability as the case may be) for road law offences, rather than requiring proof of fault or intent, for a number of reasons:

- the regulatory requirements to which the offences relate are directly related to assuring public safety;
- the requirements are regulatory in nature;
- prosecutions are numerous and need to be dealt with efficiently and at low cost in order to ensure feasible enforcement action;

- penalties for the offences are relatively low; and
- all States and Territories currently have some form of absolute liability provisions, hence, the Bill's proposals in this regard do not constitute a departure from current practice, in general terms.

However, the question of whether to apply a general criminal liability standard or an absolute liability standard is not a simple "either/or" proposition. In practice, once it is decided to move away from the general liability standard, the question is one of how far the absolute liability standard should apply. This means determining what special defences, if any, should be made available, and in what circumstances.

The approach to this question taken in relation to the current Bill has been to limit the extent of the absolute liability (or strict liability) provisions by including a number of different defences. This approach is intended to prevent possible injustice arising from the use of absolute liability and have been tailored to the situations of the different actors in the chain of responsibility. The sections below summarise the defences that will be available to the various groups.

- **'Reasonable Steps' defence for consigners, packers, loaders, operators and drivers.** With regard to mass, dimension and load restraint offences, consignors, loaders, packers, operators and drivers can all use the "reasonable steps" defence. This requires that the person did not know and could not reasonably have been expected to know of the breach of the law and that either they had taken all reasonable steps to prevent such a breach or there were no such reasonable steps that they could have taken. In the case of drivers and operators – the on-road parties with primary responsibility for such things as choosing the most appropriate vehicle for the task, knowledge of the vehicle's mass, dimension and load restraint entitlements, and taking the vehicle on to the road network – the defence is limited to minor risk breaches, other than where there has been reliance on an inaccurate container weight declarations, in which case, the defence is available irrespective of the severity of the breach.

- **Directors, partners, managers and employers.** With regard to the general liability provisions, it is a defence for directors, partners and managers of a corporation that the person was not in a position to influence the conduct of the person who actually committed the offence or that, being in such a position, they took all reasonable precautions and exercised due diligence to prevent the commission of the offence.

- **Special defence for drivers.** It is a defence for drivers, in relation to the general liability provisions, that they did not contribute to an offence caused by the non-compliant state of a vehicle, did not know of its non-compliant state and could not reasonably have known of, or ascertained, its non-compliant state.

- **Special defence for operators and owners.** It is a defence in relation to the general liability provisions for operators or owners that the vehicle only came to be in a non-compliant state after it left their control.

- **Defence for operators in respect of agents' actions.** It is a defence for operators to show that, where an offence was committed by their employees or agents, those employees or agents were acting outside the course of their employment.

- **General defences.** Of course, in addition to the above, all general defences (such as duress, lawful authority, mental incapacity, emergency, etc) that apply under the laws in operation in all of the jurisdictions will continue to be available.

It should be noted that all jurisdictions already apply absolute liability or strict liability in their existing legislation in relation to mass and loading offences, and indeed, in most of the other areas of road transport regulation. Moreover, in some circumstances there will be an increase in the defences available: in most jurisdictions there is no "reasonable steps" defence, for example. Where special defences do exist in jurisdictions' current legislation, the defences proposed in this Bill are generally consistent with, or broader in scope than, those existing defences.

The Bill will extend the application of these provisions in some respects, including applying them to others in the chain of responsibility. The main expected benefit deriving from the continued application of absolute liability or strict liability for offences under the proposed Bill is that legal proceedings against the responsible parties are more efficient and certain and hence the deterrence effects of the application of sanctions are increased. A secondary benefit is that any such positive impact on conviction rates will increase the ability of road authorities to obtain compensation for road damage caused.

As noted, the generally clear-cut nature of the offences in question suggests that the retention of an absolute liability or strict liability standard is appropriate, while the provision of several specific defences will further reduce the prospect of injustices arising from this step. Thus, the offsetting costs from absolute or strict liability are considered likely to be minimal.

6.4 Risk based determination of offence categories

Current legislation in general does not discriminate between different breaches of the road law on the basis of the level of risk involved to the public or to the road fabric. This is notable particularly in relation to the national regulations for vehicle loading, as breaches in this area occur on a continuum, at least where mass and dimension breaches are concerned.

It is appropriate that the road law should distinguish clearly between such offences on the basis of the level of risk involved, and that the enforcement powers and sanctions applied should reflect the seriousness of the offence in terms of public endangerment and costs due to damage to road infrastructure. This is consistent with the regulatory principle of proportionality (see below).

The proposed Bill would distinguish between three levels of breach, to be classified as "minor risk", "substantial risk" and "severe risk" breaches. The current Bill specifically identifies the "breakpoints" between these breach categories only in respect of mass, dimension and load restraint requirements. It is expected that a similar approach to defining breakpoints in other offence categories will be taken over time. However, the

enforcement powers and sanctions in the general parts of the Bill also refer to these breach categories. The purpose of these references is to clarify that certain sanctions options can be used only with respect to certain breach categories. For example, the option of issuing an infringement notice is not intended to be available in respect of a severe risk breach[7]. Similarly, the option of a formal warning is not available for either a substantial or a severe risk breach.

As noted above, the key benefit to be derived from the adoption of this risk-based categorisation, or stratification of offences, will be that of achieving proportionality with regard to sanctions. This, in turn, provides the opportunity to make more substantial roadside, administrative and court-based options and sanctions available in respect of major breaches and so should improve compliance over time by increasing the disincentives for non-compliant behaviour.

The table overleaf illustrates the comparison between the proposed indicative monetary penalty levels for mass and dimension offences in each category and those being applied under current legislation in a number of the states. It is apparent that the maximum penalty for severe risk breaches is in all cases substantially greater than that available under current legislation. In addition, the penalties for severe risk breaches have been made "open-ended", in that there is a direct relationship between the size of the penalty and the extent of the breach. For example, the proposed maximum penalty for an individual who has committed a severe risk overload is $10,000 plus $1,000 for every 1% overload above 120%.

[7] There will be scope for jurisdictions to apply infringement notices even in the case of severe risk breaches where local factors are deemed to render this appropriate. In general, however, this is not considered to be desirable, within the framework of the model national laws.

Table 1: Comparison of Penalties: mass and dimension breaches (applicable to individuals)

Proposed Legislation	New South Wales	Queensland	Victoria	Western Australia	South Australia
Minor risk mass overload[8] Max: $2,000 ($1,000for a 1st offence) Min: $300 (no minimum for a 1st offence) Infringement: $300	Max: $3,300 RA 108 Infringement: $206–$619	Max: $3,750 TO(RUM)A 14 Infringement: $225–$900	Max: $2,000 individual $10,000 corporation Infringement: $145–$385	Max: $500 RT(VS)R 105 & RT(VS)R 1401 Infringement: $50–$100	RTA s114(2) provides a general offence for failing to comply with mass and loading requirements. Penalties are as follows: Max $10/Min $1.75 for every 50kg of the first tonne of mass in excess of limit. Max $20/Min $10 for every 50kg of the excess mass after the first tonne. Infringement: <500kg $189 >500kg <1 tonne $242 >1 tonne <1.5 tonne $309 >1.5 tonne <2 tonne $325
Substantial risk overload Max: $4,000 ($2,000 for a 1st offence) Min: $600 Infringement: $600	Max: $3,300 RA 230 Infringement: $619–$830	Max: $3,750 TO(RUM)A 14 Infringement: $225–$1,350	Max: $2,000 individual $10,000 corporation Infringement: $505	Max: $1400 RT(VS)R 105 & RT(VS)R 1401 Infringement: $100–$300	As above for the penalties.

[8] Breakpoints vary between jurisdictions. Penalties shown correspond with the upper breakpoint on corresponding state legislation.

Table 1: Comparison of Penalties: mass and dimension breaches (applicable to individuals)					
Proposed Legislation	**New South Wales**	**Queensland**	**Victoria**	**Western Australia**	**South Australia**
Severe risk overload Max: $10,000 (plus $1,000 for every 1% over 120% overloading) Max: $5,000 for 1st offence. Min: $2,000 (plus $200 for every 1% over 120% overload.	Max: $3,300 RA 108 Infringement: N/A	Max: $6,000 TO(RUM)A 14 Infringement: $225–$1,350	Max: $2,000 individual $10,000 corporation Infringement: N/A	Max: $1,800–$3,500 (+ $400 per 3%) RT(VS)R 105 & RT(VS)R 1401 Infringement: $300–$400	As above for the penalties.
Use a vehicle exceeding dimension limits Minor risk Max: $1,500 ($750 for a 1st offence) Substantial risk Max: $3,100 ($1,500 for a 1st offence) Severe risk Max: $10,000 ($5,000 for a 1st offence)	Max: $2200 Infringement: $115[9]	Max: $2250 Infringement: $300	Max: $1,000 individual $5,000 corporation Infringement: $165 RS(V)R 418	Max: $800 (1st offence) $1,600 (subsequent) Infringement: $200 (< 4.5 tonne)[10] $600 (> 4.5 tonne)	Max: $1000 RTA s114(2)(b) Infringement: $153

[9] The maximum relates to general breach dimension regulation, the infringement relates to vehicle length (19m).
[10] Regulation refers to length.

6.5 Sanctions and penalties

The proposed approach to sanctions and penalties contained in the Bill constitutes one of the more significant departures from the practices contained in existing legislation. The Bill provides an extensive suite of sanction and penalty options, including some that can be considered innovative in nature. This contrasts with the much narrower range of sanction/penalty options contained in existing legislation.

The fundamental problem which this reform seeks to address is that existing legislation is unable to differentiate adequately in its approach to penalties and sanctions, between different classes of offender. In the interests of justice, as well as improved enforcement and compliance, it is considered essential to be able to distinguish in the application of penalties and sanctions between:

- minor and serious offences;
- unintentional offences and those committed for commercial gain;
- individuals and bodies corporate; and
- first time and habitual offenders.

The proposed penalty and sanction regime has a number of features that will address these problems. First, the existence of a range of administrative sanctions, including improvement notices and formal warnings that do not have specific penalties attached to them, will allow authorised officers to take a more active and responsive approach where remedial steps can be taken or where only minor and inadvertent breaches are detected, and may thereby prevent in some cases progression from initial offences toward habitual transgression.

Second, the penalties regime specifically provides for different maximum penalty levels for first time and subsequent offences in relation to most of the mass, dimension and load restraint offences, thus helping to ensure that the penalties applied in practice are proportionate and appropriate.

Third, the use of some "open-ended" penalties in relation to severe risk breaches means that proportionality is maintained in respect of the most severe breaches, with a direct relationship being maintained at all levels between the severity of the breach and the size of the penalty applied.

Fourth, the set of court based sanctions is broad and includes both a commercial benefits penalty and an ability to order the payment of compensation for infrastructure damage. Both of these features can be expected to have substantial positive effects on the incentives for non-compliance. The commercial benefits penalty is capable of ensuring that any financial benefits from non-compliance are more than captured by the sanctions regime, as up to three times the assessed expected benefit can be levied as a penalty under this provision. Moreover, the provision for compensation to be paid to road authorities will help to ensure that road authorities have the capacity to retrieve all of the costs, or a potentially substantial proportion of the costs, associated with damage caused by a particular offence.

Finally, the fact that the court based sanctions can be applied additively, rather than necessarily being considered as alternatives, opens the possibility of very severe penalties being imposed where these are warranted by the seriousness of the offences. The potential combination of the different types of penalty yields theoretical maxima far greater than those provided in current legislation, while the Bill includes substantial guidance as to the application of these penalties and will therefore help to ensure that they are only used in a just and proportionate fashion.

As a result of these characteristics, the proposed penalty and sanction regime is expected to have benefits in terms of discouraging non-compliance and encouraging the reform of offenders' behaviour (particularly through the use of supervisory intervention orders and prohibition orders). The financial benefits associated with such improvements in compliance are likely to be substantial, as demonstrated in the following section.

6.6 Indicative quantitative analysis of expected benefits

The fundamental benefit expected to accrue from the adoption of the Bill is an improvement in compliance with road laws. Improved compliance with the laws can be expected to yield reductions in road crashes as well as reductions in damage to road infrastructure as a result of overloading. The following will consider the likely magnitude of improvements in these two areas.

Reductions in road infrastructure damage

Damage to road infrastructure due to non-compliance with road laws is of two broad types. Firstly, non-compliant vehicles are more likely to be the cause of catastrophic failures of road infrastructure. This is most likely to occur due to accident (eg, destruction or a light pole or bridge support), but can also occur simply as a result of the use of an overloaded, or otherwise non-compliant vehicle.

The second form of road infrastructure damage is less obvious, but its existence is nonetheless well documented. This is that wear to road pavement and related infrastructure occurs at a greatly accelerated rate where vehicles are loaded to levels beyond the maxima set in legislation. As the degree of overloading increases, the rate of road wear increases geometrically. Thus, reductions in vehicle overloading will have an important impact in reducing such damage. Koniditsiotis (1998) reports the results of an extensive survey of vehicle loading, conducted throughout Australia. Tables 2 and 3, below summarise the results for each jurisdiction in terms of the percentage of all vehicles weighed that were found to be overloaded and the degree of that overloading.

The tables indicate that a national average of 14.2 % of vehicles, or around 1 in 7, was found to be overloaded. Due to concerns as to the reliability of the data in respect of Western Australia[11], an adjusted figure of 13.8 % of vehicles (Australia excluding WA) can be adopted. However, it should be noted that these data refer specifically to

[11] It is considered likely that the WA figures are overstated, due to the extensive use of a concessional loading scheme in that jurisdiction. This is reflected in the fact that the incidence of overloading reported in Table 2, at 35.6% is almost twice that of the next highest State, at 19.1%.

articulated trucks. This raises the issue of whether the data can reasonably be extrapolated to rigid trucks. An alternative data source has become available since the publication of the draft RIS in May 2002. This is an unpublished (to date) report prepared for the Australian Road Research Board[12]. This report broadly confirms the above estimate of non-compliance with mass limits by articulated vehicles, reporting that 13% of such vehicles were overloaded in 2000 (the most recent data available). However, only 2% of rigid trucks were found to be overloaded.

Thus, given that there were approximately 62,600 articulated trucks registered in Australia in 1999/2000, this suggests that there are approximately 8,640 overloaded articulated trucks on the road at any given time. Applying the 2% overloading estimate to the total number of rigid trucks (approximately 358,400 in 1999–2000[13]), this equates to approximately 7,170 overloaded rigid trucks being on the road at any given time. Thus, the estimated number of heavy vehicles (rigid plus articulated) on the road at any given time is approximately 15,810.

Table 2: Overloading by Size of Overload and State/Territory (% of all vehicles weighed)

Overload	NSW	Vic	Qld	WA	SA	Tas	NT	Aust
100–105	8.9	5.9	6.8	8.3	6.7	5.0	6.5	7.5
105–110	4.8	2.5	3.4	7.9	3.8	2.9	3.8	3.9
110–115	2.0	0.8	0.9	6.1	1.8	1.5	3.1	1.6
115–120	0.7	0.3	0.3	4.3	0.6	0.5	2.2	0.6
120–125	0.4	0.1	0.2	3.2	0.3	0.2	1.7	0.3
125–130	0.2	0.0	0.1	2.3	0.2	0.0	0.9	0.2
130–135	0.0	0.0	0.0	1.5	0.1	0.0	0.5	0.0
135–140	0.0	0.0	0.0	1.0	0.0	0.0	0.2	0.0
140–145	0.0	0.0	0.0	0.6	0.0	0.0	0.1	0.0
145 plus	0.0	0.0	0.0	0.4	0.0	0.0	0.1	0.0
Total	**17.0**	**9.6**	**11.7**	**35.6**	**13.5**	**10.1**	**19.1**	**14.2**
Overloaded vehicles	396900	159019	12582	30416	68834	2733	3902	674385
Vehicles weighed	2335631	1653657	107238	85467	511502	27022	20383	4740900

Source: Koniditsiotis (1998)

Table 3 (over page) shows the overloaded vehicles for the vehicle types included in the analysis. Western Australia is included so the overloading rates will be overstated particularly for the larger vehicle classes.

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[12] *Heavy Vehicle Compliance with Speed and Mass Limits: Evidence From Weight-in-Motion Devices.* George, R. ARRB, January 2003.

[13] *Survey of Motor Vehicle Use, Australia, 2000*. Australian Bureau of Statistics Cat: 9208.0.

Table 3: Overloaded Vehicles by Vehicle Type

Vehicle Type	Vehicles Weighed	Overloaded Vehicles	
		Number	%
Class 8	395 552	12 962	3.3
Class 9	3 924 680	579 518	14.8
Class 10	403 050	59 183	14.7
Class 11	76 150	19 793	26.0
Class 12	17 618	2 929	16.6

Note: The most common vehicles in each class respectively are 5-axle articulated, 6-axle articulated, B-double, double road train and triple road train. **Source**: Koniditsiotis (1998)

Benefits due to reduced overloading

The costs of overloading have been estimated using the separable unit costs estimated as part of the charging process (NRTC 1998). It should be noted that the following estimates relate to articulated trucks, as per the Koniditsiotis data and do not account for road damage costs due to rigid trucks. However, as noted above, evidence suggests there is a much higher incidence of overloading amongst articulated vehicles.

It was assumed that each overloaded vehicle travelled 500 kms[14]. On this basis the cost of overloading by the vehicles in Table 2 was estimated to be $23 million per annum. This will be a substantial under-estimate of the true total cost of overloading; however, as only a sample of Culway sites[15] were used, only rural sites were included and only large articulated and multi-combination vehicles were included. The cost estimated from the data in Table A.1 and the separable unit costs used for the heavy vehicle charges is only $34 per overloaded vehicle trip.

An alternative estimate of the costs of overloading on arterial roads in Queensland was published by Queensland Transport in 1999. The estimate was substantially higher than that calculated above, at $40 million for Queensland alone. However, the basis of the estimate was not able to be provided.

This estimate can be compared with the reported total expenditure on road and bridge maintenance and pavement rehabilitation in Queensland of $195.3 million in 1997–8. This comparison indicates that the cost of overloading is of the order of 20% of total maintenance expenditures. As shown in Table A.1 the incidence of overloading in Queensland is 11.7%, although the extent of the overloading is likely to be somewhat overestimated because of the use of concession schemes (particularly volume loading) as in Western Australia.

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[14] While this is not typical of all heavy vehicle journeys, this estimated average relates specifically to articulated vehicles in the context of the – mostly rural – Culway sites that form the basis of Koniditsiotis observations.

[15] These are strain gauges placed in culverts and used to measure axle mass as a means of calculating vehicle mass and speed (by reference to axle spacing and number of axles).

An additional point of comparison between the Queensland data and the Koniditsiotis data is given by the implicit cost per overloaded vehicle trip. The QT (1999) report states that their estimates are based on a total of 90,172 overloaded vehicles, implying an average cost per overloaded vehicle trip of $444. This is an order of magnitude higher than the above estimate of $34.

If the Queensland estimate that 20% is the share of maintenance expenditure attributable to overloading is applied to national data, this would suggest an annual cost Australia-wide in the order of $200 million (based on the $1 billion expenditure on road and bridge maintenance and pavement rehabilitation in 1997–98). This compares with the above estimate of $23 million per annum. The fact that the upper estimate is more than eight times the lower estimate indicates the considerable degree of uncertainty that attaches to quantitative calculations in this area. However, it must be noted that reasons have been advanced for believing that the lower figure represents a substantial under-estimate, while the upper figure is likely to represent an over-estimate as a result of the operation of concession schemes in Queensland.

Given this, there are good grounds for believing the true figure to be within this range. For the purposes of the current analysis, a conservative estimate of the "true" cost associated with overloading would be that it lies within the range of $50 million to $100 million, although the fact that there is little certainty associated with the estimate must be stressed.

The above figure provides the basis for the estimation of reductions in road infrastructure costs as a result of reduced overloading. Such estimation relies on establishing a realistic view of the extent to which the measures in the Bill, taken together, will be successful in dissuading overloading. Clearly, this is subject to some variables that are beyond the scope of the Bill itself, such as the extent and direction of enforcement efforts.

One basis for estimating what may be achievable in terms of reducing overloading is to consider existing differences between jurisdictions in overloading prevalence. As indicated in Table 1, above, the current Victorian rate of overloading (at an estimated 9.6% the lowest of any jurisdiction) is approximately 30% below the average for Australia as a whole (13.8%, excluding Western Australia). While overloading rates are likely to reflect a range of factors, some relating to conditions in the jurisdiction in question, it is clear that the legislative and enforcement environment must be a substantial contributor.

As discussed throughout this RIS, the proposed legislation will make a number of substantial improvements to existing legislation. While there is substantial variation between the States and Territories in respect of current legislation, the Bill represents a substantial step forward in comparison with even the most advanced of the current legislative arrangements, notably in its adoption of a comprehensive sanctions regime, chain of responsibility provisions and more proportionate sanctions determination. The central purpose of the current Bill is to achieve better compliance and a comprehensive range of measures is included in order to achieve this goal. In this context, the above assumption that its effect would be to reduce non-compliance Australia-wide is arguably extremely conservative and should certainly be achievable.

Achieving this level of non-compliance Australia-wide would be likely to reduce annual road damage costs to between $35 million and $70 million per annum Australia-wide, compared with the estimate derived above of current road damage costs of $50 million to $100 million per annum. In this case, the benefits associated with reduced road infrastructure maintenance costs as a result of reduced overloading would be equivalent to between $15 million and $30 million per annum.

It should be noted, however, that this benefit of reduced overloading brings with it an offsetting cost. If the incidence of overloading falls, the quantity of goods carried in a given number of vehicle trips will also fall. Thus, there will be a fall in the productivity of these trips, measured as number of tonne-kilometres travelled. It is not possible at present to quantify the size of this offsetting cost. It is plausible, however, that the costs involved could even be larger than the identified benefits of the reduction in the road damage costs of overloading. If this were the case, it would indicate that, from a societal perspective, the mass limits have been inappropriately set[16]. If such a situation were to arise, it is important to note that the appropriate policy response would be to re-visit the mass limits, rather than to abandon action to improve compliance levels.

In this respect, the likely offsetting costs of reducing the incidence of overloading can be regarded as conceptually beyond the scope of the current RIS, being more properly considered in the context of the regulation of mass limits. *Benefits of reduced road crash rates*

The second major source of benefits is that of reductions in the number of road crashes involving heavy vehicles that can be expected due to better compliance with road laws. Vehicles that are non-compliant with road laws are likely to be disproportionately involved in road accidents for a number of reasons. For example, exceeding mass limits is likely to make vehicles less controllable in emergencies or extreme conditions and reduce the driver's ability to avoid crashes. Shifted or lost loads due to non-compliance with load restraint provisions may also reduce controllability as well as posing major hazards to other road users. Speeding and driving hours offences are also clearly associated with higher accident rates, as speeding and fatigue are widely recognised as being among the major causes of road crashes more generally.

Data on heavy vehicle accident involvement and estimated costs per accident, derived from the Australian Transport Safety Board and the Bureau of Transport Economics, form the basis for the following estimates of the potential benefits that would be associated with different proportional reductions in accident frequency. Table 4, below, summarise the incidence of crashes involving heavy vehicles in Australia and includes estimates of the proportion and number of these crashes in which heavy vehicle drivers were believed to be either fully or partly at fault.

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[16] This would be so only if all the costs of overloading were taken into account and weighed against the benefits of greater productivity. Additional costs (other than those of road damage) could be expected to arise in terms of increased accident rates due to the diminished controllability of overloaded vehicles, especially in emergency situations.

Table 4: Incidence and cost of road crashes involving heavy vehicles[17].

	Heavy Rigid trucks	Articulated trucks	Total	% at fault[18]	Total at fault
Fatal	128	165	293	32%	94
Serious injury	1,024	862	1,886	53%	1,000
Other[19]	36,459	6,092	42,551	53%	22,552
Total	**37,611**	**7,127**	**44,738**		**23,648**

Table 5 uses the estimates of the number of accidents in which heavy vehicle drivers were believed to be at fault in conjunction with data on the average cost per accident within each category to obtain estimates of the cost of accidents in which heavy vehicle drivers were believed to be at fault. The purpose of this calculation is to determine a starting point for estimates of the potential benefits that could be derived via a reduction in heavy vehicle "at fault" accidents.

Identifying this subset of "heavy vehicle at fault" accidents is necessary because the effects of the Bill will only be felt in terms of this subset of accidents. That is, improved compliance with mass, dimension, load and other heavy vehicle related legislation can be expected to reduce the incidence of accidents in which the heavy vehicle is at fault. By contrast, it cannot be expected to have a substantial impact on accidents in which the heavy vehicle is not at fault[20].

Table 5: Cost of accidents in which the heavy vehicle driver is responsible

	Total at fault	Cost per accident[21]	Total cost per accident type
Fatal	94	$1.97 million	$185.2 million
Serious injury	1,000	$473,000	$473.0 million
Other	22,552	$16,000	$360.8 million
		Total all types	**$1,019.0 million**

The contributing factors to road accident rates are many, including road building expenditures, vehicle design and enforcement policies as well as less tangible factors such as public education campaigns and public attitudes. Given this, the attribution of

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[17] Data from ATSB and BTE. Fatal accidents data for articulated trucks is for 2000 (see *Road Fatalities Australia – A Statistical Summary*. ATSB (2001), table 21. Fatal accidents data for heavy rigid trucks, together with serious injury data for both categories relates to Jan – June 2000 and has been scaled to an annual equivalent figures (see *Road Safety Office Report No. 24*. ATSB (2002), Table 1 and Table 51.

[18] ATSB Australian Truck Crash Database: A Summary (2000). Estimate for "other" accidents is simply extrapolated from the "Serious Injury" category estimate. Note, estimates for Fatal and Serious Injury crashes are adjusted via proportional distribution of the "unknown responsibility" category.

[19] BTE Report No. 102., 2000 (data relates to 1996). This is the only data able to be identified for this category of crash.

[20] These data have been recalculated since the release of the May 2002 draft RIS, in response to comments received, notably from the Victorian Transport Association.

[21] BTE Report No. 102 (2000), with CPI adjustment to yield 2003 dollar equivalents. The BTE figures, which are based on 1996 data, are multiplied by 1.16 (See ABS 6401.0)

road accident prevalence to different factors is extremely problematic. However, in general, the large range of factors involved suggests it is likely that the effect of improved compliance and enforcement arrangements, as contained in the Bill, is likely to be smaller in this area than in relation to road infrastructure costs.

On the other hand, very substantial reductions in overall road accident rates have been achieved in practice over recent decades as a result of the implementation of a combination of different public policy measures, including major changes to road rules, sanctions and penalties and enforcement practices. These reductions have been experienced across all vehicle classes. For example, the absolute number of crashes involving articulated vehicles in Australia fell by 36% between 1981 and 1998, despite increases in total distance travelled, while fatal crashes also declined by 36% during the same period[22].

While, as noted, it is difficult to separate out the impact of specific measures, it is clear that the total effect of the measures taken has been very substantial. Given the substantial nature of the changes to enforcement powers, sanctions and penalties in the proposed Bill, it can be considered plausible that its overall effect would be to reduce road accident prevalence by between 1 and 5 %. This is arguably a relatively conservative estimate, given the size of the reductions in road crashes achieved to date.

Moreover, data suggest that the current fatality rate for heavy vehicles in Australia remains relatively high, with the recent NRTC Truck Safety Benchmarking Study concluding that "the overall number of persons killed in truck crashes per kilometre of truck travel in Australia is 47% higher than in the United States [and] 39% higher than in Great Britain…"[23], notwithstanding the above-mentioned improvements in absolute performance. This suggests that there is room for additional measures, such as those contained in this Bill, to contribute to further improvement. This view also underlies the adoption, by the Australian Transport Council, of a Road Safety Strategy for the period 2001 to 2010 which aims to reduce road fatalities by 40 % by 2010. The current Bill can be expected to play an important part in reaching this goal.

A reduction of 1–5 % in the annual cost of "at fault" crashes involving heavy vehicles of $1.02 billion would imply benefits from the implementation of the Bill in terms of reduced road accident costs of the order of $10.2 million—$51.0 million per annum. Similarly, a reduction of 1–5 % in the number of fatality accidents involving heavy vehicles would imply a reduction of between 0.94 and 4.70 in the number of fatal accidents annually.

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[22] Quinlan (2001), op cit, p40; ATSB (2001), op. cit, Table 21.

[23] *Truck Safety Benchmarking Study.* Haworth, N., Vulcan, P., & Sweatman, P. NRTC, Melbourne, (2002), p 15.

7. IDENTIFICATION AND ANALYSIS OF EXPECTED COSTS ASSOCIATED WITH THE BILL

The main costs associated with the implementation of the Bill would be related to the changes in compliance and enforcement activity that would necessarily follow. Among these are:

- the need to prosecute an increased number of offences in the severe risk category, vis-à-vis current practices largely relying on infringement notices to deal with offences in this category;
- the need to prosecute an increased number of offences relating to parties other than drivers and operators as a result of the chain of responsibility provisions;
- the need for additional resources to allow the increased investigative powers provided for in the Bill to be used adequately to prepare prosecutions; and
- cost of implementing new sanctions options.

The size of some of these costs will be highly dependent on the approaches taken in practice to the use of the various powers. Consequently, the following estimates should be regarded as indicative in nature. It should also be noted that this analysis does not include data in relation to changes in fine revenues. This is because fines constitute transfer payments, rather than being "real" benefits and costs in the economic sense. Changes in fine revenues do not, in themselves, increase or decrease overall welfare (ie, from the "whole of society" perspective). To the extent that they have any impact on overall welfare, it is through the effects that such changes may have in modifying behaviour. Estimates of various changes in behaviour expected to result from the implementation of the Bill are, of course, discussed at length in this RIS.

7.1 Additional prosecutions of severe risk offences

Discussions held with the Western Australian Department of Main Roads provide one basis for estimating the likely impact of the Bill's requirement that all severe risk offences should be dealt with in the courts. Western Australia has estimated that, if all such offences had been taken to court in 1998–99, an additional 756 offences would have been dealt with in court. This compares with only 29 mass and dimension offences that were actually dealt with in the courts in 1998–99 under the previous practice of taking court action only where the breach is more than 30 % over the limit[24].

This suggests that the changes proposed in relation to sanctions and penalties could have substantial impacts in practice, not least for the road authorities themselves. Data is not available on the current enforcement practices of the other States and Territories. However, in order to derive an estimate that is conservative, in the sense of representing an effective upper bound of the likely cost in this regard, it will be assumed that the former Western Australian policy, above, is representative of national approaches, and that Western Australia's enforcement efforts are equivalent to the national average.

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[24] Current practice in WA has changed, with breaches prosecuted in court where the expected fine would exceed $3,000.

Given that WA accounts for around 14 % of total heavy vehicles registrations, extrapolation of the above estimates suggests an increase in offences dealt in court of around 5150 per annum.

The costs imposed by this substantial increase in the use of the court system are of three broad types:

- costs incurred by road authorities in bringing prosecutions;
- costs incurred by defendants in defending prosecutions; and
- costs incurred through the court system itself in hearing cases.

The aggregate costs incurred will be critically dependent on the number of cases that are defended. Information from Victoria is that only around 10 % of cases relating to road law breaches are currently defended[25], suggesting that the cost of many court ordered sanctions may be relatively low. However, the adoption of a wide range of new sanctions, which may be imposed additively, together with the considerable increase in the level of many of the fines able to be imposed, suggest that the proportion of cases that are defended may well increase substantially. Faced with potentially major sanctions, such as the application of compensation orders and commercial benefits penalties, defendants have considerably greater incentives to defend charges brought against them. For serious and repeat offenders, who risk being the subject of supervisory intervention orders, this incentive to defend charges is further heightened.

Costs to authorities

The Western Australian Department of Main Roads has estimated the additional costs it would incur from prosecuting all severe risk breaches in the courts would approximate $292,500 per annum. This is based on an estimate that 3 additional compliance and enforcement officers would be required[26], together with approximately ¾ of a full-time legal officer, with an allowance also made for travel costs. This estimate effectively assumes that each compliance/enforcement officer will devote less than one person/day to each court action, with less than ¼ day being devoted to each action by a legal officer. These estimates can therefore be regarded as very conservative, being apparently based on a low percentage of contested cases. Moreover, the estimate appears to have made little, if any, provision for corporate overheads. Given these factors, and the abovementioned likely substantial increase in the proportion of contested cases, it is considered appropriate to increase this estimate by 50 %, to $438,750. Applying the ratio of WA registered heavy vehicles to total national heavy vehicle registrations, this suggests that road authorities around Australia may incur additional costs of around $3.0 million per annum due to the need to take court action over all severe risk breaches of load requirements.

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[25] MM Starrs, p33.

[26] These comprise 2 on-road enforcement officers (@$50,000 p.a.), 1 administration/compliance officer (@$45,000 p.a.), 0.75 legal officers (@$60,000), plus travel costs estimated at $87,500 p.a.).

No data is currently available as to the average costs to defendants and the court system of such cases. Given this, it is considered appropriate to estimate these costs as a proportion of the costs to the road authority.

Costs to defendants

The costs to defendants are assumed to be equal to those incurred by the road authority. Where cases are undefended, costs to defendants may be minimal. However, defended cases will require the engagement of legal representatives, while there will also be lost revenue due to a truck being off the road (in the case of an owner-driver) during proceedings or (in other cases) costs of management time involved in being present at court. The costs to defendants in such instances are likely to exceed substantially the above costs of the authority, which are effectively based on an input of little more than a single person/day of an administrative or enforcement officer's time.

Costs to defendants – consultation comment

Consultation comments on the draft RIS included some discussion of the issue of the costs to industry of defending prosecutions. The Victorian Transport Association provided alternative estimates of these costs. The VTA suggested that the average cost to a defendant of a defended action would be around $9,000, comprising $5,000 in legal costs, $1,000 in management time lost, $500 in driver time lost and $2,500 in "lost opportunity". On this basis, it was calculated that the cost to industry in the aggregate would be $4.6 million per annum, rather than the draft RIS' implicit estimate of $3 million. This estimate was based on acceptance of the RIS estimate of 10% of prosecutions being defended, though the submission also notes the likelihood that a significantly higher percentage of prosecutions may be defended due to the potential costs associated with the proposed new sanctions regime.

It can be noted that the VTA estimate of industry costs in this area is only around 50% higher than the RIS estimate. Given the degree of uncertainty necessarily involved in such estimation, this difference can be regarded as indicating broad agreement regarding the "order of magnitude" involved. In aggregate terms, accepting the VTA estimate of defence costs per prosecution would add $1.6 million to total costs, which is equivalent to approximately 7.6 per cent of the base case estimate.

A potentially larger effect on the aggregate costs to defendants arises from the assumptions made as to the proportion of prosecutions that are defended. The VTA has argued that this proportion could rise from the current 10% estimate to as high as 50% due to the desire to avoid sanctions that would, in some cases, be significantly greater than at present. This could include, for example, avoiding the possibility of being declared a systematic or persistent offender.

However, it is not considered that this effect is likely, for a number of reasons. Firstly, the degree of difference between existing and proposed sanctions would, in most cases, not be sufficient to yield a change in defendant behaviour of this magnitude. Second, the continued use of the absolute liability standard in the Bill (in line with current practice in virtually all jurisdictions) means that the potential benefit of defending prosecutions would, in many cases, clearly be limited. Put another way, the limited proportion of

defended cases at present may be in substantial measure related to the current use of absolute or strict liability in most jurisdictions and, therefore, be unlikely to change even given some shifts in sanctions implications.

Finally, it must be noted that a fundamental objective of this Bill, taken as a whole, is to reduce the incidence of non-compliance with legislation. Thus, any increase in the *proportion* of defended prosecutions is very likely to be more than offset by a reduction in the total number of prosecutions undertaken. Thus, the raw number of defended prosecutions may be stable or declining, even were the proportion of defended prosecutions to rise. If this is so, then the aggregate costs to defendants are unlikely to be significantly higher than estimated in the draft RIS.

Costs to the court system

The costs to the court system are also estimated as being equal to those incurred by the road authority. These costs, outlined above, are equivalent to approximately $600 per case, an amount considered broadly consistent with Magistrate's Court costs orders.

Aggregating the above costs suggests that the marginal annual costs of additional court actions in respect of severe load breaches may be of the order of $9.0 million.

7.2 Additional prosecutions due to "chain of responsibility" provisions

Similar information has been provided by the Western Australian Department of Main Roads in respect of the likely impact of the "chain of enforcement" provisions of the Bill. The additional costs will derive from prosecutions of parties other than drivers and operators, as well as a likely increase in the number of prosecutions of drivers and operators. The WA estimates are that the costs to the road authority of these additional prosecutions are likely to be similar to those associated with the bringing to court of all severe risk offences, as above. The estimate given is as follows:

3 investigation officers @ $60,000 =	$180,000
0.75 legal officer	$ 60,000
Travelling costs	$187,500
Total	$427,500

As with the data in Section 7.1, above, an increase of 50% is applied to the estimated labour costs to take account of corporate overhead expenses. This increases the estimated cost for Western Australia to approximately $547,500. Applying the same ratios as above, this suggests that the nationwide costs to road authorities may be equivalent to $3.85 million, while the total costs to all parties may be of the order of $11.5 million.

7.3 Use of increased investigative powers

As noted in Section 5, authorised officers will be given substantially increased enforcement powers by the Bill, notably in areas such as entry and search. It is arguable that the exercise of these powers will require additional resources to be expended by road authorities. This will be so particularly if the existence of greater powers increases the

authorities' ability to pursue suspected breaches of the law and increases the number of prosecutions resulting.

However, a contrary possibility must also be considered. This is that the availability of these powers will substantially reduce the costs of gathering necessary evidence for many prosecutions that would, in any case, be undertaken.

The relative size of these two effects cannot be estimated with any confidence. It is considered at least plausible that the resource savings deriving from the provision of enhanced general investigative powers will be as great as the incremental costs of any increase in prosecutions that may be enabled. Consequently, it is not clear whether there will be any net cost as a result of the provision of these powers.

Importantly, it should be emphasised that any net costs that do arise will be the result of increased enforcement action. To the extent that this implies a greater probability of being prosecuted for breaches of the road laws, it can be expected that there will be offsetting benefits in terms of improved compliance.

No quantitative estimate is therefore included of the possible costs arising from this aspect of the Bill.

7.4 Costs of implementing new sanctions options

It can be expected that some of the additional sanctions options to be provided in the Bill will tend to increase the costs of either road authorities or those who are subject to the sanctions. In particular, the introduction of improvement notices and formal warnings, among the administrative sanctions, as well as supervisory intervention orders, among the court based sanctions, may have this effect.

Formal warnings

These administrative actions are expected to be used, to a large extent, in circumstances in which no formal action would be taken at present, because of the inappropriateness of the currently available sanctions to the circumstance. That is, these actions will only substitute to a limited degree for the use of other actions, such as infringement notices. Given this, the use of these tools will represent a net increase in enforcement activity.

Some information on the likely extent of the use of these tools is available from Queensland, which issued formal warnings under its own legislation during 1998 and 1999. Table 6, below, indicates the number of warnings issued in relation to load issues during this period, as well as the number of infringement notices issued for the same offence categories during the same time.

Table 6: Warnings and Infringement Notices Issues, March–August, Queensland

Year	Mass	Dimension	Load Restraint
Warnings			
1998	63	33	95
1999	75	69	147

Infringement Notices			
1998	897	66	78
1999	1480	260	122
Warnings/Total (%)			
1998	6.6	33.3	54.9
1999	4.8	21.0	54.6

The table indicates that a quite substantial use of the warnings option has been made, with a total of 482 warnings being issued over the two years, compared with 2903 infringement notices. Thus, the warnings issued over the period amount to almost 17 % of the total administrative sanctions applied.

It can also be noted that the increase in the number of warnings issued in 1999 coincided with a substantial increase in the number of infringement notices issued. This appears to confirm that the warning notices have been largely used in addition to infringement notices, rather than as an alternative to them. Thus, of the 482 warnings, it can be estimated that at least 400 constitute additional enforcement actions, that would not otherwise have been taken.

Taking this average of 200 "net" warnings per annum and applying the ratio of Queensland enforcement officers to the national total suggests that there could be around 970 warnings per annum issued nationally. For jurisdictions that implement the formal warning sanction (for this is not proposed as an essential element of the regulatory package, and hence, some jurisdictions may not implement this sanction), the cost of issuing these warnings will vary with the administrative systems put in place in relation to recording their issue, as well as the incidence, if any, of warnings being rescinded and replaced by other enforcement actions, as provided for in the Bill. For present purposes, it is assumed that the cost will be in the range $25 to $50 per warning, suggesting annual costs of $24,250 to $48,500 per annum.

In addition, there will be "one-off" costs related to the implementation of appropriate systems to deal with the warnings. Queensland recently abandoned use of its trial warnings system, having estimated the cost of implementing a permanent system at $250,000. The bulk of this cost relates to the need to make amendments to the TRAILS database used by its road authority, as indicated by the fact that Victoria has estimated the one-off costs to it of implementing the warnings system at only $15,000. This figure relates only to the cost of developing a recording system and amending the charges database.

It is considered that the Victorian estimate may be incomplete and, hence, unduly low. However, it is not clear that costs of the order of those estimated by Queensland will be borne in all jurisdictions. In the absence of more detailed information, a midpoint estimate of $135,000 per jurisdiction will be used, giving an estimated one-off cost for implementation of $945,000.

Supervisory intervention orders

Supervisory intervention orders also constitute a mechanism that will be employed in addition to, rather than as a substitute for, current enforcement tools. The purpose of this instrument, as noted above, is to adopt a "proactive" approach to improving the performance of systematic or persistent offenders (Section 76). The orders allow for intensive surveillance, as well as potentially functioning as a means of "re-education" – ie, of changing attitudes to compliance related business issues.

The costs to a corporation subjected to an order are potentially far reaching, since the orders have a duration of up to one year and can embrace any or all of the following elements:

- appointing or removing staff to or from particular positions;
- training and supervising staff;
- obtaining expert compliance advice;
- implementing managerial or operational practices or systems;
- conducting specified operations subject to the direction of the road authority;
- furnishing compliance reports as required, with the road authority to determine the content, form, manner and frequency of such reports;
- appointing an auditor to assist in improving compliance; and
- monitoring compliance.

By contrast, it can be expected that the number of supervisory intervention orders in place at any one time will be small, as their application is only to "systematic or persistent" offenders. As an indicator, it can be noted that the above sections have estimated that approximately 5150 additional severe risk offences will be prosecuted in the courts annually as a result of the Bill's provisions. If chain of responsibility provisions lead to prosecutions of corporate officers in half of these cases, this would yield 2575 corporations potentially subject to supervision orders.

It is to be expected that only a small proportion of these prosecutions would result in supervisory orders being implemented, while many orders would be likely to be restricted, in the first instance, to relatively less intrusive reporting requirements, rather than to full audit based regimes. For the purposes of this analysis, the number of supervision orders is estimated to be in the range of 2.5 % to 5 % of this estimated number of corporate prosecutions for serious risk offences. This is equal to between 64 and 128 supervision orders per annum.

A basic supervision order might require the preparation and lodgement of quarterly compliance reports over the course of one year. If such a report requires 2 person days for preparation and ½ person day for review (within the relevant road authority), the cost per compliance report would be in the vicinity of $800[27], yielding a total cost per compliance order of $3200. It can be noted that some supervision orders may cost less than this amount, to the extent that their duration is less than the maximum of one year.

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[27] Based on full time adult ordinary time earnings of $803 per week, with 100% labour on-costs assumed.

On the other hand, farther reaching orders may cost substantially more. Given this likely variability, the figure of $3,200 will be used as an average figure.

This implies a total direct cost in respect of supervision orders of between $204,800 and $409,600 per annum. There will necessarily be additional costs associated with these orders, to the extent that the greater supervision that they imply forces businesses to change their operations in order to achieve higher levels of compliance with the relevant legislation and regulations. However, such costs are not attributable to the supervisory orders *per se*, since they relate to the achievement of compliance with other, existing laws. More broadly, the costs of increased compliance are offset to some extent by the more efficient competition that derives, in practice, from eliminating the unfair advantages over competitors that non-compliant operators enjoy. This issue is discussed further in Section 8, below.

An important additional consideration in relation to supervisory intervention orders is qualitative in nature. It is that there are arguably important civil liberties issues raised by the adoption of this tool, since it allows the enforcement authority to exercise substantial powers in relation to the day to day running of a business and to involve itself in a concentrated way in the management of that business over a period of up to one year. Such an intensive involvement by regulatory authorities in private sector activity is unusual in nature and can only be justified if it is regarded as proportional to the dangers to society posed by the operation of the business in question.

The above analysis indicates that SIOs are expected to be relatively rarely used, with their use being reserved for cases of "systematic or persistent" non-compliance. It is clear that the dangers to the road-using public of such "systematic or persistent" non-compliance are real and substantial, and include death and serious injury, in addition to major property damage. In addition, it must be stressed that SIOs are to be imposed only where operators have chosen to behave repeatedly or flagrantly in ways that are non-compliant with road laws. Moreover, the orders are temporary in nature, having a maximum duration of twelve months.

Given all of these factors, it is considered that SIOs are a proportionate response to the problems of systematic or persistent non-compliance and that the seriousness of the consequences of such non-compliance means that the SIOs, with their attendant consequences for the civil liberties of offenders, constitute an appropriate sanction.

Prohibition orders

The Bill also provides for a prohibition order to be made, which has the effect of preventing the offender from having a specified role or responsibilities associated with road transport, for a period specified by the court. This sanction would largely be used where a supervisory intervention order had failed to bring about an adequate improvement in the practices of a systematic or persistent offender. Given this, and the very serious nature of the sanction – which effectively removes a person from involvement in the road transport industry – the number of orders expected to be made is small. If it is assumed that 10 % of those subjected to supervisory intervention orders would subsequently be subject to a prohibition order, this would equate to 6.4 to 12.8 such orders being made annually. Even this estimate is likely to be too high, given the

extremely strong disincentives for operators to put themselves in a position of being subject to such orders.

In considering the likely cost of a prohibition order, it is necessary to distinguish a number of different circumstances:

- for a manager or executive director of a road transport operator, the cost entailed in being subject to such an order is likely to be loss of employment and the inability to obtain alternative employment within the industry for a specified period. However, a possible alternative, particularly in cases where the prohibition order was of relatively short duration, would be that the individual would be moved to another position within a company that was not covered by the prohibition provisions;

- for a non-executive director, the sanction may, in effect, be less severe, as the person may hold multiple part-time directorships and only those related to transport operations would be directly affected by the order. On the other hand, it is possible that knowledge of the prohibition order may, indirectly, cause difficulties in respect of other directorships and other professional functions more generally;

- for a proprietor of a road transport operator, the sanction is that s/he would be required to cede the management of their firm to other parties for the duration of the order;

- where the recipient of the order is not a road transport operator, but rather, an 'off-road' party (for example, a consignor, loader, packer or consignee of goods transported by road), this sanction would have the effect of requiring the offender to transfer all activities associated with road transport to an agent for the duration of the order. However, if the order is made against an individual rather than a body corporate, these activities could be transferred to another individual within the same organisation.

These private costs to individuals are not able to be quantified *ex ante.* However, they are expected to be more than offset by the road safety benefits derived from the improved operations of transport companies due to the removal of serious and persistent offenders from the management of their operations. It is emphasised that prohibition orders represent the last step in a lengthy chain, or "hierarchy" of sanctions and would be used only where other sanctions had failed to modify behaviour and where serious offences continued to be committed. This sanction, while severe, is therefore considered to be proportionate in such circumstances.

7.5 General requirement for increased enforcement activity

A number of submissions received during consultation in response to the RIS underlined the need for improved resourcing of compliance and enforcement activity generally if the objectives of the Bill were to be achieved in practice. For example, one submission argued that *"The levels of vehicle overloading quoted in the draft statement for example*

shows that the current staff levels are inadequate to police existing requirements"[28]. The submission received from the Australian Trucking Association also emphasised the need for adequate resourcing to ensure the Bill's objectives were met.

It should be noted, apropos these comments, that all States and Territories have commenced a process of implementation planning in relation to the Bill, and that this process is being co-ordinated by Austroads and the NRTC. This planning process includes, for example, the provision of training packages for enforcement officers to facilitate uniform application of the laws across Australia.

More generally, agencies are increasingly adopting a range of new technologies and systems to improve enforcement by maximising the productivity of available resources. For the future, electronic monitoring, accreditation systems and auditing offer smarter alternatives to traditional policy methods, since they allow identification of those who obtain unfair competitive advantages by systematically abusing the laws.

[28] Submission of JMS Stacy, South Australia.

8. SUMMARY AND ANALYSIS OF EXPECTED COST AND BENEFITS

8.1 Costs summary

The preceding sections identify four areas in which quantifiable costs can be estimated in respect of the proposed Bill. By far the most substantial of these costs are the additional prosecutions that are expected to be generated as a result of two factors: the adoption of chain of responsibility provisions, which will allow (or at least better support) the prosecution of a wider range of offenders, and the general requirement that "severe risk" breaches be prosecuted in the courts, rather than being dealt with via administrative sanctions[29].

The incremental costs of the prosecution of all serious risk breaches have been estimated at $9 million per annum, as the result of approximately 5,000 additional prosecutions being brought before the courts. The additional cost of prosecuting under the chain of responsibility provisions is estimated at a similar amount: $8.7 million.

By contrast, the remaining costs, which relate to the implementation of new sanctions in contexts in which no sanction would otherwise be used, are relatively small, being estimated as within the range of $229,000 per annum to $458,000 per annum approximately.

The major uncertainties in relation to costs are thus threefold. First, the number of additional prosecutions for severe risk breaches may differ from that estimated. However, given that the estimate used is based on the assumption that very few such breaches are currently prosecuted, the estimated costs are conservative and likely to represent an overestimate in this regard.

Secondly, the cost of additional chain of responsibility prosecutions is necessarily subject to substantial uncertainty, given that the powers involved will be entirely new and the ability to use them successfully in practice – and on a wide scale – is yet to be established. Again, the approach taken has been to adopt a relatively conservative cost estimate, based on a relatively high level of enforcement effort being applied to the new powers.

Third, the costs to defendants and the court system itself are subject to substantial uncertainty. While the costs to road authorities of the above changes are based on adjusted estimates supplied by certain road authorities, the costs to other parties have had to be estimated as an extrapolation of these road authority costs. It is believed that the approach taken – of estimating the costs for each of the other parties as being equivalent (per case) to that incurred by the road authority – may also be conservative. This is due to evidence from the road authorities that a relatively small proportion of prosecutions are currently defended in the courts. Undefended actions will clearly impose a substantially lower cost on defendants and the courts themselves than do defended actions. In such

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[29] As noted above, some jurisdictions may continue to use some administrative sanctions in this area. However, the purpose and effect of the Bill will be to have most such cases dealt with via court-based sanctions.

circumstances, the costs may well be substantially less than those incurred by the road authority in investigating the offence and compiling evidence.

Thus, notwithstanding the uncertainties involved in cost estimation, it is considered that the overall cost estimates employed, being generally biased somewhat in a conservative direction, are unlikely to be substantially exceeded in practice.

8.2 Benefits summary

The primary benefits expected to flow from the implementation of the Bill are of two types: reduced accident costs and reduced road infrastructure damage. The benefits of reduced road damage flow almost entirely from the Bill's expected effects in reducing non-compliance with mass restrictions. The road safety benefits are expected to derive from better compliance with mass, dimension and load restraint requirements, as well as many of the other road rules applying to heavy vehicles, including driving hours, speeding, etc. The Bill's general improvements to compliance and enforcement arrangements are expected to lead to improved compliance being achieved in practice in most or all of these areas.

Two substantial sources of uncertainty exist with regard to the benefits of reduced road damage. The first relates to the current costs of road damage, while the second necessarily relates to the effectiveness of the Bill in reducing such damage. The RIS has discussed two studies of road damage costs that yield substantially different estimates and has opted to use an estimated range that is located between the figures derived from these two studies. This figure is $50–$100 million per annum, while the lower estimate derived from the Western Australian study is $23 million and the upper estimate is $200 million.

In relation to the extent to which the Bill may reduce road damage, the approach taken has been to look at the existing variability in overloading rates as an indicator of what is likely to be achievable through better compliance and enforcement legislation. This has yielded an estimate of a potential 30 % reduction, based on the difference between Victorian overloading rates and the national average. It is believed that such a reduction is very likely to be achieved given the assumptions made in this RIS that there will be some thousands of additional prosecutions undertaken in relation to severe risk breaches, as well as a substantial additional number of prosecutions under the new "chain of responsibility" provisions. These factors, together with the availability of substantially greater sanctions than at present, will greatly increase the disincentives for non-compliant behaviour and should therefore improve compliance significantly. The estimate of a 30% reduction in overloading may therefore be seen as a relatively conservative one.

In relation to reduced accidents, there is a relatively high level of certainty as to the existing costs of crashes. There is, of course, very much less certainty as to how great will be the Bill's effect in reducing those costs. As noted in the text, road accident rates have been shown to be very responsive to concerted public policy action over the last two to three decades. This gives good general grounds for believing that there is a potential to achieve important further reductions. If the above arguments as to the expected improvements in compliance with existing standards are accepted, there would appear to

be grounds for confidence that the Bill will have a substantive effect. Nonetheless, there is no firm basis on which to model the size of the effect that may be produced.

It is for this reason that a wide range of estimates – from a 1 % to a 5 % reduction – has been employed. Given that crashes involving articulated trucks fell by 36 % between 1981 and 1996, it is clear that improvements in the above range for the heavy vehicle sector must be regarded as plausible. The fact that the current rate of crashes involving heavy vehicles remains considerably above that in many comparable countries also underlines the feasibility of achieving substantial further reductions.

8.3 Summary of benefit/cost results

Appendix 2 sets out in spreadsheet form the benefit/cost calculations undertaken, as per the above discussions. Three Net Present Value figures are calculated, corresponding to an "upper bound", a "midpoint" and a "lower bound". The time horizon used is 10 years, which is standard for most regulatory evaluation purposes and reflects the probable lifespan of much regulation. A real discount rate of 6 % has been employed, although the conclusions are essentially unaffected by the discount rate chosen, given the even distribution of the costs and benefits estimated.

The NPV results are as follows:

Upper bound:	$443 million
Midpoint:	$237 million
Lower bound:	$30 million

Thus, all calculations indicate a substantially positive result. Another means of verifying the robustness of such calculations is to consider the benefit/cost ratio – that is, the ratio of estimated total benefits to estimated total costs. The ratio, in relation to each of the above scenarios is as follows:

Upper bound:	3.88:1
Midpoint:	2.53:1
Lower bound:	1.20:1

Again, these results all indicate a robust result, suggesting strongly that the proposed Bill would yield net benefits across a wide range of assumptions.

8.4 Break even analysis

In contexts of substantial data uncertainty, an important alternative analytical approach to benefit/cost analysis is break even analysis. This involves calculating the values for the key benefits identified that would be required in order to just equal the identified costs. Given that the cost estimates contained in this analysis vary little, while the benefits vary widely, the use of a break even analysis would appear to be appropriate in this case.

One complication, however, is the fact that the benefits identified exist in two major dimensions, rather than one. This allows for, or requires, different "break even" possibilities to be calculated. The first set of scenarios below is based on a given effectiveness of the Bill in relation to road damage reductions and solves for the degree of

effectiveness in reducing road accident rates that would be required if the benefits of the Bill were to equal its costs. These scenarios can be considered the more "robust", given that there is a more direct link between the Bill's provisions and reductions in overloading of trucks and, hence, a greater degree of certainty surrounding the road damage reductions than for the road accident costs reductions that have been estimated.

Scenario 1: Mid-range road damage reductions

The NPV calculations have been undertaken on the presumption that road wear reductions will be in the range $15–$30 million. This is based on total road wear estimates of $50 to $100 million and a 30 % effectiveness of the Bill in reducing those costs. If the road wear reductions achieved are assumed to fall in the middle of this range, at $22.5 million per annum, the benefits would, in themselves, more than cover the costs attributed to the implementation of the Bill. Thus, even were no benefits realised in terms of reduced accident rates, the overall impact of the Bill would have a positive net present value.

Scenario 2: Low range road damage reductions

A conservative scenario can be obtained by taking the lower value of road wear costs – ie, $50 million per annum – and halving the assumed effectiveness of the Bill's provisions, so that it is assumed to reduce these costs by only 15 %. This implies an annual reduction in road wear costs of $7.5 million, while annual costs are equal to $18.2 million in the worst case.

In this scenario, the benefit accruing from reduced accident rates would need to be equal to $10.7 million per annum. This is equivalent to a reduction of slightly more than 1% in accident rates, and appears highly likely to be achieved.

Scenario 3: Minimum road damage reductions

An alternative, "worst case" scenario would be to assume that total road wear costs due to overloading are as per the substantially lower estimate of $23 million, derived from the Koniditsiotis (1998) study, and to simultaneously assume that the effects of the bill will be to reduce these costs by only 15 %, rather than the 30 % taken as a base case. This implies annual reductions in road wear of only $3.45 million.

In this scenario, the break-even point, taking the worst case costs scenario of $18.1 million, would require that road accident reductions being an annual benefit of $14.65 million. Given the estimated current costs of heavy vehicle crashes of $1.02 billion, this implies a necessary reduction in accident rates of 1.43 %. This remains near the lower end of the range of 1–5 % used for estimation and is clearly likely to be achieved. Moreover, this scenario can be regarded as unduly pessimistic, in that the road wear estimate on which it is based has been identified as being substantially incomplete.

Scenario 4: Minimum accident cost reductions

The alternative dimension in which to consider a break-even analysis is to determine the level of road wear reduction that would be required, given a certain estimate of the minimum likely benefits in terms of reduced road crashes.

This analysis has suggested that road accident reductions may be in the order of 1–5 %. If the minimum of this range – ie, a 1% reduction – is considered, the benefit would be equal to $10.2 million per annum. Given annual costs of $18.2 million, this implies that road wear benefits of $8 million per annum would be required for a break even result. This would be equivalent to a reduction in existing rates of approximately 10.7 %[30]. This is, again, substantially lower than the best estimate figure of a 30% reduction proposed above.

[30] Based on a midpoint *ex ante* road wear cost figure of $75 million per annum.

9. IDENTIFICATION AND ASSESSMENT OF FEASIBLE ALTERNATIVES

Regulatory impact statements must identify and analyse all feasible alternatives means of achieving a regulatory objective, in order to demonstrate that the proposed regulatory change constitutes the preferred option in terms of its impact on overall social welfare. In relation to the current Bill, the implementation of chain of responsibility provisions has been judged to be fundamental to achieving its underlying objectives. Thus, only options containing this provision are regarded as feasible. Two feasible options have been identified that would substantially achieve the Bill's main objectives of improving road safety and improving the efficiency and effectiveness of the implementation of road transport law. These are, firstly, the adoption of a variant of the proposed Bill that did not include the proposed new range of innovative sanctions options and, secondly, the adoption of a licensing system for transport operators. These two alternatives are described and analysed in the following sections.

9.1 Adoption of bill variant not including new sanctions options

As noted elsewhere in this RIS, the proposed Bill includes a number of new sanctions options - improvement notices, the commercial benefits penalty, compensation orders, supervisory intervention orders and prohibition orders. These sanctions have not been employed previously in the road transport context, while precedents for their use in other regulatory areas are also relatively few.

An alternative to the proposed Bill would be to proceed with the reforms in the remaining areas (ie, powers of authorised officers, chain of responsibility, risk-based sanctions) while continuing to rely on the existing range of administrative and court-based sanctions.

Expected benefits of the alternative

It is likely that this alternative would achieve many of the benefits of the proposed legislation. The objective of ensuring that a wider range of responsible parties could be successfully prosecuted would be met through the adoption of the proposed chain of responsibility and through the reforms to powers of entry, inspection and search. The need to ensure that penalties provided adequate and proportionate responses to different kinds of breaches of the law – and so improved compliance incentives – could also be met through the adoption of risk based sanctions and the use of the proposed level of fines to replace those currently provided under state legislation. Thus, the effectiveness of this option in improving compliance is likely to be broadly similar to that of the proposed Bill.

In addition, there could be a number of benefits from not adopting the Bill's proposed sanctions regime. First, the sanctions regime proposed is complex, embracing a total of nine different types of sanction. This complexity is likely to mean that the level of awareness and understanding of the different sanctions to which they are subject is relatively low among industry participants, detracting from their deterrent value and offending against the principle that laws should be transparent and widely understood. It may also lead to confusion and inefficiency in the application of sanctions. The

alternative of relying on a simpler sanctions regime may have benefits in ensuring better understanding of the sanctions applicable and streamlining the application of sanctions.

Second, there is a risk of the interaction of the different sanctions in the proposed Bill in ways that could yield an unjust or disproportionate outcome. This risk occurs in relation to the court based sanctions, where all of the six types of sanction can, at least theoretically, be applied to the same offence[31]. Thus, a "commercial benefits" penalty of up to three times the court assessed value of the benefit expected to be derived from the non-compliance can be added to a "compensation order" for an amount equal to the road damage occasioned and a substantial conventional fine added to the two. While it is clearly the responsibility of the courts to ensure that injustices do not result from their application of these sanctions, the proposed Bill contains no guidance on what is considered a proportionate outcome or in what situations the penalties should be applied additively.

It can be noted too that the conventional fine structure has been substantially overhauled as part of the Bill's drafting, with expert advice, to ensure that the fines applied are appropriate to the different classes of offence and the risks they imply. Thus, it is arguable that there is little room for an additional set of penalties to be applied. Given these factors, the risk of injustices must be regarded as real.

Given this possible consequence of the Bill, the alternative of retaining a simpler sanctions regime, consistent with current practice but with the fines structure revamped as proposed in the Bill, would have important potential benefits. As courts would not be required to impose additive penalties there would be a clearer focus on the overall outcome. Moreover, the characterisation of the penalty imposed as a "fine", rather than as "compensation" and/or "a commercial benefits penalty" arguably delivers a clearer message that the behaviour involved is regarded seriously as criminal behaviour. Thus, it may increase the deterrence effect of the penalty.

A third area in which this alternative would be potentially superior to the proposed Bill is that it is certain to entail somewhat lower enforcement costs than the Bill's sanctions regime. The alternative sanctions provided for in the Bill require the court to determine, presumably after hearing expert evidence, the size of the likely commercial benefit from the non-compliant act and the extent of the road damage caused, as well as the extent of the likely contribution to this of the non-compliant act. These judgments are all likely to be complex and difficult to reach and may have substantial resource implications for interested parties. Reliance on a simpler sanctions regime, as proposed in this alternative, would avoid incurring these costs.

Finally, it is arguable that some at least of the proposed sanctions are unnecessary as they are, implicitly, included within the regime of fines. This observation can be applied to both commercial benefits penalties and compensation orders. Both of these sanctions are based on notions of "proportionality" relating to the effect in practice of the non-compliant behaviour. However, the revised fines structure has been constructed by

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[31] Except that it is not permissible to simultaneously apply both a supervisory intervention order and a prohibition order.

experts in order to conform to appropriate principles of proportionality which, in effect, take the same factors into account. One reason for having a substantial range of fines is precisely in order to allow the courts to determine proportionality in relation to specific offences. On this view, there is no benefit in creating separate types of sanction in order to address the same issue, while the risk of "double counting" arises, as noted above.

Expected costs of the alternative

An important cost of adopting this alternative and maintaining the existing range of sanction types is that the opportunity would be lost to employ sanctions as a direct means of improving an offender's willingness or ability to comply with road law. This issue arises particularly with regard to intervention orders. These orders may be of widely varying forms, giving the court's discretion to tailor the order to the specific offences and the specific offender. Orders may require offenders:

> *"…to do things that the court considers will improve the person's compliance with road laws or specified aspects of road laws… "*

In illustrating the nature of this general power, the Bill sets out a range of examples of the kinds of requirements able to be specified. These include:

- appointing or removing staff from certain positions;
- training and supervising staff;
- obtaining expert advice on maintaining compliance;
- implementing managerial or operational practices, systems or procedures;
- conducting certain operations at the direction of the road authority;
- furnishing compliance reports to the road authority; and
- appointing an auditor.

Supervisory intervention orders are intended to be used in respect of "systematic or persistent" offenders. In such cases, the ability to subject the offender to ongoing supervision, as well as to take a direct role in addressing what are likely to be systemic flaws in the offender's operations, can be expected to have a substantial effect on future compliance. This will be so to the extent that non-compliance has been due to lack of appropriate training and/or managerial focus. Moreover, the intrusiveness of this sanction is likely itself to be a spur to improved behaviour in an effort to have the order lifted as soon as possible. Thus, to adopt the alternative would involve forgoing these likely compliance benefits.

A similar argument can be made in relation to the commercial benefits penalty and the compensation order, albeit less forcefully. That is, these sanctions options represent an attempt to focus on the consequences of the non-compliance with the law and to make the offender confront these via the penalties applied. In addition the penalties that may be levied could be substantially in excess of those available under the fines arrangements. This means that the sanctions regime can deal effectively with the illegal profits that can be earned through systematic non-compliant behaviour, preventing fines being considered simply as an "expense". Thus, the availability of these sanctions options provides potentially greater incentives for compliance than the system of court based

fines alone. Thus, the adoption of the alternative would also be at the cost of foregoing these potential benefits of the proposed Bill.

A third cost of adopting the alternative would be in foregoing the option, contained in the Bill, of employing prohibition orders. These orders would have the effect of prohibiting offenders from having a specified role or responsibilities associated with road transport. The orders are to be for a specified duration and may only be used in the case of "systematic or persistent" offenders.

These orders can be considered as a form of "negative licensing", albeit of a temporary sort. Negative licensing is a form of "light handed" regulation under which those who have proved themselves to be unsuitable to operate in an industry can be excluded and is so called because it constitutes an alternative to "positive" licensing – ie, the conventional model in which entry qualifications must be established.

This limited negative licensing model, proposed in the Bill, can be seen as a response to the arguments of a number of parties in favour of a positive licensing regime for road transport. The case for and against positive licensing is considered in the next section. While avoiding the main disadvantages of positive licensing, negative licensing still provides courts (on the application of road authorities) with the power to exclude serious and repeat offenders from the industry and so act to preserve public safety. The adoption of the alternative would, therefore involve foregoing this benefit of the proposed Bill.

A fourth cost of adopting the alternative would result from the loss of different administrative sanction options. The benefits of using improvement notices and formal warnings are that they allow for an immediate response to a breach and they provide authorised officers with a power to order that breaches be remedied without imposing penalties, in circumstances where such penalties are considered appropriate. In this way, these instruments increase the discretion available to authorised officers. This may assist in long-term efforts to improve and maintain compliance levels by enabling more proportionate responses to be made to offences and by encouraging the development of more constructive and cooperative relationships between road authorities and industry participants.

Summary

The assessment of this alternative has identified a number of ways in which the adoption of a simpler sanctions structure than that provided in the proposed Bill could yield important benefits. These include a better understanding of the sanctions structure among those who must comply, the elimination of risks of injustices arising from the additive application of different sanctions and the avoidance of potentially significant court related costs that could be incurred in determining appropriate commercial benefits and compensation based sanctions, in particular.

However, it is considered that these potential benefits are outweighed by the costs of forgoing the option of a more sophisticated sanction structure that can be applied proportionately in a wider range of circumstances. In particular, the commercial benefits and compensation order sanctions provide a potentially more appropriate response to systemic corporate violations of the road law. Intervention orders also have the potential

to yield substantial gains in terms of directly facilitating improved corporate compliance, while the option of prohibition orders, functioning as a form of negative licensing, provides additional protection of public safety that is not available under current sanctions. Thus, adopting the alternative would involve the foregoing of all of these gains, which are judged to be substantial.

Finally, it is believed that many of the possible problems with the Bill's sanctions regime, discussed above, can be eliminated or minimised through means including the careful exercise of judicial discretion and the adoption of information and education initiatives on the new sanctions regimes for industry participants. This would enable the proposed Bill to garner the substantial benefits of the newly proposed sanctions at relatively small cost.

9.2 Adoption of an industry licensing scheme

The adoption of business licensing schemes is a widespread regulatory response in contexts in which there are substantial risks to the public and/or to industry participants resulting from the conduct of the business. It can be noted that road transport is the only major goods delivery mode in Australia that is currently not subject to licensing, with air freight, shipping and rail freight operators all being subject to substantial licensing requirements.

Moreover, Australia is in a minority among OECD countries in not imposing a licensing requirement on road freight operators[32]. In 1998 over eighty per cent of the OECD's thirty member countries imposed some form of licensing requirement on the road transport sector. In most cases, licensing involves registration of the operator in a transport register. In most countries the licensee has to demonstrate compliance with technical, safety and/or financial fitness requirements specified by the regulator, these requirements functioning as a means of regulating the 'quality' of operators.

For example, in the fifteen European Union countries licence applicants must demonstrate they:

- are of good repute;
- have appropriate financial standing;
- are professionally competent or employ persons who are professionally competent;
- have suitable vehicle operating centres and maintenance facilities or arrangements; and
- have environmentally acceptable vehicle operating centres and vehicle maintenance facilities or arrangements.

The issue of operator licensing has also received considerable attention in the Australian context. Licensing was recommended by the 1984 Federal Road Freight Industry Inquiry and Federal legislation to implement this recommendation was enacted, but never

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[32] This discussion draws substantially on *Options for the Regulation of the Road Freight Industry.* Ironfield, D. NRTC Information Paper, September 2001.

implemented[33]. More recently, the report of an inquiry into safety in the industry conducted for the NSW Motor Accidents Authority[34] has also recommended the implementation of a licensing scheme in Australia.

Expected benefits of the alternative

In general, business licensing regimes are held to ensure a high level of compliance with required standards by virtue of the availability of the sanction of removal of the licence to operate. They are particularly favoured where there are substantial risks to public health and/or safety because they allow for *ex ante* examination of the likely suitability of the applicant to operate in the business in question and therefore for the formation of a judgement as to whether the applicant would pose an acceptable risk.

Within the context of the road transport industry, advocates of licensing generally argue that the need for licensing derives from the highly competitive nature of the industry and the consequent pressures this creates for non-compliance with safety regulations. It is argued that low profit rates provide incentives for transport operators to pressure drivers to work unduly long hours, agree to drive overloaded vehicles or undertake other risky behaviours, in order to reduce costs. Licensing is seen as being able to deter such practices because of the major consequences that a loss of licence would entail.

Moreover, the existence of a licensing scheme is sometimes seen in itself as reducing competitive pressures, and hence pressures for non-compliance. This may come about because of the practical effect of "financial stability" requirements, in particular, as well as other qualifications, in reducing entry to the industry.

A licensing scheme can also be seen as a logical extension of one of the key reforms that form part of the currently proposed Bill: ie, the implementation of chain of responsibility requirements to ensure that operators, as well as other parties, are better held to account for their responsibility in respect of breaches of the road laws. In effect, the adoption of licensing, in the context of a suite of sanctions such as those in the current Bill would have the effect of providing one more sanction to supplement the temporary prohibition orders.

Alternatively, it can be argued that the presence of a licensing scheme would constitute an effective substitute for some of the complex array of sanctions contained in the proposed Bill. That is, if the option of suspension or cancellation of a licence were available, there may not be a need for other penalties such as commercial benefits penalties. Thus, licensing could be seen as a means of simplifying the regulatory system.

As noted above, the US, the UK and Finland, all of which countries have an operator licensing system, have fatality risk levels from crashes involving heavy vehicles that are substantially lower than Australia's. This could be seen as suggesting the effectiveness of such licensing systems in improving safety levels. However, as discussed below,

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[33] Quinlan (2001), op cit, p27.
[34] Quinlan (2001), op cit, p28.

research has highlighted substantial doubts as to the practical effectiveness of this mechanism[35].

The benefits of licensing clearly depend on the effectiveness of the scheme in achieving its objectives. However, studies undertaken in the USA and the UK suggest that the licensing and associated safety rating arrangements in place in those countries have not been particularly effective in improving compliance with safety regulations.

Reviews of the USA's arrangements

A 1999 audit of the Office of Motor Carrier Safety program by the Inspector General raised considerable doubt about the effectiveness of the program and its enforcement. Major changes were recommended as a result. Key problems identified were that:

- very few operators (only 28 % of all carriers in 1998) were actually safety rated. Moreover, of those rated, 38 % were rated as unsatisfactory. However, the rating system allowed operators with unsatisfactory ratings to continue to operate for extended periods;
- the policies and procedures in place did not ensure that safety regulations were enforced. The report argued that emphasis of the program had shifted too far towards education and outreach which has little impact on businesses which persistently breach safety rules;
- the sanction of licence loss was rarely used in practice. Over a period from 1995 to 1998 only 17 businesses were closed by regulators, even though 117 businesses were identified as having committed multiple significant breaches of the safety regulations;
- performance measures indicated that very little progress was being made in improving performance. In fact, fatalities involving commercial vehicles increased by 20 per between 1992 and 1997, while vehicle miles travelled had increased by 25 %, reflecting only a very small decline in fatalities per mile travelled;
- the database used to identify high-risk operators was incomplete and inaccurate and data entry was not timely; and
- the priority needed for the safety program was difficult to achieve when its administration was the responsibility of an agency whose primary role was investment in road infrastructure.

Moses and Savage (1992)[36] also expressed doubts about the effectiveness of the USA safety rating and enforcement system. While many of the operators found during audits to have unsatisfactory safety performance subsequently improved their safety outcomes, the overall effect on industry safety was found to be small. This was due to the small number of operators actually audited and the very small percentage of that number (only 5 %) who were rated as unsatisfactory. Clearly, an improved performance by such a

[35] The following section draws substantially from Ironfield (2001), op. cit., especially pp 44–46.
[36] Cited in Ironfield (2001) op cit.

small group would, in itself, have little effect on overall industry performance. Moreover, Moses and Savage found that many areas investigated by safety rating auditors, such as financial responsibility, and many questions relating to maintenance, had little impact on safety performance.

While reforms to the US system are currently underway, it is notable that a system that has been in place for many years has been found to have so little impact in practice. A recent review of the UK system, however, has reached similar conclusions.

Concerns raised about the UK's arrangements

While the UK is generally considered to have relatively strict licensing requirements, a number of observers have argued that these requirements have not had any impact on the issues of over-capacity and low profitability that are seen by licensing advocates as being the mechanisms by which licensing schemes are likely to lead to better performance. For example, a member of the recently formed Commission for Integrated Transport has called for the British Government to provide grants to assist small haulier businesses to exit the industry.

Moreover, a random survey of heavy goods vehicles by a British enforcement agency found relatively low levels of compliance with safety law. The survey found that:

- over 25 % of vehicles surveyed had faults that would warrant prohibition of the vehicles' use if repairs were not carried out; and
- 12 % of trucks checked had faults that were sufficiently serious to justify immediate removal from the road (UKDETR 1999)[37].

In sum, the experience of jurisdictions that have long experience of licensing schemes appears to cast doubt on their efficacy in practice. While it may be argued that poor performance is related to specific implementation and enforcement problems, any such theoretical approach to asserting the benefits of licensing schemes must take account of

Expected costs of the alternative

The fundamental concern with the use of business licensing is that of its anti-competitive potential. In the Australian context, any licensing scheme would necessarily need to be subjected to the public benefit test as per the National Competition Policy Agreements.

The anti-competitive impact of a licensing scheme derives from its tendency to limit entry to a market. The practical extent of this limitation is a function of the specific licensing requirements implemented and, potentially, the degree of discretion granted to licensing authorities and the manner in which that discretion is exercised. A generic problem, widely recognised in the regulatory literature, is that of "regulatory capture", whereby the close relationships between regulators and the regulated that develop over time tend to result in regulators making decisions that are predominantly in the interest of the incumbents of the regulated industry, rather than the public as a whole. The

[37] Ironfield, (2001) op cit.

experience of taxi regulation, in which the relative number of taxis has continually declined over a number of decades across Australia, is a frequently cited example of this dynamic. The observation cited above that US regulators had proved reluctant to use the sanction of removing licensing is consistent both with the notion of regulatory capture and with the experience of most other licensing schemes.

The second major generic objection to business licensing schemes is that the qualifications required are often either of limited relevance to the regulatory objective, or are by nature susceptible only to subjective analysis and so tend, in practice, to lead to arbitrary and ineffective decision-making by regulators, with limited benefits.

The following discussion of the qualifications included in most road transport operator licensing schemes considers the merits of these qualifications in the context of these general concerns.

Fit and proper person provisions

Many schemes, such as the UK's O licence, include a requirement that the licensee be a "fit and proper person". There are several concerns with the use of such provisions in a regulatory context.

- **Lack of an objective standard.** Most regulation fails to specify in objective terms what are the criteria for determining whether a person is "fit and proper". One sound reason for this is concern that such criteria could unreasonably exclude certain individuals – eg, those with a criminal conviction in the distant past. However, the net result of this failure to specify objective standards is broad scope for arbitrariness when regulators are deciding applications. This, in turn, means that this test can be applied in an unduly restrictive way and so tend to give the licensing scheme an unintended degree of anti-competitive impact.

- **Ease of avoidance.** On the other hand, where such tests are used, there is often a substantial, and frequently largely successful, avoidance of the requirements through the use of corporate structures and bogus office-holders. Thus, the test may largely operate to exclude people of relatively marginal concern, while being unable to rule out more obviously "unfit" individuals from involvement.

- **Lack of a clear link with the regulatory objective.** In many cases there is not a clear link between the grounds for determining that someone is not "fit and proper" and the requirements of the occupation in question. This will, again, tend to mean that the requirement can be unduly exclusionary and, hence, anti-competitive in its effect.

For all of these reasons, recent regulatory reforms in Australia have seen the removal of "fit and proper" person tests from a very wide range of regulation, with only a relatively small minority of the provisions that previously existed having been maintained. In general, reviews of such tests conducted under National Competition Policy have concluded that the objectives underlying the test can be more directly and effectively achieved through other means.

Business skills tests

A second widely used requirement is that the licence applicant possesses appropriate business skills. This is often operationalised by a legislated requirement to complete a certain formal business skills training course. Alternatively, applicants may be able to put forward evidence of previous business experience.

Such requirements have the obvious difficulty that they can lead to a regulatory official being in a position of having to assess the business skills of a professional business person. Moreover, they necessarily constitute a very indirect approach to the problem of improving safety performance, being based on the limited and not entirely established correlation between business skills, subsequent financial status of the business and the tendency to adopt or encourage unsafe practices. Thirdly, they are often undermined substantially in practice by the adoption of the practice of "grandfathering", whereby existing industry participants are exempted *en masse* from the requirements.

On the other hand, the capacity of these restrictions to raise anti-competitive barriers to entry to an industry is comparatively small, provided that the skills requirements are not set unduly high.

Financial stability requirements

The third common requirement is that licence applicants must be able to demonstrate that they are financially "solvent" or "stable". The purpose of such requirements is to attempt to ensure that the business has adequate access to capital to pass through its establishment phase and reach a viable status. By so doing, it is considered that the operator is less likely to be tempted to adopt poor practices that compromise safety in the interests of ensuring survival.

The key problem with these requirements is that it is clearly impractical to set the financial "hurdle" at a sufficiently high level to ensure the medium term survival of the firm, as to do so would clearly substantially restrict entry. Thus, the UK's requirement in this respect as at 2000 was that the operator have access to 3,600 pounds, while evidence to a Parliamentary Committee reviewing the regulation of the industry suggested that a figure of 20,000 pounds would be appropriate[38].

Even at this higher figure, the losses of a poorly performing road transport firm could soon eat away at any financial "comfort zone" that was implied by the regulation. Given this, it is highly likely that the net effect of such provisions is more likely to be to restrict entry to those with limited capital resources than to ensure that transport companies were not operating under financial pressure.

The recent recommendations of Quinlan (2001) in this regard also include the suggestion that licence applicants should put forward a business plan and that they have knowledge of OHS issues. The former suggestion again raises the difficulty of being predicated on the need for a businessman's proposed *modus operandi* to be scrutinised and approved by

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[38] Quinlan, op cit, p 268.

a regulatory official, whose claim on superior expertise in the subject area is likely to be slender.

The latter provision, of requiring demonstrated knowledge of OHS issues, might be regarded as being little more than a codification of the general duties of employers under occupational health and safety legislation in most jurisdictions. However, it would appear to have the potential to be used in a highly restrictive manner, given the complexity of such legislation.

Administrative costs

In addition to the above doubts over the likely effectiveness of a licensing scheme and concerns as to the social and economic impacts of its likely anti-competitive effects, the direct costs of administering such a scheme must be considered. It is not possible to adduce quantitative estimates, given the variety of specific forms that a licensing regime could take. However, the following categories of costs can be noted:

- costs of establishing and maintaining a register of licensed persons;
- costs of processing licensing applications and renewals;
- costs of establishing and maintaining administrative procedures to determine whether licences should be withdrawn, or other associated action taken, in individual cases; and
- costs of establishing and maintaining an appropriate appeals mechanism.

In addition to the above concerns, Australia's federal political system necessarily creates another difficulty for the adoption of a licensing scheme, since much of the heavy vehicle industry regularly operates across State and Territory borders. Difficulties would include the need to ensure an acceptable level of regulatory harmonisation (if licensing were implemented at state level) or to create the means through which a national licensing scheme would operate. Practical issues of ensuring adequate data flows between jurisdictions to support the effective implementation of licensing would also be important. Overall administrative costs could be expected to be high, given these factors.

Summary

In theoretical terms, the option of adopting a licensing regime in respect of transport operators can be considered to be appropriate, given the extent of the risks to public and employee safety that are associated with the industry and the theoretical ability of licence withdrawal to deal swiftly and effectively with high risk circumstances.

However, there are grounds for doubting the practical effectiveness of licensing regimes, both in general terms and in relation to the specific experience with their use in some other countries in which they have been employed in the road transport context. While these problems are arguably due to specific questions of implementation and enforcement, a consideration of general regulatory incentives tends to suggest that such problems may be systemic in nature. Moreover, the potential for licensing schemes to lead to substantial economic costs via anti-competitive effects is substantial.

Notwithstanding these considerations, the possibility that a carefully designed and implemented licensing scheme could yield net benefits is not excluded. However, it is considered that such a regulatory response cannot be justified at present. The current Bill would have the effect of substantially improving effective regulatory controls on the road transport industry, through action in a number of areas, as discussed above. It does so while retaining an essentially light handed approach to regulation that contains relatively small risks of "regulatory failure". In this context, it is considered appropriate to adopt this, quite substantial, step toward increased regulatory control over the road transport industry and to carefully evaluate its effects, rather than to move directly toward the more "heavy handed' regulatory approach implied by industry licensing.

Finally, it must be noted that the regulatory reforms contained in the proposed Bill are not generally inconsistent with the adoption of a licensing regime. Thus, the adoption of its measures in no way precludes the subsequent consideration of a licensing proposal should the effectiveness of the currently proposed measures prove less than is currently anticipated.

Given these considerations, the proposed Bill is considered to be superior to the industry licensing alternative at the present time.

10. CONSULTATION

The Road Transport Reform (Compliance and Enforcement) Bill has been shaped by extensive consultations, with initial consultation on the development of the NRTC's compliance and enforcement policies having commenced as early as 1994. Major stakeholders that have been involved in extensive consultations over this period include State and Territory road transport and enforcement agencies, the road transport industry, the Transport Workers' Union and the National Farmers' Federation. As well, the NRTC has established and worked consultatively with specialist compliance advisory groups.

The Bill and its accompanying draft RIS were first released for public comment in June 2002 and have been in the public domain since that time. Following the receipt of consultation comments on the first draft Bill, a revised Bill was prepared and released for public comment in March 2003. The public comment period in respect of this revised Bill closed on 9 May 2003.

A total of 28 submissions were received and have been taken into account in preparing this final RIS. The comments received on the revised Bill acknowledge the significant progress made in developing the Bill and the extent to which the concerns raised in respect of the June 2002 Bill have been addressed in the current version.

None of the comments received in respect of the revised Bill raise new substantive issues. In sum, there is broad support for the Bill among the stakeholder groups. The main areas in which reservations are held are fourfold:

- The road transport industry reiterates continued opposition to the limitation on the new reasonable steps defence offered to drivers and operators.
- Business interests reiterate continued opposition to the extended liability provisions that impose liability on directors and managers for road transport breaches committed by their businesses and within their personal influence and control.
- Shipping liner interests reiterate that the consignee should be held primarily liable for inaccurate container weight declarations.
- The Commonwealth Attorney-General's Department reiterates that the Bill is not framed according to the conventions of Commonwealth laws in some respects.

It is not proposed to make any further changes to the Bill in response to the submissions received during this final round of consultation. The NRTC's responses to the above main points of continuing concern are as follows.

Limitation on the "reasonable steps" defence

Some submissions have reiterated previously expressed views that the "reasonable steps" defence to absolute liability offences should be available for substantial risk, as well as minor risk offences.

NRTC notes that it is necessary for the defendant to establish the defence on the balance of probabilities, then it is incumbent on the prosecution to disprove the defence beyond a

reasonable doubt. Thus, extending this defence would render it extremely difficult to respond to breaches in the substantial risk breach range other than in cases in which it is quite clear that reasonable steps have not been taken by the operator or driver.

The extension of the defence into the substantial risk breach category could thus result in additional deliberate risk-taking, especially if enforcement agencies could not secure penalties for substantial risk breaches for the reasons above. This would be counter to the compliance objectives of improved safety, reduced infrastructure damage and reduced unfair competitive advantage. In general, the provisions regarding absolute liability, chain of responsibility and the "reasonable steps" defence constitute a careful balancing of the competing requirements of enforceability and deterrence, on the one hand, and safeguarding of individual rights and prevention of unfair outcomes, on the other. It should be noted that the absolute liability provisions of the Bill essentially reflect existing practice and that the provisions regarding "reasonable steps" generally extend the defences available, vis-à-vis existing requirements. The NRTC has concluded that the current balance, as contained in the proposed Bill – including the extent of the reasonable steps defence provided – is the most appropriate one, notwithstanding some contrary views expressed. In this context, it can be noted that some other parties, including enforcement bodies, have also argued in general against the use of this defence.

Extension of liability to directors and managers

A small number of submissions have again argued against the extension of liability for offences to company directors and managers via the "chain of responsibility" provisions of the Bill. For example, the Australian Institute of Company Directors commented:

> *"While there is a reasonable steps defence, we strongly oppose the concept of absolute liability for company directors. In essence this means that company directors are guaranteeing the performance of the company. This is unfair and unduly onerous and a concept at odds with the limited liability concept which is fundamental to company law."*.

NRTC takes the view that provisions of this type are common in modern legislation and it is important to ensure that those engaged in running a business are accountable for their business' decisions and practices. (An example is provided by Section 66B(4A) of the Victorian *Environment Protection Act 1970.*) The defences provided in clause 146 are broad defences that protect the honest and diligent business manager from any liability for actions or inactions that are beyond their personal control. Thus, it is concluded that the Bill as currently formulated appropriately balances the need to hold parties that have contributed to the commission of an offence accountable and the need to ensure that parties are not found liable where they have acted appropriately within their powers and capabilities to ensure that an offence is not committed.

Consignee should be held primarily liable for inaccurate container weight declarations

As noted above, shipping liner interests have continued to argue that the consignee of a load should be held primarily liable if, due to an inaccurate container weight declaration, a mass limit offence is committed. For example, Shipping Australia commented:

> *"…our view on the liability for mis-declaration of weights for inward shipments, remains unchanged, namely that the Consignee should be the 'first port of call' for imported full containers if there is a breach…"*

The NRTC comments that the consignee proposals in the Bill hold the consignee liable in a primary sense for any breach of the road mass limits, or any breach of the requirement to provide a road carrier or driver with an accurate container weight declaration in circumstances where the consignee has intentionally, recklessly or negligently induced or encouraged the commission of that breach.

The Bill imposes joint and several liability, which means that all or any of the responsible parties may be liable – and enforcement response will only target the particular party or parties whose actions or inactions have led to the commission of the breach in question. Enforcement will not be taken against any party who has taken the appropriate reasonable steps to avoid the breach. Hence, there is no 'first port of call' as such in the Bill.

Consistency of the Bill with the conventions of Commonwealth law-drafting

The Commonwealth Attorney-General's department has reiterated that the Bill does not in all areas conform to the conventions of Commonwealth law-drafting. However, the comments received also note that

> *"We appreciate that the Commission is developing the Bill as national best practice and that the final product needs to reflect an agreed policy position on the basis of all jurisdictions' views. Accordingly, we appreciate it may not reflect all of the drafting and legal policies of the Commonwealth in its final form."*

The NRTC comments that the Bill is intended to serve as a model of best practice legislation, and includes "essential" and "desirable" elements. This status reflects recognition of the need for each participating jurisdiction to give due weight to the need to conform to its own legal drafting and legal policy requirements.

General

The responses received to the draft RIS and Bill, released in June 2002 lead to a range of quite significant changes being made prior to the release of the revised Bill for further comment in March 2003. The comments received during this final round of consultation indicate a high level of support for the revised Bill, with a relatively small number of substantive issues remaining subject to disagreement. The main substantive issues in this category have been discussed above, with the views of the NRTC in response to the consultation comments received being included.

The comments received in this latest round of consultation did not disclose any new issues of substance in which there was disagreement with the provisions of the Bill, nor any substantial new arguments in favour of the positions taken previously by the stakeholders. Consequently, it is not proposed to make any further changes to the revised Bill.

An extensive summary of the comments received during this most recent round of consultation, together with full NRTC responses, is attached as an Annexe to this RIS.

11. IMPLEMENTATION AND REVIEW

The Council of Australian Governments' *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting bodies* require that RIS's should include a discussion of the means by which proposed regulation will be implemented and what arrangements are to be made for its review.

It should first be noted that the proposed Bill constitutes "model" legislation and that distinctions have been drawn between essential and desirable elements of the Bill, in terms of their incorporation in State and Territory legislation. That is, the implementation of the Bill will not constitute a process of obtaining strict national uniformity in this area, but rather the adoption of a model of close regulatory harmonisation. The corollary of this fact is that the specific implementation requirements for the Bill will vary to some extent from jurisdiction to jurisdiction.

As noted in the Consultation section, above, the process of development of the current Bill has been an extensive one, covering several years. The States and Territories have therefore had considerable opportunities to consider the specific implications of the implementation of the Bill within their own jurisdictions and to make arrangements for the implementation of the Bill. As noted previously in this RIS, all States and Territories have commenced a process of implementation planning in relation to the Bill.

This process is being co-ordinated by Austroads and the NRTC and includes, for example, the provision of training packages for enforcement officers to facilitate uniform application of the laws across Australia.

Three specific implementation projects should be mentioned:

- Austroads is leading the development of the national enforcement guidelines that will support the Bill. These include guidelines for the assessment of the severity of mass, dimension and load restraint breaches; guidelines for the use of enforcement powers along the chain of responsibility; and guidelines for the preparation of industry codes of practice. A number of these guidelines have already been completed, and the remaining sets are intended to be completed in time for implementation with the model provisions.

- South Australia is leading the development of a national communications strategy that will optimise the communication of information on the implications of the Bill to those potentially affected. The target audience extends beyond the on-road parties – drivers and road transport operators – to 'off road' parties such as those involved in consigning, loading and packing goods for road transport.

- Queensland Transport is leading the development of national competency standards for enforcement officers

More generally, agencies are increasingly adopting a range of new technologies and systems to improve enforcement by maximising the productivity of available resources. For the future, electronic monitoring, accreditation systems and auditing offer smarter

alternatives to traditional policy methods, since they allow identification of those who obtain unfair competitive advantages by systematically abusing the laws.

Thus, while the Bill can be expected to require an increase in enforcement related resources, especially in the shorter term, to ensure that new powers and responsibilities contained in the Bill can be exercised appropriately, it is likely that improved compliance will reduce these demands over time as the full effectiveness of the Bill's provisions becomes apparent. In addition, better directed enforcement, plus improved technologies and systems can be expected to enhance the productivity of enforcement efforts.

Review processes

An important aspect of national regulatory reform is ensuring that the reforms are kept up to date and effective.

Maintenance is the term applied in the Commission's Strategic Plan to refer to the amending and updating of existing national reforms as need arises. The NRTC formalised its maintenance role in 1999 when the ATC approved the Australian Road Rules and agreed to a maintenance strategy for the Rules, recognising that without a concerted effort to keep them up to date, national uniformity or consistency would rapidly be lost.

However, in addition to the maintenance of implemented reforms, there is also a need for the periodic and comprehensive review of the reform to ensure its continued relevance and effectiveness. This is the type of exercise that the NRTC has undertaken for the compliance and enforcement aspects of heavy vehicle mass, dimension and load restraint regulation (contained in Part 4 of the Bill), and other current work on comprehensive reviews of the regulatory approaches to fatigue, heavy vehicle speed and the road transport of dangerous goods.

At their meeting in April 2003, Transport Agency Chief Executives considered that nationally implemented reforms should be reviewed by the NRTC on a cycle of ten years after ATC approval. The national review would be a comprehensive evaluation of the reform, distinguishable from the maintenance of the reform, which would occur on an as-needs basis. This is the time scale for the review of many jurisdictions' subordinate legislation. Transport Agency Chief Executives also considered that a minor review of implemented reforms be conducted by the NRTC at the five year mark to gauge whether the reform is meeting its objectives.

Hence, the NRTC proposes to undertake a minor review of the effectiveness of the Bill within five years of ATC approval, and a comprehensive review within ten years. Maintenance of the package, including any necessary amendments to the Bill, will also be undertaken from time to time and on an as needs basis.

12. STATEMENT OF COMPLIANCE WITH NATIONAL COMPETITION POLICY

The National Competition Policy Agreements set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

> *The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:*
>
> *(a) the benefits of the restriction to the community as a whole outweigh the costs; and*
>
> *(b) the objectives of the regulation can only be achieved by restricting competition.*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

> Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).[39]

Therefore, all RIS's must include a section providing evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations. No restrictions on competition have been identified in connection with the proposed Bill.

Conversely, it can be expected that the overall effect of the Bill will, at the margin, be pro-competitive. This is because improved compliance and more effective sanctions (including in particular the commercial benefits penalty) will reduce the extent of unfair competitive advantages enjoyed by those who do not comply with the road laws. This will tend to reduce economic distortions and thus improve overall economic welfare.

Therefore, the Bill is considered to be fully compliant with the National Competition Policy.

At the last meeting of the TACC, agencies agreed in principle to a common date for the introduction of new legislation in all jurisdictions. This agreement should reduce the prospect of inconsistent implementation in the interim.

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[39] *Competition Principles Agreement*, Clause 5. 1995. See: www.ncc.gov.au