

Ada Evans Chambers Conference 2010

Motor Traffic Law:

“He ain’t heavy, he’s my consignee...”

Prosecutions under

Chapter 3 – Mass, Dimension and

Load Restraint Requirements for Vehicles

Road Transport (General) Act 2005

Case law review

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ROAD TRANSPORT (GENERAL) ACT 2005

CHAPTER 3 – MASS, DIMENSION AND LOAD RESTRAINT

REQUIREMENTS FOR VEHICLES

PART 3.1 - PRELIMINARY

Section 21 – Operators

Combinations – meaning of “operations”

The term “operations” in relation to such a vehicle is broad enough to cover a number of activities involving the vehicle in its use including but not limited to it being driven and is not confined to its use at a particular place or on a roadway. It embraces actions or activities involving the towing vehicle including those that take place with it at the depot and those in the course of transportation: *Western Freight Management Pty Limited v Road Transport Authority of New South Wales* [2009] NSWSC 328.

“the person...responsible”

The Plaintiff was involved in a conjoint operation with another party. The plaintiff operated the prime movers and the other party supplied the particular trailer attached to the prime mover and loaded the same. The issue was whether at the relevant times the plaintiff was the operator within the meaning of the Act. The Plaintiff contended that the other party was the operator in respect of the relevant offences. The court found that the plaintiff had authority to instruct and ensure its employees checked dimensions of

different combinations, and, in the event of non-compliance, to take the necessary steps to arrange for a combination that did comply with the legislative requirements. It was not to the point that the other party supplied a particular trailer and loaded the same. The plaintiff was involved in a conjoint operation which involved towing vehicles in combinations, and as such had responsibility for controlling and directing “operations” of them when used in “combinations”: *Western Freight Management Pty Limited v Road Transport Authority of New South Wales* [2009] NSWSC 328.

PART 3.2 – MASS, DIMENSION, LOAD RESTRAINT AND OTHER RESTRICTIONS FOR VEHICLES

Section 27 – Excess Permits

Excess permits

Although no relevant principle was established as the dispute between the parties was resolved with costs being the only outstanding question, the following case discusses a factual scenario involving excess permits and the interplay between the RTA and local councils where the proposed route involves roads controlled by both parties: *Rex J Andrews Pty Ltd v RTA & Anor* [2009] NSWSC 1063.

PART 3.3 – SPECIAL PROVISIONS – MASS, DIMENSION AND LOAD RESTRAINT REQUIREMENTS FOR HEAVY VEHICLES

Division 4 – Liability for breaches of Mass, Dimension or Load Restraint Requirements

Section 58 – Liability of consignee

Liability of Consignee – “conduct...inducing”

Conduct is defined in section 3 of the Act.

The defendant was a consignee of grain delivered to various of its depots. At times loads would exceed mass requirements. In an endeavour to comply with the legislation, it developed a policy, of which the RTA was aware, of not rejecting overloaded vehicles (as the vehicle would merely be returned to the road in its overloaded state) but made provision for recording breaches and giving warnings to those trucks exceeding the limit by more than five percent. The RTA, in prosecuting the defendant, alleged that no unequivocal warning was given to the driver of each overloaded vehicle that any subsequent vehicle in breach would be rejected, although its ultimate position was that the defendant’s policies were irrelevant in determining the defendant’s “conduct”.

Held: A court is entitled to take into account the factual context, including the defendant’s policy, in determining the relevant conduct and inducement under s 58(3)(b).

It is necessary that the character of the conduct be determined in all of the circumstances of the case: *Roads & Traffic Authority of New South Wales v Graincorp Operations Limited* [2009] NSWSC 1204.

“Induce” is not defined in the Act. The meaning of the word has been considered where it appears in other statutes. To assert that one person has induced another to act is to say that, by words or deeds, the first person has caused the second person to act in a particular way. Put another way, the acts or deeds of the first person constitute a reason for the second person to act in a particular way. Inducement may be obvious, such as bribes, threats or offers of reward, or it may be subtle, by manipulation: *Finance Sector Union v Commonwealth Bank of Australia* [2000] FCA 1372. There must be a necessary causal connection. “Inducing” conveys both the means employed and the result: *ACCC v Mayo International Pty Limited* (1998) 85 FCR 327.

In the context of s 58(3), the relevant actions or conduct must possess a character or quality that is capable of inducing or rewarding a breach of a gross mass requirement. There must be proof of a fact or matter that establishes that the *conduct* in question has such a character or quality. Whilst the mere doing of an act may be *capable* of inducing a breach, there may be no *likelihood* of it actually doing so. The fact that overloaded trucks presented themselves at the defendant’s depots, notwithstanding earlier warnings may, but would not necessarily, point to the defendant’s conduct as the, or even a, causal factor. It was for the prosecution to adduce evidence that moved the causal issue beyond speculation as to the *likely* causes of particular breaches: *Roads & Traffic Authority of New South Wales v Graincorp Operations Limited* [2009] NSWSC 1204.

Liability of consignee - negligence

Negligence in s 58(3)(c) is not limited to the prosecution proving reasonable foreseeability of the result of the defendant’s conduct but also requires proof, to the requisite standard,

of breach of the standard of care that would be expected of an objectively reasonable person in the situation in which the person charged was placed at the time. A person who is subject to a particular duty of care may be required to take certain protective or precautionary steps to avert or minimize the risk of certain events occurring. The fact that such measures may not ultimately prove effective does not, of itself, establish negligence: *Roads & Traffic Authority of New South Wales v Graincorp Operations Limited* [2009] NSWSC 1204.

In deciding as part of its policy not to turn overloaded trucks away the defendant, inter alia, took into consideration the problem of potential liability under s 82(1) of the Act (the truck would have been returned to the road in its overloaded state). In exercising care, it was entitled to have regard to that matter and the court was entitled to bring it into consideration: *Roads & Traffic Authority of New South Wales v Graincorp Operations Limited* [2009] NSWSC 1204.

Liability of consignee – “likely”

In the Local Court the magistrate held that “likely” meant a “real and not a remote possibility”. On appeal, the defendant contended the term should have been construed to mean “a high degree of probability but not necessarily in excess of 50%”. Although the judge on appeal appeared not to find favour with the defendant’s contention, no final or concluded view was expressed: *Roads & Traffic Authority of New South Wales v Graincorp Operations Limited* [2009] NSWSC 1204.

Division 5 – Sanctions

Section 60 – Matters to be taken into consideration by courts

Considerations to be taken into account on sentence

A court is obliged in determining the appropriate fine for each offence to have regard to each of the matters in s 60 which are relevant to the defendant's offending.

Greater weight is to be given to considerations of general and specific deterrence when the offence involves a severe risk breach and there is more than one such offence: *The Roads and Traffic Authority of New South Wales v Fletcher International Exports Pty Limited* [2008] NSWSC 936.

PART 3.4 – PROCEEDINGS FOR OFFENCES FOR MASS, LOADING AND DIMENSION REQUIREMENTS

Division 1 – Liability of registered operators and owners

Section 82 – Causing or permitting

Duties that conflict with other provisions of the Act

This section may conflict with other provisions of the Act (see commentary for s 58). If it is impossible to do a thing specified in a statutory provision without contravening another law, the provision may be construed either as authorizing the doing of that thing (so that it is inconsistent with the other law) or as imposing a qualified duty which stops short of

requiring contravention of the other law: *Commercial Radio Coffs Harbour Limited v Fuller* (1986) 161 CLR 47. See also *Roads & Traffic Authority of New South Wales v Graincorp Operations Limited* [2009] NSWSC 1204.

Division 3 – Reasonable steps defence

Section 87 – Reasonable steps defence for mass requirements: drivers, operators and owners

“Reasonable steps defence”

There are three separate and cumulative elements to the reasonable steps defence, each of which the defendant bears the onus of proving:

- (i) that the defendant did not know of the contravention;
- (ii) that the defendant could not reasonably be expected to have known of the contravention;
- (iii) that the defendant had taken all reasonable steps to prevent the contravention.

Where the contravention alleged is of exceeding mass limits (for example, an offence against s 56), before the court can be satisfied of the third matter set out above, the defendant must also prove:

(iv) that the defendant took all reasonable steps to cause the mass of the load carried to be ascertained at the start of the journey during which the contravention occurred.

That fact, in turn, can only be established by the defendant by proof of either one of the following facts:

(v) that the load had been weighed; or

(vi) that the defendant or driver of the vehicle was in possession of sufficient and reliable evidence from which the weight was calculated: see *Roads and Traffic Authority of NSW v Time Road Express Pty Ltd* [2007] NSWSC 93.

Some months later the NSW Supreme Court again had occasion to look at s 87 in a case of similar factual circumstances: see *Roads and Traffic Authority (NSW) v Alto Rural Pty Ltd* (2007) 48 MVR 543; [2007] NSWSC 1123. There is nothing in the judgment to indicate the court was aware of the earlier judgment in *Roads and Traffic Authority of NSW v Time Road Express Pty Ltd* [2007] NSWSC 93. In *Alto Rural* the court states that there are two, rather than three, elements to the test (with elements (i) and (ii) above described as the first element, and (iii) above being the second element). Although this follows the structure of the section itself, it is arguable that the statement of the test in *Time Road Express* as involving three elements is clearer, given that there are two separate elements within subs(1)(a): “did not know” having a subjective gloss, and “could not reasonably be expected to have known” an objective one.

“the start of the journey”

The element that must be proved at (vi) above raises the further question of identifying “the start of the journey”. The “start of the journey during which the contravention occurred” is the location when and where the vehicle is loaded, and from whence it sets out on its journey in its loaded state. It is not the location from where the truck is dispatched (usually the defendant’s own premises). This is an inevitable construction given that the provisions in question are concerned not simply with weight, but also with distribution. The latter could not reasonably be ascertained merely from information as to the weight of the goods to be consigned. It could only be ascertained at the location when and where the vehicle is being loaded: see *Roads and Traffic Authority of NSW v Time Road Express Pty Ltd* [2007] NSWSC 93. See also *RTA v Westgate Logistics Pty Ltd* [2007] NSWSC 537 at [37].

“Sufficient and reliable evidence”

Evidence of the usual practices of the defendant, or an estimate of the weight of the load, could never be sufficient to satisfy a court of the subs(3) matters. The requirement for “sufficient and reliable evidence” from which the weight was calculated appears to require evidence of an actual calculation of the weight, not merely the basis on which the weight was capable of being calculated: see *Roads and Traffic Authority of NSW v Time Road Express Pty Ltd* [2007] NSWSC 93.

Evidence that a person in charge of a weighbridge “waved through” the driver after the vehicle had stopped on the weighbridge plate would not be sufficient to satisfy the requirements of subs (3)(b). The provision requires that the defendant or the driver be in possession of sufficient and reliable evidence. This has to be evidence from which the weight was calculated. Evidence of being waved through by a weighbridge operator did not make out this requirement. In *obiter dicta* the court considered that, in the circumstances of this case, the taking of all reasonable steps to prevent the contravention required the relevant person (in this case the driver) to satisfy himself that the vehicle had been weighed and that there was no overloading. Where the company had a policy of weighing vehicles before they commenced their journeys it might be thought that this could be achieved by implementing procedures where the driver observed the weighing process and obtained evidence as to the weight of the load: *RTA v Westgate Logistics Pty Ltd* [2007] NSWSC 537.

A manifest given to the driver with an entry showing the load of the vehicle would not satisfy the requirements of subs (3)(b). What this provision has in mind is possession of sufficient and reliable evidence from which the weight was calculated (as opposed to the calculation itself): *RTA v Westgate Logistics Pty Ltd* [2007] NSWSC 537.

Corporations

Subs(5) is in the nature of a threshold requirement rather than a dictionary provision for the meaning to be given to subs(1). Thus subs(5) operates in the sense that the defendant will fail to establish the elements in subs(1)(a) unless the court is also satisfied as to the

requirements thereof in subs(5). It contemplates situations where an employee such as the driver lacked relevant knowledge but that it was had by either a director or a manager (an example is given of cases where there is known to be problems with a work system and/or its supervision). Where subs(5) applies, knowledge (actual or constructive) of the driver is not to be disregarded when making a determination on the elements in subs(1)(a). It would be unrealistic to suggest that the court should only look at evidence concerning directors and management: see *Roads and Traffic Authority (NSW) v Alto Rural Pty Ltd* (2007) 48 MVR 543; [2007] NSWSC 1123.

Section 88 – Reasonable steps defence for other mass, dimension and load restraint requirements

Reliance on RTA inspections

The defendant was charged with having non-compliant mudflaps on one of its B-double prime movers. A few months earlier the prime mover was passed by RTA officers as B-double compliant and the defendant paid a higher registration fee for that level of registration. The defendant was entitled to believe that the B-double registration by the RTA included the compliance of the mudflaps, therefore the reasonable steps defence was made out: *RTA v Western Freight Management Pty Ltd* [2007] NSWLC 3.

Reliance on third parties

On the question of liability, a consignor is not simply entitled to rely on the third party making the deliveries to comply with the law. It should be aware of the obligations

imposed on it by the Act. The consignor is obliged to ensure that overloads do not occur and can not turn a blind eye to whether the trucks delivering the goods were overloaded or not. Nor, on the question of penalty, is reliance on a third party a mitigating factor (for the same reasons): see *The Roads and Traffic Authority of New South Wales v Fletcher International Exports Pty Limited* [2008] NSWSC 936.

Division 4 – Other Special Defences

Section 92 – Special defence for all owners or operators

Standard of proof - “the person establishes”

The standard of proof placed on the defendant is on the balance of probabilities: *RTA v Macri* [2009] NSWSC 15. See also s 141 *Evidence Act 1995*.

“Being used at the relevant time”

The words in subs (1) direct the inquiry about the scope of employment or agency to the “use” of the vehicle “at the relevant time”. As this section is a defence to the offence charged, the relevant time is the occasion of the offence. The relevant use is that charged as the use at the relevant time: *RTA v Macri* [2009] NSWSC 15.

“Outside the scope of the employment/agency”

The defendant was the operator of a vehicle which did not comply with the mass requirements under s 56, namely, it was overloaded. The defendant had engaged a driver

for the vehicle who was directed to pick up an excavator of a certain tonnage. In fact, the driver loaded another excavator which was 5 tonnes heavier. The court held that the defendant had not established on the balance of probabilities that the vehicle was being used by the driver at the time of the offence outside the scope of his employment or agency: *RTA v Macri* [2009] NSWSC 15.

Division 5 - Fines

Section 96 – Provisions relating to first offences and second or subsequent offences

“Second or subsequent offence”

The longstanding principle of statutory interpretation is that provisions in penal statutes for an increased penalty for a second or subsequent offence are only to apply if there has been a conviction for the first offence before the commission of the subsequent offence. The question that arises is whether the legislature intended to displace that principle by enacting s 96(2). The court held that that it has plainly indicated its intention to depart from the principle and that the word “occasion” in s 96(2) should not be read as “occasion of prosecution”. Thus in this case, where the defendant was being sentenced for ten offences against s 53 occurring at different times, it was proper for the second to tenth offences to be treated as second or subsequent offences: *The Roads and Traffic Authority of New South Wales v Fletcher International Exports Pty Limited* [2008] NSWSC 936.

Sentencing for multiple offences

A court will err if, when sentencing on multiple offences, it treats second and subsequent offences as though on a schedule (ie Form 1 under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*), when in fact that procedure had not been used. The court is required to consider what is an appropriate penalty for each offence. Having done so, it can consider what the appropriate penalty should be applying the principle of totality: *The Roads and Traffic Authority of New South Wales v Fletcher International Exports Pty Limited* [2008] NSWSC 936.

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APPENDIX – LEGISLATION EXTRACTS

ROAD TRANSPORT (GENERAL) ACT 2005

21 Operators

(cf model provisions, s 11)

- (1) For the purposes of this Chapter and Part 4.2, a person is an "operator" of a vehicle or combination if:
 - (a) in the case of a vehicle (including a vehicle in a combination)-the person is responsible for controlling or directing the operations of the vehicle, or
 - (b) in the case of a combination-the person is responsible for controlling or directing the operations of the towing vehicle in the combination.
- (2) A person is not an operator merely because the person does any or all of the following:
 - (a) owns a vehicle or combination,
 - (b) drives a vehicle or combination,
 - (c) maintains or arranges for the maintenance of a vehicle or combination,
 - (d) arranges for the registration of a vehicle.

Note: Section 80 (Liability of registered operators and owners) contains provisions relating to the liability of registered operators and owners in connection with offences committed by persons who are operators of vehicles or combinations.

58 Liability of consignee

(cf model provisions, s 96)

- (1) A person who is a consignee of goods consigned for road transport is guilty of an offence if:
 - (a) the person engages in conduct, and
 - (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement, and
 - (c) the person intends that result.

Note: Section 69 (Liability of consignee-knowledge of matters relating to container weight declaration) provides that a consignee is taken to have intended the result referred to in subsection (1) if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration contained false or misleading information about the weight of a freight container.

- (2) A person who is a consignee of goods consigned for road transport is guilty of an offence if:
 - (a) the person engages in conduct, and

- (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement, and
 - (c) the person is reckless as to the matter mentioned in paragraph (b).
- (3) A person who is a consignee of goods consigned for road transport is guilty of an offence if:
- (a) the person engages in conduct, and
 - (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement, and
 - (c) the person is negligent as to the matter mentioned in paragraph (b).

Maximum penalty:

- (a) first offence-50 penalty units (in the case of an individual) or 250 penalty units (in the case of a corporation), or
- (b) subsequent offence-100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

60 Matters to be taken into consideration by courts

(cf model provisions, s 97)

- (1) The purpose of this section is to bring to the attention of courts the general implications and consequences of breaches of mass, dimension or load restraint requirements when determining the kinds and levels of sanctions to be imposed.
- (2) In determining the sanctions (including the level of fine) that are to be imposed in respect of breaches of mass, dimension or load restraint requirements, a court is to take into consideration the classification of the breach under this Part and, having regard to that classification, the following matters:
 - (a) minor risk breaches involve either or both of the following:
 - (i) an appreciable risk of accelerated road wear,
 - (ii) an appreciable risk of unfair commercial advantage,
 - (b) substantial risk breaches involve one or more of the following:
 - (i) a substantial risk of accelerated road wear,
 - (ii) an appreciable risk of damage to road infrastructure,
 - (iii) an appreciable risk of increased traffic congestion,
 - (iv) an appreciable risk of diminished public amenity,
 - (v) a substantial risk of unfair commercial advantage,
 - (c) severe risk breaches involve one or more of the following:
 - (i) an appreciable risk of harm to public safety or the environment,
 - (ii) a serious risk of accelerated road wear,
 - (iii) a serious risk of harm to road infrastructure,
 - (iv) a serious risk of increased traffic congestion,
 - (v) a serious risk of diminished public amenity,
 - (vi) a serious risk of unfair commercial advantage.
- (3) Nothing in this section affects any other matters that may or must be taken into consideration by a court.

- (4) Nothing in this section authorises or requires a court to assign the breach to a different category of breach.
- (5) Nothing in this section requires evidence to be adduced in relation to the matters that are to be taken into consideration by a court pursuant to this section.

82 Causing or permitting

(cf model provisions, s 152)

- (1) A person who causes or permits another person to commit an applicable road law offence is taken to have committed that offence and is punishable accordingly.
- (2) This section does not affect the liability of the person who actually committed the offence.
- (3) This section does not apply in relation to directions given by authorised officers or police officers under applicable road laws.

87 Reasonable steps defence for mass requirements: drivers, operators and owners

(cf Roads Act 1993, s 235)

- (1) If a provision of this Act, or a regulation made under this Act, states that a person has the benefit of the "reasonable steps defence" for an offence relating to a mass requirement, it is a defence to a prosecution for an offence alleged to have been committed by a person as the driver, owner or operator of a vehicle or combination if the defendant establishes that the defendant:
 - (a) did not know, and could not reasonably be expected to have known, of the contravention, and
 - (b) had taken all reasonable steps to prevent the contravention.
- (2) If the relevant contravention resulted from the fact that the mass of the vehicle or part of the vehicle (together with the mass of any load on the vehicle or part of the vehicle) exceeded any limit prescribed by the regulations, then the court is not entitled to be satisfied that the defendant took all reasonable steps to prevent the contravention unless it is satisfied that the defendant took all reasonable steps to cause the mass of the load carried on the vehicle to be ascertained at the start of the journey during which the contravention occurred.
- (3) The court is not entitled to be satisfied that the defendant took all reasonable steps to cause the mass of a load to be ascertained unless it is satisfied that:
 - (a) the load had been weighed, or
 - (b) the defendant, or the driver of the vehicle, was in possession of sufficient and reliable evidence from which that weight was calculated.

- (4) Subsections (2) and (3) do not apply if the defendant satisfies the court that at all material times that the defendant did not, either personally or through any agent or employee, have custody or control of the vehicle concerned.
- (5) If the defendant is a corporation, then, in order to satisfy the court that the corporation did not know and could not reasonably be expected to have known of the relevant contravention, the corporation must satisfy the court that:
 - (a) no director of the corporation, and
 - (b) no person having management functions in the corporation in relation to activities in connection with which the contravention occurred, knew of the contravention or could reasonably be expected to have known of it.

88 Reasonable steps defence for other mass, dimension and load restraint requirements

(cf model provisions, s 89)

- (1) Application This section does not apply to an offence relating to a mass requirement if the defendant is the driver, operator or owner of the vehicle concerned.
- (2) Defence If a provision of this Act, or a regulation made under this Act, states that a person has the benefit of the "reasonable steps defence" for an offence, it is a defence to a prosecution for an offence to which this section applies if the defendant establishes that:
 - (a) the defendant did not know, and could not reasonably be expected to have known, of the contravention concerned, and
 - (b) either:
 - (i) the defendant had taken all reasonable steps to prevent the contravention, or
 - (ii) there were no steps that the defendant could reasonably be expected to have taken to prevent the contravention.
- (3) Matters that court may have regard to Without limiting the above, in determining whether things done or omitted to be done by the defendant constitute reasonable steps, a court may have regard to:
 - (a) the circumstances of the alleged offence, including (where relevant) the risk category to which the breach concerned belongs, and
 - (b) without limiting paragraph (a), the measures available and measures taken for any or all of the following:
 - (i) to accurately and safely weigh or measure the vehicle or combination or its load or to safely restrain the load in or on the vehicle or combination,
 - (ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the vehicle or combination or its load might be calculated,

- (iii) to manage, reduce or eliminate a potential breach arising from the location of the vehicle or combination, or from the location of the load in or on the vehicle or combination, or from the location of goods in the load,
- (iv) to manage, reduce or eliminate a potential breach arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load,
- (v) to exercise supervision or control over others involved in activities leading to the breach, and
- (c) the measures available and measures taken for any or all of the following:
 - (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons,
 - (ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws,
 - (iii) to maintain equipment and work systems to enable compliance with relevant laws,
 - (iv) to address and remedy similar compliance problems that may have occurred in the past, and
- (d) whether the defendant had, either personally or through an agent or employee, custody or control of the vehicle or combination, or of its load, or of any of the goods included or to be included in the load, and
- (e) the personal expertise and experience that the defendant had or ought to have had or that an agent or employee of the defendant had or ought to have had.

92 Special defence for all owners or operators

(cf model provisions, s 158)

- (1) It is a defence to an applicable road law offence alleged to have been committed by a person as an owner or operator of a vehicle or combination if the person establishes that the vehicle or combination was being used at the relevant time by:
 - (a) another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the alleged offender, or
 - (b) an employee of the alleged offender who was acting at the relevant time outside the scope of the employment, or
 - (c) an agent (in any capacity) of the alleged offender who was acting at the relevant time outside the scope of the agency.
- (2) If the offence relates to a breach of an applicable road law in connection with alleged deficiencies concerning the vehicle or combination, the defence is not available unless the alleged offender establishes that:

- (a) the vehicle or combination had not, before it ceased to be under the alleged offender's control, been driven on a road in Australia in breach of an Australian applicable road law arising in connection with all or any of those alleged deficiencies, and
- (b) one or more material changes, resulting in the alleged breach, had been made after the vehicle or combination had ceased to be under the alleged offender's control.

96 Provisions relating to first offences and second or subsequent offences

(cf model provisions, s 132)

- (1) Application of section This section has effect for the purpose of determining whether an offence is a first offence or a second or subsequent offence for the purposes of determining the maximum penalty for an offence under Part 3.3.
- (2) Separate occasion of second or subsequent offence A person is found guilty of a second or subsequent offence if and only if the occasion in respect of which the second or subsequent offence occurred was different from the occasion in respect of which the first offence for which the person was found guilty occurred.
- (3) Order in which offences actually committed is immaterial It is immaterial in which order the offences were committed.
- (4) Risk category is immaterial In the case of offences relating to mass, dimension or load restraint requirements, it is immaterial whether the breaches concerned are of the same risk category or of different risk categories.
- (5) Offence to be treated as first offence in cases of uncertainty If the court is satisfied that a person is guilty of an offence but is unable to ascertain (from the information available to the court) whether or not the offence is a first offence for which the person was found guilty, the court may impose a penalty for the offence only as if it were a first offence.
- (6) Offences under corresponding applicable road laws In determining whether a person has been found guilty of an offence previously under a provision of an applicable road law, regard is to be had to finding of guilt for offences committed under corresponding provisions of the applicable road laws of other jurisdictions.
- (7) The regulations may make provision for or with respect to determining what are or are not to be treated as corresponding provisions of the applicable road laws of other jurisdictions.