

# **Heavy Vehicle National Law Bill 2012**

**Report No. 4**

**Transport, Housing and Local Government  
Committee**

**August 2012**

## **Transport, Housing and Local Government Committee**

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### **Acknowledgements**

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the committee acknowledges the assistance provided by the Department of Transport and Main Roads and the National Heavy Vehicle Regulator Project Office.



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## Abbreviations

ATA	Australian Trucking Association
AHVRA	Australian Heavy vehicle Repairers Association
ALRTA	Australian Livestock and Rural Transporters Association
ATC	Australian Transport Council
COAG	Council of Australian Governments
CTP	Compulsory Third Party
GVM	Gross Vehicle Mass
HVNL	Heavy Vehicle National Law
IGA	Intergovernmental Agreement
LSA	<i>The Legislative Standards Act 1992</i>
NFF	National Farmers Federation
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
NRTC	National Road Transport Commission
QAO	Queensland Audit Office
RIS	Regulatory Impact Statement
SCOTI	Standing Committee on Transport and Infrastructure
TMR	Department of Transport and Main Roads



## Chair's foreword

On behalf of the Transport, Housing and Local Government Committee (the committee) of the 54<sup>th</sup> Parliament of Queensland, I am pleased to present the committee's first report relating to a bill.

The *Heavy Vehicle National Law Bill 2012* was introduced to Queensland Legislative Assembly (the Assembly) on 31 July 2012 and referred to the committee for consideration. The committee was set a reporting date of 13 August 2012.

At the outset I would like to acknowledge the work of the Transport and Local Government Committee (TLGC) of the previous Parliament, who had commenced examining an earlier version of the bill. The fact that the TLGC had commenced a public consultation process on the previous bill meant that the committee could focus on gaining an understanding of the technical aspects of the bill as well as the policy outcomes it aims to achieve, within the time allowed. The TLGC received a total of nine submissions on the previous bill (one was later withdrawn) and a further eight submissions were received by this committee (two of these replaced submissions previously made to the TLGC).

I would like to thank the Department of Transport and Main Roads (TMR) and the National Heavy Vehicle Regulator (NHVR) Project Office for the assistance it has given the committee, and in particular for the briefing it provided. This greatly assisted the committee to understand the purpose of the bill and to gain knowledge of the harmonisation process that is currently being undertaken by the federal, state and territory governments in consultation with industry. The development of a single, consolidated body of heavy vehicle national law aims to significantly reduce regulatory burden for the freight industry.

I also wish to thank the members of the committee who have taken their responsibility to consider the policy outcomes to be achieved by the legislation very seriously. This was a particularly difficult task given the size of the bill and the short timeframe available to consider it.

I wish to draw the Assembly's attention to the fact that the committee's recommendations in respect of this bill are unanimous.

On behalf of the committee I thank those individuals and organisations who lodged written submissions on this bill, and others who have informed the committee's deliberations: the committee's secretariat, officials from TMR and from the NHVR Project Office, and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



Mr Howard Hobbs MP  
**Chair**

13 August 2012



## Recommendations

### **Recommendation 1** **7**

The committee unanimously recommends that the *Heavy Vehicle National Law Bill 2012* be passed.

### **Recommendation 2** **32**

The committee recommends that the Minister for Transport and Main Roads amend Clause 638 of the bill to provide that immunity from personal liability is excluded in circumstances where the protected person has acted negligently and/or recklessly. **32**

## Point of Clarification

### **Point of Clarification 1** **32**

The committee seeks clarification from the Minister for Transport and Main Roads on why there is a need to reverse the onus of proof for the heavy vehicle industry as in clauses 96, 162, 222, 225, 263, 266, 268, 465, 504, 511, 514, 517, 554, 560, 568-571, 575-580, 639, 650, 651, 654 and 663 of the bill rather than relying on existing legislative protections that apply to employer/employee relations.

## 1 Introduction

### 1.1 Role of the committee

The Transport, Housing and Local Government Committee (the committee) was established by resolution of the Queensland Legislative Assembly (the assembly) on 18 May 2012. The committee consists of both government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the bill, and
- the application of the fundamental legislative principles to the bill.

The Assembly referred the *Heavy Vehicle National Law Bill 2012* (the bill) to the committee on 31 July 2012 and the committee was set a reporting date of 13 August 2012.

A previous version of the bill, the *Heavy Vehicle National Law Bill 2011*, was introduced to the 53<sup>rd</sup> Parliament on 15 November 2011 and referred to the Transport and Local Government Committee (TLGC), the portfolio committee which had responsibility for transport. The TLGC had not completed its report at the dissolution of Parliament on 19 February 2012, at which time that bill lapsed.

The bill currently before the committee is essentially the same bill as the one considered by the TLGC. The TLGC commenced its examination of the 2011 bill by calling for public submissions, both in a public advertisement and by writing to stakeholders, in December 2011.

Nine submissions had been received by the closing date of 3 February 2012. One submission was later withdrawn. The TLGC also received a briefing from the Department of Transport and Main Roads (TMR), the National Heavy Vehicle Regulator (NHVR) Project Office and the National Transport Commission (NTC) on 30 November 2011.

Given that the bill is essentially the same as the one that was consulted on by the former TLGC, and given the limited timeframe for consideration of the bill, the current committee decided not to hold a public hearing. The committee wrote to previous submitters to give them an opportunity to amend or withdraw their submission and it also wrote to stakeholders to invite new submissions by 7 August 2012. Two organisations, the Australian Trucking Association (ATA) and the National Farmers Federation (NFF), took the opportunity to update their submissions, no submissions were withdrawn and six new submissions were received from stakeholders, giving a total of fourteen submissions (see Appendix A).

The committee was briefed by TMR and the NHVR Project Office on 3 August 2012. This briefing was open to the public and was broadcast on the parliamentary website. Transcripts of the two public briefings held on 30 November 2011 and on 3 August 2012, submissions received and accepted by the committee, and a summary of amendments made since the bill was introduced in 2011 (tabled by TMR at the public hearing) are published on the committee's webpage at [www.parliament.qld.gov.au/THLGC](http://www.parliament.qld.gov.au/THLGC).

## 1.2 Policy objectives of the *Heavy Vehicle National Law Bill 2012*

The principle objectives of the bill are to:

- reconcile variations in state heavy vehicle laws to a single, unified approach applicable across all states and territories; and
- establish the NHVR responsible for the administration of those laws.

The new National Heavy Vehicle Law (national law)<sup>1</sup> will replace eight sets of laws that operate across Australia.<sup>2</sup> The Hon Scott Emerson, Minister for Transport and Main Roads, when introducing the bill to the Assembly stated that:

*Queensland businesses will soon benefit from improved productivity and the ability to operate across state borders without the unnecessary burden of dealing with a range of regulators and regulatory interpretations across jurisdictions.*<sup>3</sup>

## 1.3 Summary of the reform process<sup>4</sup>

The Council of Australian Governments (COAG) has been driving a national program of micro-economic reform in a range of sectors to produce single regulatory environments for the Australian economy. The COAG reforms aim to improve productivity and international competitiveness and reduce compliance burdens for business, making it easier for businesses and workers to operate across state borders.

As part of this reform, COAG agreed to establish the NHVR and National Law to regulate all vehicles over 4.5 tonnes Gross Vehicle Mass (GVM). This reform seeks to improve safety outcomes and preserve flexibility and responsiveness, while securing economic outcomes at a jurisdictional level through existing productivity initiatives.

The objective of the reform is to improve national road freight industry productivity and safety through removing inefficiencies arising from inconsistent jurisdictional requirements, and to streamline regulatory arrangements to reduce costs and the regulatory burden on Australian transport companies.

### 1.3.1 Queensland's role as host jurisdiction

In February 2010, Queensland was named host jurisdiction to lead implementation of the National Law and the NHVR. TMR has advised that Queensland was given this role in recognition of the State's positive working relationship with industry and its strong support for, and adoption of, previous national heavy vehicle model legislation.<sup>5</sup>

The NHVR will be established in Queensland as an independent statutory body, responsible for administering the National Law. The NHVR Project Office has been established in Brisbane and a governing board of senior transport and road agency officials, the National Heavy Vehicle Project Implementation Board, has been created to oversee the implementation of the reform. Membership of this board includes officials from all jurisdictions and industry representatives.<sup>6</sup> The bill also allows for the establishment of a NHVR Board whose proposed members have been nominated and

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<sup>1</sup> The national law comprises this bill, the amendment bill and regulations made under the legislation.

<sup>2</sup> Mr Ollason, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.2.

<sup>3</sup> Queensland Parliament, 2012, *Record of Proceedings*, Brisbane 31 July, p.1292.

<sup>4</sup> Unless specifically referenced, sections 1.3 and 1.4 of this report are based on information provided by TMR in the explanatory notes and drafting instructions for the *Heavy Vehicle National Law Bill 2012*.

<sup>5</sup> Mr Cridland, *Hansard transcript*, 30 Nov 2011, TLGC - Public briefing on the *Heavy Vehicle National Law Bill 2011*, p.2.

<sup>6</sup> *Ibid*, p.2.

agreed to by Standing Committee on Transport and Infrastructure (SCOTI). The Minister for Transport and Main Roads will have the power to formally appoint the Board members after the bill has been passed in the Queensland Parliament.

### *1.3.2 Consistency with legislation of other jurisdictions*

It is proposed that the National Law and supporting regulations be adopted in a consistent manner in every jurisdiction under a template law model. Each jurisdiction will pass legislation so that the National Law, as enacted by Queensland, is applied as law in its own jurisdiction. Western Australia has indicated an intention to mirror the legislation.<sup>7</sup>

The overarching governance framework and performance measures for the national scheme have been outlined in the Intergovernmental Agreement (IGA) on Heavy Vehicle Regulatory reform between the Commonwealth and all states (except Western Australia at this stage) and territories. This agreement was signed on 19 August 2011. The IGA establishes the background, broad policy framework, inter-jurisdictional arrangements, and funding for the NHVR. On 4 November 2011, SCOTI approved the draft the bill.

### *1.3.3 Implementation*

Due to the complexity of some of the issues involved in consolidating the model laws, the development of the National Law is being progressed in two stages. The bill currently being considered by the committee and the regulations to be made under it, provide the legislative framework for the establishment of the NHVR as well as the substantive consolidation of model laws into a single body of law. However, some policy and technical matters remain unresolved either due to their complexity or the inability of the participating jurisdictions to reach agreement. An amendment bill is currently being drafted for the consideration of SCOTI to enable resolution of those outstanding issues.

Once approved, the National Law will be the primary source of regulation for heavy vehicles in Australia. However, it will not regulate such matters as transport of dangerous goods, traffic laws or public/passenger transport regulation. The National Law does not currently include heavy vehicle driver licensing, although work is continuing on exploring a national licensing regime and may be included in the National Law in the future.

## **1.4 The need for reform**

The explanatory notes advise that consolidation and unification of national heavy vehicle laws is necessary to address a long standing problem of contradictory and inconsistent state laws that stifle productivity and hamper the promotion of safety. Although the 'harmonisation' approach adopted over the last two decades has improved the situation, the model laws have been adapted to reflect individual state and territory concerns and environments. Differences in legal and law enforcement systems, drafting preferences, local requirements and operational realities have meant that sometimes laws have been partially implemented, or not implemented at all. In other instances, local productivity variations have gone beyond thresholds given in the model laws. Consequently, despite significant progress towards national consistency, important variations remain.

The lack of a single administering body leaves operators to navigate a maze of government bodies for important decisions around registration, accreditation, vehicle conditions and access. There is no single repository of expertise for industry to refer to. Hence, operators seeking road access often face ambiguity when identifying appropriate decision makers and where to lodge an application. The divergent roles of transport agencies and the road manager may be unclear, and operators may face

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<sup>7</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes, p.30*

long delays in determinations. Rights of review have not been enshrined in law, and administrative mechanisms are inconsistent.

Variations in law create particular problems for interstate operators. Even relatively small distinctions in regulation have compliance and enforcement consequences for cross-border operators. The more diversions within law, the more resources interstate operators must expend on understanding and maintaining compliance.

The current cost of compliance is considerable. NatRoad estimates that the typical driver of heavy trucks receives approximately three days of compliance training per year. With 44,000 interstate drivers, this equates to 132,000 days of compliance training, at a total cost of \$17,780,000.<sup>8</sup>

An operator wishing to cross the state border into Western Australia may be a member of up to three accreditation schemes, all with fees and entry requirements (although efforts have been made to streamline the associated auditing and compliance regimes). Variations in regulations have direct impacts on productivity for operators in cross-border regions.

Border crossings are a 'high-stress' node in the transport and according to industry sources, drivers who cross borders experience considerable 'compliance stress', with attendant health risks. Although this stress is non-quantifiable and has no direct economic impact, it influences drivers' quality of life and on-road focus. It could also conceivably be a risk factor in fatigue management.

The current complexity of the system is a natural barrier to expansion. It creates an incentive for operators to stick to operations within their home jurisdiction because of lack of time and resources to devote to mastering the different regulatory regimes. This provides a competitive advantage to incumbents and to larger operators with the resources to devote to acquiring such mastery.

The widely divergent regimes also create equity issues. Transport operators across states and territories are subject to different regulatory impacts. The explanatory notes provide an example where there are fewer than 0.1 inspections per heavy vehicle each year in Western Australia, compared with in the Northern Territory, where there are 1.4 inspections per heavy vehicle per year. Operators pay different fees for similar services, are subject to different technical requirements, are granted varying levels of access for the same vehicles seeking to operate on similar infrastructure, and incur divergent penalties for the same offences.

The explanatory notes state that issues of duplication, red tape, confusion, stress, equity and competitiveness need to be understood against the backdrop of the freight task to be fully appreciated. By 2030, the total national road freight task is expected to be 1.8 times its 2008 level.<sup>9</sup> Importantly, it is the *interstate* road freight task that will drive this growth.

### **1.5 How the bill achieves the policy objectives<sup>10</sup>**

COAG has decided that a single, unified national law administered by an independent Regulator will best manage this anticipated growth from a productivity and safety perspective. This option was agreed on after the Commonwealth Regulatory Impact Statement (RIS) produced in 2009 assessed four different approaches for a national system of heavy vehicle registration.

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<sup>8</sup> Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement*, May 2009, p.20 (as quoted in the explanatory notes, *Heavy Vehicle National Law Bill 2012*, 2012, p.5.)

<sup>9</sup> Department of Infrastructure and Transport, *Road freight estimates and forecasts in Australia: interstate, capital cities and rest of state*, research report 121, 2010, p. v. (as quoted in the explanatory notes, *Heavy Vehicle National Law Bill 2012*, p.6)

<sup>10</sup> Unless otherwise referenced section 1.5 of this report reflects the information provided in the explanatory notes, *Heavy Vehicle National Law Bill 2012*, pp.4-6.

The agreed option was considered to deliver the most significant benefits when measured against the key objectives for regulatory reform and was the option supported by the Australian Transport Council (ATC). Accordingly, the National Law is geared towards realising the vision of the regulator endorsed by the ATC.

The 'consolidation' approach – rather than a wholesale rewrite and revamp of the laws - was considered the most appropriate for several reasons. Firstly, some of the model laws (such as those around registration) have been in place for many years and are well understood and accepted by community and industry. Secondly, the model laws had all been subject to rigorous scrutiny through processes such as RISs and reviews. Thirdly, a consolidation approach would deliver the timeliest and cost effective outcome.

The consolidation model involved the NTC and the states and territories reviewing existing model laws and undertaking a comprehensive stocktake of all known variations from those model laws. Nine 'stocktake' workshops with representatives from the states and territories were conducted, where variations were tabled and discussed. In all, 368 issues were identified that required resolution for the National Law. These were resolved through several robust governance processes including an independent expert panel, a high level reference group, an industry advisory group and a public consultation process. Ongoing discussions have been held with state and territory governments and other stakeholders to resolve new issues as they have become apparent. The evidence collected through this process is reflected in the bill.

The National Law administered by the NHVR will be based on existing national model legislation developed since 1991 by the NTC, and its predecessor the National Road Transport Commission. These model laws and Regulations are:

- Road Transport Reform (Heavy Vehicle Registration) Act
- Model Heavy Vehicle Charges Act
- Road Transport Reform (Mass and Loading) Regulations
- Road Transport Reform (Oversize and Overmass Vehicles) Regulations
- Road Transport Reform (Restricted Access Vehicles) Regulations
- Road Transport Reform (Higher Mass Limits) Regulations
- Road Transport Reform (Alternative Compliance Schemes) Regulations
- Road Transport Reform (Vehicle Standards) Regulations
- Road Transport Reform (Compliance and Enforcement) Bill
- Road Transport Reform (Intelligent Access Program) Bill
- Road Transport Reform - Heavy Vehicle Driver Fatigue Act
- Model Act on Heavy Vehicle Speeding Compliance

The NTC has also developed guidelines for the concessional mass limits and National Heavy Vehicle Accreditation Scheme reforms. Guidelines for the administration of vehicle registration and the operation of escort and pilot vehicles have also been developed.

Although the NHVR will be responsible for regulating all heavy vehicles, the following elements of heavy vehicle legislation will not be functions of the NHVR:

- driver licensing will remain a function of the states and territories
- pricing and heavy vehicle charging determinations will continue to be the responsibility of the NTC, with the NTC making recommendations to SCOTI
- access decisions will remain the responsibility of the road authority, similar to existing arrangements between local and state government road managers. Although NHVR will issue permits for access to the road network, it will not be able to do so without the written permission of the road authority. Specific provisions in the National Law give effect to this.
- personalised registration plates will remain the function of the states and territories.

### 1.5.1 Consultation process

On 28 February 2011, a draft RIS was released and was available for consultation until 6 May 2011. Sixty four submissions were received from the transport industry, industry peak bodies, allied industries such as the insurance, government, individuals.

In addition to the formal submissions, 18 forums were held across the country to explain the intent of the proposed law and the likely impacts. The forums attracted 780 stakeholders, and included question and answer sessions that provided attendees with direct access to the regulatory bodies that were developing the laws and establishing the regulator. The question and answer sessions have all been considered in the development of the National Law and accompanying RIS. Key stakeholders, such as the ATA, Australian Livestock Transporters Association, NatRoads, Australian Logistics Council (ALC), NFF, Australian Local Government Association and Transport Workers Union of Australia (TWU) have all been directly consulted at least once.

The explanatory notes to the bill provide a summary of the results of consultation:

*The submissions reveal an overwhelming support for the concept of a NHVR. Industry is enthusiastic about a 'one stop shop' and supportive of the new decision making frameworks and the potential to improve access arrangements. Local Governments have welcomed the prospect of improved technical assistance regarding pavements and bridges and all parties strongly support the ability of the regulator to chart and respond to access 'hot spots'. The potential for the regulator to take a decisive leadership role in chain of responsibility investigations is warmly embraced by virtually all stakeholders.*<sup>11</sup>

The submissions received by this committee have also been overwhelmingly supportive of the concept of a unified national approach to heavy vehicle legislation and the establishment of the NHVR. However, a number of specific issues have been raised with the committee and these are discussed in Section 2 of this report.

### 1.5.2 Estimated cost

An independent cost benefit analysis was commissioned to ascertain the net benefits possible through adoption of the proposed national heavy vehicle law. Two separate methodologies were used. The first (based on previous RISs and the work of the Productivity Commission) estimated total net present value gains of around \$12.4 billion over twenty years. The second methodology (based on new research and direct consultation) conservatively estimated gains in the order of \$9 billion in net present value over twenty years. These benefits will be predominately derived through red tape reduction and reduced regulatory burden to industry through the consistent and coordinated administration of a single, nationally applied heavy vehicle law.

As provided for in the COAG IGA, the costs of establishing the NHVR will be funded by the Commonwealth Government. These costs will largely comprise the establishment of a basic information technology platform from which the regulator will operate. To the extent possible, existing jurisdictional systems capability and functionality will be utilised to minimise systems development and build costs. The Commonwealth provided \$15.556 million for the development of the information technology systems for the regulator.<sup>12</sup>

There will be costs incurred by individual jurisdictions in implementing transitional arrangements to apply the new national law within their jurisdiction and each jurisdiction will be responsible for funding their own transitional costs. However, costs incurred by individual jurisdictions in moving regulatory responsibility for heavy vehicles to the NHVR will be cost recovered from industry through

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<sup>11</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes, p.30.*

<sup>12</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.12.

the Heavy Vehicle Charges Determination. These costs will be largely comprised of system changes to facilitate effective information exchange and updated workflow processes for the delivery of national services under the national legislation.

On an ongoing basis, the NHVR will be self-funded through cost recovery from industry through the Heavy Vehicle Charges Determination and through the application of fees for the direct services that it provides. The draft bill establishes that the fees may be set by regulation or by the regulator. A cost recovery methodology will be used in the calculation of both charges and fees.

The NHVR Project Office has advised the committee that it is intended that the NHVR will administer the new regime within the pool of funding that is provided by the current heavy vehicle charges. The committee has also noted that the NHVR will not be responsible for making the annual determinations as pricing and heavy vehicle charging determinations will continue to be the responsibility of the NTC, with the NTC making recommendations to SCOTI.<sup>13</sup>

**Recommendation 1**

The committee unanimously recommends that the *Heavy Vehicle National Law Bill 2012* be passed.

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<sup>13</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, pp.12-13.



## 2 Examination of the Heavy Vehicle National Law Bill 2012

### 2.1 Introduction

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering the policy to be given effect by the bill.

The committee appreciates that this bill is the result of several years of discussion and negotiation between the Commonwealth, state and territory governments and that extensive consultation has been undertaken with industry. The bill has been endorsed by SCOTI.

Submissions received by the committee reflect the consultative approach that has been undertaken so far, in that they are all supportive of the objectives of the bill to develop a single, unified approach the heavy vehicle legislation across all states and territories; and to establish a national regulator responsible for the administration of those laws.

### 2.2 Multi-staged bill process

The committee is cognisant of the multi-staged approach being taken to the legislative reform process. TMR has advised the committee that there was over 1,000<sup>14</sup> technical and policy issues raised during the consultation process on the bill and that, while some of these have been addressed in this bill, there are some that were not able to be incorporated into the bill within the current timeframes. TMR advised the committee that:

*This law was meant to basically bring those eight sets of law together. It was not really about debating policy issues that might have been around, some of them for many, many years. It was saying let's get a national law in place and then as we move forward the policy debates will open up again and no doubt in time that national law will change, like all laws do.*<sup>15</sup>

A Heavy Vehicle National Law (HVNL) amendment bill which will address some of the outstanding policy and technical issues is currently being finalised for consideration by SCOTI. However, even after consideration of the amendment bill, there will remain a number of unresolved issues which have been identified in a Forward Work Program The Forward Work Program has been widely circulated to industry and was presented to SCOTI in May 2012. This program will provide the basis for dealing with each issue through discussions with the various parties. TMR has provided the committee with a copy of the Forward Work Program.

A submission received from Transport for NSW provides an example of the general acceptance of the need for a multi-staged process to ensure effective implementation of the reform process. The submission details how the NSW Government is committed to the development of the NHVR as it will improve safety for the community while reducing costs and regulatory burden for the Australian transport industry. The submission goes on to state:

*The passage of HVNL Bill 1 is a crucial step in the development of a functional National Heavy Vehicle Regulator by 1 January 2013. While it must be acknowledged that the first HVNL Bill in its current state does not provide the robust regulatory framework required of a National regulator, it does allow the establishment of the National Heavy Vehicle Regulator Office ..in line with the direction of the Council of Australian Governments.*

*The HVNL Amendment Bill, expected to be approved by SCOTI in [early] 2012, will finalise the outstanding issues relating to matters such as a more consistent application of penalty*

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<sup>14</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p. 3

<sup>15</sup> Mr Ollason, *Ibid*, p.2.

*regimes prior to the National Regulator becoming operational in 2013. NSW transport agencies will continue to work with other jurisdictions, industry and the National Heavy Vehicle Regulator Project Office in the development of the HVNL Amendment Bill.*<sup>16</sup>

### Committee comment

The committee is generally satisfied that the bill should be passed in its present form and that further policy issues should be dealt with in the HVNL amendment bill (to be considered by the assembly later in 2012), and through the Forward Work Program which has been endorsed by SCOTI. However, there are a number of specific issues raised by committee members and by stakeholders that the committee wishes to draw to the attention of the Assembly. These issues are discussed below.

### 2.3 Timeframe for proclamation of the bill

The committee received a submission from the ALRTA stating its strong desire to see the NHVR commence delivery of at least some initial nationwide services to industry from 1 January 2013 and requesting that the committee highlight this objective in its report. They note that to achieve this goal, the provisions of Chapter 12 of the bill should commence as soon as possible and certainly not later than October 2012.<sup>17</sup>

However, the ATA and ALTRA propose that provisions of the current bill, other than Chapter 12, should not commence prior to the Parliament's consideration of the amendment bill.<sup>18 19</sup>

At the 3 August 2012 public briefing, TMR advised the committee that;

*... it is proposed to proclaim particularly chapter 12 of the bill, because that is the one that gives the heads of power to create the entity of the regulator and to appoint the board and the corporate structures ... Once that happens, our minister, Minister Emerson, will then be able to formally appoint the board members for the regulator. They have been nominated and agreed by SCOTI, so the head of power from this bill allows the minister to do that.*<sup>20</sup>

The committee has sought further clarification from TMR and has been advised that the bill will be proclaimed in stages that, dependant on the bill's passage through the Parliament, will allow for the NHVR Board to be established in mid October and the regulator to take on limited functions when it commences on 1 Jan 2013. Specifically, TMR has advised the following:

*It is expected that the provisions listed below will be proclaimed during October 2012 to allow the regulator to be created in late October to early November 2012. These provisions have been chosen for early proclamation as they are required to establish the regulator Board and Corporate Structures. Please note the below list may be amended on the advice of [Office of Queensland Parliamentary Counsel] OQPC during the preparation of the proclamation notice and should be taken as indicative only.*

- *Application provisions (clauses 1 to 19)*
- *Part 1.1 Introductory matters (all)*
- *Part 1.2 Interpretation (any definitions referred to in a substantive provisions referred to this in this list)*
- *Part 1.3 Application and operation of Law (all)*

<sup>16</sup> Transport for NSW, *Submission no.1*, p.1.

<sup>17</sup> ALRTA, *Submission no.11*, p.1.

<sup>18</sup> Ibid, p.1

<sup>19</sup> Australian Trucking Association, *Submission no.16*, p.3.

<sup>20</sup> Mr Ollason, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.3

- *Chapter 12 - Administration (all)*
- *Chapter 13 - Part 13.4 Protected Information (all)*
- *Chapter 14 Savings and transitional provisions (all)*
- *Schedule 1 Miscellaneous provisions relating to interpretation (all)*

*The remainder of the legislation will be replaced by the HVNL Amendment Bill which will commence on a common date, approximately July 2013.*<sup>21</sup>

The initial focus of the NHVR will be the national heavy vehicle accreditation scheme, performance based standards, harmonisation of vehicle inspection standards and key local productivity initiatives.<sup>22</sup> On 18 May 2012, SCOTI agreed the planned operations of the NHVR from 1 January 2013. This schedule is provided at Attachment B.

#### **Committee comment**

The committee supports the proposed legislative timeframes which provide for the establishment and operation of the regulator (with limited functions) by 1 Jan 2013, with full national operations anticipated to commence across all states and territories in mid-2013.<sup>23</sup>

#### **2.4 Resourcing the NHVR**

The NFF and AgForce have raised the issue of funding for the NHVR in their submissions to the committee. AgForce in particular submits that it would be unacceptable if industry is asked to fund the NHVR on top of already paying registration and other road charges.<sup>24</sup>

The explanatory notes advise that on an ongoing basis, the NHVR will be self-funded through cost recovery from industry through the Heavy Vehicle Charges Determination and through the application of fees for the direct services that it provides. A cost recovery methodology will be used in the calculation of both charges and fees.<sup>25</sup>

The NHVR Project Office advised the committee at the public briefing on 3 August 2012 that:

*The industry frequently asks me whether heavy vehicle charges will increase as a result of the national heavy vehicle regulator coming into operation. The response to that has been—and I can indicate that again today—is that we are endeavouring to create the national heavy vehicle regulator within the pool of funding that is currently in existence. That underpins the whole concept of having a national reform, because we are going to replace some things that are done eight times individually in every state and territory into the one national body. .... It is the National Transport Commission whose responsibility it is to do the annual determinations and the new determinations around the heavy vehicle charges themselves. So I do not have any direct control in that particular process and ultimately those decisions are made by ministers.*<sup>26</sup>

AgForce has also sought assurances from the NHVR that there will be no detrimental impact on funding for road maintenance and upgrades with the establishment of the NHVR.<sup>27</sup>

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<sup>21</sup> Email from TMR to the THLGC on 9 August 2011.

<sup>22</sup> NHVR Project Office. (2012) – *Questions and answers for Industry*. Accessed on 8 August 2012 from [http://nhvr.gov.au/wp-content/uploads/20120627\\_Industry-QandA\\_FINAL\\_v0.41.pdf](http://nhvr.gov.au/wp-content/uploads/20120627_Industry-QandA_FINAL_v0.41.pdf) p.4.

<sup>23</sup> NHVR Project Office. (2012) – *Laws* Accessed on 6 August 2012 from <http://nhvr.gov.au/laws/>.

<sup>24</sup> AgForce, *Submission no.17*, p.2.

<sup>25</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p.9.

<sup>26</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.12.

<sup>27</sup> AgForce, *Submission no.17*, p.2.

### Committee comment

The committee notes that it is the intention of the NHVR to administer the new regime within the current pool of funding but that the regulator does not have any direct control over the annual heavy vehicle determination charges, which are agreed to by SCOTI on the recommendation of the NTC.

The committee is strongly of the view that funding for road maintenance and upgrades in Queensland should not be reduced as a result of the cost of establishing and maintaining the office of the National Heavy Vehicle Regulator.

### 2.5 NHVR Audit requirements

The Queensland Audit Office (QAO) has brought to the attention of the committee concerns it has with sections 632 and 633 of the bill, which relate to the financial management and audit of the NHVR. While the bill requires the regulator to prepare accurate financial statements and facilitate the audit of these statements, it is silent in relation to who is to conduct these audits other than:

- the auditor is to be a 'qualified person' (s.632(g))
- the auditor is to be decided by the responsible Ministers (s.633(2)9a)9i)
- the national regulations may provide for the auditing of the financial statements.

Under the present bill, ministerial discretion is provided for the appointment of the auditor, which could be either a public sector or private sector auditor. The QAO advises that TMR has advised them QAO that as Queensland is the host jurisdiction, the responsible minister could request that the Queensland Auditor-General conduct the audit. However, the Auditor-General advises that there is no current basis for him to agree to this request and he is concerned that the lack of clear, well defined audit requirements may weaken the overall accountability and transparency of the regulator. The QAO has attached examples of audit requirements in other national laws.<sup>28</sup>

The committee sought clarification from TMR and was provided with the following advice:

*Once the Queensland Auditor-General Act is disapplied it will have no effect on the regulator. However, the national regulations will ensure a public sector auditor (that has been designated by the responsible Ministers as auditor for the regulator for a particular year) may undertake the audit as if the regulator was a statutory body within that jurisdiction.*

*This would include giving the auditor the necessary powers and protections to support the audit that would ordinarily be available to the auditor. However, no audit office will have sole mandate/responsibility for having to audit the regulator, and importantly, reporting will not be to the Queensland Ministers and Parliament. The audit report will be provided to the regulator to be included in the annual report which in turn will be tabled in all participating jurisdictions Parliaments.*

*The regulator itself will not be involved in the auditor selection process. Nor will it have an input as to whether a public or private sector auditor will be used. The auditor will be selected by the responsible Ministers - this is a group of Ministers from all jurisdictions (including the Commonwealth) who effectively have oversight of the regulator. It is not proposed that the responsible Ministers will "direct" an audit office to undertake an audit. The decision of the responsible Ministers about who is the auditor is intended to be based on a negotiated outcome.<sup>29</sup>*

<sup>28</sup> QAO, Submission no.15 p.2.

<sup>29</sup> TMR email to the THLGC dated 9 August 2012.

### Committee comment

The committee is satisfied that the necessary powers and protections will be put in place to ensure the regulator is audited in an accountable and transparent manner.

### 2.6 Chief Executive Officer liability and chain of responsibility (also see section 3.1.3 of this report)

In their submission the ATA has raised issues about Chief Executive Officer liability. They have suggested a set of six amendments to the chain of responsibility provisions which are to be included in the upcoming HVNL amendment bill. The ATA submits that:

*These amendments are designed to impose positive duties on businesses and individuals to prevent mass, dimension and load requirement breaches. The amendments would also ensure that company directors, officers, the members of business partnerships and the managers of unincorporated businesses are innocent until proven guilty. The presumption of innocence is a golden thread that runs through our legal system. The ATA believes that trucking business owners and managers should have the same legal rights as other Australians.<sup>30</sup>*

There was discussion around the issues raised by the ATA at the public briefing on 3 August 2012. The following advice was received from the NHVR Project Office:

*We have had extensive consultation with the ATA on all of the issues they have raised. ...They have issues around the chain of responsibility, some of which I believe we have dealt with. They have issues around executive officer liability, which I am sure you have heard about. We have gone some way towards working with the ATA and reflecting changes to the way that executive officer liability will be dealt with in the amendment bill compared to the first bill. I think it is fair to say that the ATA would say we have not gone far enough, in their opinion, on executive officer liability in either the first bill or the second bill. It is, however, a priority issue on the forward work program that ministers have agreed to, and I am quite certain that there will be further work being done on that as a matter of some urgency in 2013.*

*The ATA are also looking for positive duties to be placed on all participants in the supply chain, compared to the current position. We agree with that and think that is something that has to be looked at. It is a forward work program item because it has implications that are wider than just the particular mass, dimension and loading types of offences and breaches that would be most thought about in that environment, and we do particularly want to make sure that in the forward work program we strengthen chain-of-responsibility obligations on all parties in the supply chain so that we consider it as a whole rather than perhaps trying to make individual interventions in the way the bill is drafted currently without having the benefit of the analysis and the time needed to go and look at the wider impact of that.*

*.... We have reduced the number of offences to which executive officer liability applies. There is no longer a blanket liability, which is in bill 1. There are now a reduced number of offences in bill 2. There is still a reverse onus of proof in bill 2. That is something that they {ATA} are very aware of and want further work done on. We are working with them, both now and in the forward work program to come, to address their issues and their concerns.<sup>31</sup>*

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<sup>30</sup> ATA, Submission no.16, p.3.

<sup>31</sup> Mr Hancock, Hansard transcript, 3 August 2012, THLGC - Public briefing on the Heavy Vehicle National Law Bill 2012, p.7

**Committee comment**

The committee is satisfied that it is the intention of the regulator to resolve issues relating to Chief Executive Officer liability and chain of responsibility through ongoing consultation with industry and that these issues will be included in the HVNL amendment bill and the Forward Work Program.

**2.7 Input of local decision makers to NHVR permit decisions**

Chapter 4 of the bill empowers the regulator to authorise heavy vehicle use by giving a permit. The committee raised the issue of whether the regulator would have sufficient access to local knowledge to inform the issuing of such a permit. The NHVR Project Office provided the following explanation.

*The national regulator .... is the body that in future will receive all permit applications and issue all permits nationally. It will also issue all gazettals nationally. What you are referring to in fact is the way that operationally the regulator will interface with the local decision makers who own and maintain the road network, whenever a permit application is sought. We are ... in the process right now of developing the sorts of Information and Communication Technology (ICT) infrastructure, other systems and working protocols as to how all that arrangement will unfold in the operational sense once the scheme is fully national. The key thing... is that those with local knowledge still get to make the decisions about what vehicles travel on what part of their road network..... some of what we will be dealing with, in an operational sense will also be governed by ministerial guidelines...a guiding set of principles that we will develop in conjunction with road managers, local councils and state road agencies to help them make the sorts of decisions they need to make. It will give further definition to what public safety and amenity on local roads means etcetera. Those particular types of guidelines or instruments will be needing unanimous approval by responsible ministers, SCOTI, and we intend to develop a number of those between now and 1 January and then certainly into the early part of 2013 and complete our full set of those to give support to local decision makers.<sup>32</sup>*

**Committee comment**

The committee is satisfied that it is the intention of the regulator to ensure local decision makers (road managers, local councils and state agencies) will have input into the heavy vehicle permit system through Information and Communication Technology (ICT) infrastructure, working protocols, and ministerial guidelines which will be developed in conjunction with them.

**2.8 Decision making process for heavy-wide load permits**

Historically, there has been an issue with the provision of permits for heavy-wide loads. In particular, some states have not had the capability to provide a permit in a timely, efficient manner.<sup>33</sup> The committee sought advice on whether the new regulator would play a role in improving the delivery of these permits.

The NHVR Project Office provided the following response:

*The heavy-wide loads and the way that those sorts of decisions are made nationally does differ from state to state, and the capacity to be able to make those decisions is different certainly when you get to a local government level. The national regulator clearly has a national coordination role to play, and part of that national coordination role will certainly be to look at where decisions are able to be made in parts of Australia in an effective, efficient and timely manner compared to other parts of Australia where perhaps that is not*

<sup>32</sup> Ibid, p.5

<sup>33</sup> Ibid, p.5.

*quite the case currently for a whole host of reasons, and the national regulator will bring into those sorts of decision making processes a level of support that does not currently exist. It can also take.... the sorts of decision making processes or systems that apply in one part of Australia and have them apply in other parts of Australia, as again a national coordination approach.*

*The regulator will be the one where all of the permits will be applied to and it will be the one that will be issuing all of the permits, and we will have what is being termed a case management approach to that. So where we have got permit applications that are outside the norm, that involve wider, heavier vehicles on a particular part of the road network, the intention is that the national regulator would have skilled resources within its own organisation—in some cases based here in Brisbane—who would case manage those types of applications with everybody concerned. So it could be police, a utility company, the local council and the state road agency all needing to make a part of the decision as to whether that type of vehicle or that load can get access to the road network. I think that coordination and that case management will make quite a difference in my opinion to how those decisions get made nationally.<sup>34</sup>*

#### **Committee comment**

The committee recognises the enormous task involved in co-ordinating heavy-wide load permits across the nation and encourages the regulator to work towards ensuring that these permits are provided in a timely and efficient manner.

#### **2.9 Driver fatigue**

The committee raised a concern about lack of flexibility with the current driver fatigue provisions, especially in relation to the current requirement to stop for a 24 hour break period even if the driver is within close proximity of home or a town with rest facilities.

The NHVR Project Office provided the committee with advice that the new advanced fatigue management approach will introduce some flexibility into fatigue management relative to driving hours and rest required.<sup>35</sup>

*The other thing .... is that the law sets up the broad policy objectives. The regulations contain more of the operational aspects of how fatigue will work and mass, dimension and loading, and we are still working on the regulations and they will have to go to ministers and they will be the subject of a lot of discussion with all of the states and territories and industry as well. .... There are also business rules inside the National Heavy Vehicle Accreditation Scheme that we are looking at as well to complement the overall new approach to advanced fatigue management, which, as I have already indicated, at the end of the day and at the end of the process will need to be approved by ministers before it can come into operation.<sup>36</sup>*

The National Road Freighters Association (NRFA) also made a submission about driver fatigue requesting that Queensland adopt the same system as Western Australia – 14 day cycles requiring drivers to undertake two periods of consecutive 24 hour rest breaks in each cycle.<sup>37</sup> The committee sought clarification from TMR on this issue and was provided with the following advice.

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<sup>34</sup> Ibid, p.5

<sup>35</sup> Ibid, p.11.

<sup>36</sup> Ibid, p.10.

<sup>37</sup> NRFA, *Submission no.13*, pp.1-2.

*The Heavy Vehicle National Law Bill has been developed largely through the consolidation of ministerially approved model laws developed by the National Transport Commission (NTC) over the past decade. The National Fatigue Model Laws were approved in August 2008 and have been implemented by Queensland, New South Wales, Victoria and South Australia through existing state based laws. All other states and territories, with the exception of Western Australia, will adopt the national fatigue laws when the HVNL is introduced in their jurisdiction.*

*Unlike other jurisdictions who regulate heavy vehicle driver fatigue through transport laws, Western Australia legislates heavy vehicle driver fatigue under Codes of Practice established under Occupational Health and Safety laws. Western Australia has indicated that will not be adopting the HVNL in so far as it applies to fatigue management of heavy vehicles and will maintain its existing approach.*

*National fatigue laws have been the subject of extensive fatigue expert advice and industry consultation and are considered to provide an appropriate balance between providing flexibility and productivity opportunities for industry and managing the road safety risks of driver fatigue.*

*Queensland supports the adoption of national fatigue model laws through the introduction of the HVNL.<sup>38</sup>*

#### **Committee comment**

The committee is satisfied that it is the intention of the regulator to resolve operational issues relating to driver fatigue through ongoing discussions between states, territories and industry.

#### **2.10 Log books and kilometre parameters**

The committee asked TMR what changes are planned in relation to log book requirements. The HVNR Project Office provided the following advice:

*There is a change in this instance for Queensland. Currently states and territories have differing kilometre parameters under which a work book is either required or not required. In Queensland it is 200 kilometres from base. You do not need a work book for that travel. That is coming back to 100 kilometres nationally, so there may be operators here in Queensland who currently do not need to fill out a logbook because they are travelling within 200 kilometres of base. When that moves nationally to 100 kilometres from base, they will need to start completing a work diary or a logbook. That has been nationally agreed as part of the overall reform.*

*In terms of the national regulator, I do believe that there are some instances where the regulator will want to consider its exemption power on the requirement to complete logbooks very carefully. That is not something that you would do without some considerable scrutiny of the particular types of circumstance, and there will be ministerial guidelines to guide the decisions of the regulator in that instance. So that is something that I quite openly acknowledge is a change and it is a change for Queensland.*

*The other component to logbooks is there is a lot of work going on in terms of electronic work diaries and trying to make that process more flexible and efficient for operators, and that work has got some years to mature. I have been to Carpentaria shire and talked to Carpentaria shire about their requirements on logbooks, for example particularly when they are undertaking remote maintenance operations where they are well and truly more than 100 kilometres from base but they establish a work camp and stay there and then work*

<sup>38</sup> Email from TMR to the THLGC dated 9 August 2012



*within a radius of that work camp. I do think there is some capacity there to consider those kinds of working arrangements and whether in those particular types of arrangements, for example, there is a requirement for a logbook to be completed.*<sup>39</sup>

#### **Committee comment**

The committee is satisfied that it is the intention of the regulator to provide some flexibility with regards to log book requirements.

#### **2.11 Pilot and escort arrangements**

The committee raised the issue of road pilotage regulations, which currently change at each state border, and how these will be affected by the new regime.

The NHVR Project Office provided the following advice:

*That may be the instance and may be the occurrence on 1 January 2013 when the national scheme commences. We do, however, recognise that as a significant issue for those operators who are moving those unusual types of vehicles and equipment across state borders and we do want to endeavour to harmonise those pilot and escort arrangements because I have heard and I have been to meetings where I have had operators say, 'Well, I have waited a day at the South Australian border because the local police, who now are required under South Australian regulation to come and escort my vehicle, do not turn up for a day.' So I am very aware of that. That work to harmonise those kinds of arrangements will be undertaken as soon as the regulator can, in conjunction with the states and territories.*<sup>40</sup>

TMR provided further advice on this issue in their response to a question taken on notice at the public briefing on 3 August 2012:

*With the introduction of national heavy vehicle regulation in Australia, state and territory governments agreed to the development of a national accreditation scheme and a national operational guideline for pilot and escort vehicle drivers through a consultative process managed by Austroads [Freight Taskforce]. It is intended that, ultimately, both the accreditation scheme and the operational guideline will be administered by National Heavy Vehicle Regulator (NHVR).*

*Transitional arrangements within HVNL Amendment Bill provide for the jurisdictional status quo with respect to accreditation be retained, until such time as the NHVR is able to commence administration of the scheme.*

*At present, accreditation requirements in each jurisdiction vary across a spectrum, states and territories have agreed to a three-tiered approach to the national accreditation scheme, whereby Level 1 pilots, Level 2 pilots and Escorts will be mutually recognised Australia-wide. Under the proposal, jurisdictions will continue to specify how many Level 1 pilots, Level 2 pilots and Escorts are required to accompany any given load in their jurisdiction.*

*Under the proposed scheme, jurisdictions will retain the right to require their own local police officers or transport inspectors to conduct escorts in lieu of accredited operators. If, at any time in the future, a jurisdiction wishes to introduce accredited operators to escort operations, a pool of nationally recognised accredited escorts will exist, as will an avenue for pilots to further their training and progress to escort accreditation, thereby joining the national pool.*

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<sup>39</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.10.

<sup>40</sup> *Ibid*, p.14.

*Currently in Queensland, Queensland Police Service (QPS) have the responsibility for issuing permits for excess dimension vehicles (for example, 5.5 metres and above). This includes deciding upon matters about setting the time the vehicle may travel and ensuring that there are the appropriate numbers of escorts accompanying the excess dimension vehicle.*

*Despite there being no current accreditation requirements for pilot vehicle drivers in South Australia, New South Wales and Tasmania, or for Level 1 pilot vehicle drivers in Northern Territory and Victoria, the proposed national scheme would include accreditation requirements for all Level 1 pilots. (i.e. a knowledge test and background checks as per current Queensland practice). However some jurisdictions supported allowing non-accredited pilots for certain industry sectors to conduct operations under specific conditions in their jurisdiction only (e.g. agricultural vehicle escorts).*

*The proposed approach to Level 2 pilots will be similar to what is current practice for all pilots in Western Australia. This will include five units of competency delivered by a Registered Training Organisation (RTO), and it may include an optional unit of competency in Bridge Supervision, which some jurisdictions have indicated may be desirable for certain heavy load movements over sensitive infrastructure.*

*Queensland's Form 7 Guideline for Pilot and Escort Vehicles and Drivers has been agreed as the basis for development of a national operational guideline. Stakeholders have agreed to a number of modifications to the Queensland guideline to make it a suitable national guideline.*

*The HVNL includes general provisions for heavy vehicle access, but not to the extent in establishing the quantity and types of escorts required to accompany excess dimension vehicles. Currently all jurisdiction vary in their approach in providing access to large excess dimension vehicles, but generally state based legislation provides the ability to issue instruments such as notices/guidelines and permits with conditions to facilitate access to the road network. The approach with the HVNL is similar in that instruments, such as notices and permits, will be used to grant access for vehicles not captured by the general dimension provision of the HVNL.*

*Under the HVNL, the NHVR will be responsible for issuing all permits, including those for excess dimension vehicles, and notifying the applicant of any access conditions. The HVNL also places responsibilities on the NHVR to ensure consent is obtained from the road manager prior to issuing permits. The approach correlates with the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform.*

*Under the NHVL (Amendment Bill) the NHVR will also need to seek consent from the QPS in circumstances currently attracting their involvement under Queensland law (expected to be above 5.5m). Additionally, QPS will still maintain the ability to impose conditions in the interest of public safety similar to those currently applied.*

*The National Project Office is developing a set of Ministerial guidelines that road managers must have regard to when making decisions in providing consent. One of the key objectives of the NHVR is to increase the consistency of access decisions making throughout Australia. In supporting the National Project Office all jurisdictions are working towards establishing consistent cross border conditions.<sup>41</sup>*

#### **Committee comment**

The committee is satisfied that that it is the intention of the regulator to eventually harmonise issues relating to pilot and escort arrangements.

<sup>41</sup> TMR, *Response to Question on Notice*, dated 9 August 2012.

## 2.12 Unique primary producer schemes

AgForce has raised concerns around the ability to get the higher efficiency combinations i.e. AB Triples approved (particularly for cattle) when some of the smaller states may not require the capacity. Their submission outlines the issue:

*Queensland is a very large state and therefore the distances and numbers of cattle that are moved are significant, and both producers and transport operators are always looking for more efficient combination to move not only stock but grain as well.*

*Queensland currently allows larger combinations than in other states, i.e. Victoria, as distances and cattle numbers are not as significant. Therefore when the NHVR comes into being we would like to know how larger combinations will be assessed to ensure Queensland producers are not unfairly disadvantaged.*<sup>42</sup>

The NHVR Project Office provided the following advice on this issue at the public briefing on 3 August 2012:

*... at the current time volumetric loading schemes and other forms of primary producer schemes, which are dealing with mass dimension loading requirements, are treated as local productivity initiatives and are preserved. There is no intention to change from an individual state or territory those sorts of schemes from the commencement of the national regulator. I think you have got volumetric loading here in Queensland. That remains for your Queensland operators when the national regulator is in place. Other states have other forms of loading requirements for particularly livestock movement and other forms of primary produce.*

*What the national regulator would do is consider all of those schemes across Australia and look to see where a particular scheme or features of a particular scheme would have benefit for a greater area than it is currently in place for. Again, the reform intention is not to make anyone any worse off than what they are today. In fact, the intention is to enhance and make more productive the heavy vehicle sector. So any concerns from the Queensland livestock loading industry that they will lose their volumetric loading are not correct.*<sup>43</sup>

### Committee comment

The committee is satisfied with the confirmation provided by the NHVR Project Office that unique primary producer schemes such as volumetric loading schemes will be preserved under the reform arrangements.

## 2.13 Protected information

The Western Australian Police have raised a concern in their submission relating to protected information. The current provision for authorised use and disclosure of information collected by the NHVR is considered to be too restrictive by the WA Police. They submit that:

*... although section 668 of the draft bill provides for authorised use of protected information, the narrow definition of the term largely negates its practical application.*

*Similar provisions contained in chapter 7 of the draft bill relating to information collected by an intelligent access service provider (obtained from a[n] electronic diary used to record a vehicle's travel data for fatigue purposes) also restrict the access and use of information that may enhance police intelligence holdings and assist with the enforcement of crimes.*

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<sup>42</sup> AgForce, Submission no.17, p.2.

<sup>43</sup> Mr Hancock, Hansard transcript, 3 August 2012, THLGC - Public briefing on the Heavy Vehicle National Law Bill 2012, p.11.

*This effectively mean information available through, say electronic work diaries, cannot be accessed for intelligence holdings and would restrict access to information for other purposes, such as for investigating offences involving drug trafficking or transportation of stolen property. Therefore it would be more effective if the information obtained could also be used for the purpose of police investigations.*<sup>44</sup>

The committee sought clarification on the issue of protected information during its public briefing on 3 August 2012 and was provided with the following information:

*The Western Australia Police put forward some issues around protected information. We have discussed this with them. We do have in the bill the ability for information to be provided that would facilitate the ordinary business of government, and I think that has gone some way towards dealing with the Western Australia Police issue. However, the ability to access information is a forward work program item. There is more work to be done beyond the amendment bill itself, and that is something that we will continue to work with Western Australia and other police agencies around Australia on post the amendment bill process.*<sup>45</sup>

#### **Committee comment**

The committee notes that this issue will be dealt with through the Forward Work Program.

#### **2.14 Defect notices**

The Western Australian Police have raised another concern in their submission regarding the bill's requirement to issue major and minor defect notices for vehicles. Currently the WA Police operate under a different system and the bill requires them to have knowledge of, and use documentation for, a parallel system.

*Police are not qualified mechanics and as such can only rely on their training and experience on what constitutes a breach of the vehicle standards.... WA Police concern is that police officers generally do not have an in depth knowledge and experience of heavy vehicle mechanics and tolerances and this would make it difficult for them to identify confidently defects that represent a safety risk. For example, if a heavy vehicle has one bald tyre on an eighteen-wheeled truck is this defect a safety defect?*

*Further Clause 479 allows the power for any police officer to remove a defect notice issued by another police officer. This is contrary to the Road traffic (Vehicle Standards) regulations 2002, which only allow a police officer to remove a Compliance Notice of that officer is authorised by the Director General Transport.*<sup>46</sup>

The committee sought clarification on this issue during the public briefing held on 3 August 2012 and received the following advice:

*There was an issue around defect notices that Western Australia Police raised. They do not want to issue two different types of defect notices between light and heavy vehicles. We think that can be accommodated within their jurisdiction without needing to change the Heavy Vehicle National Law. What we have most recently done in the Heavy Vehicle National Law is give each jurisdiction the ability to indicate whether they are comfortable for a police officer in another jurisdiction to withdraw a defect notice that has been issued by one of their authorised police officers. We have left that to the states and territories*

<sup>44</sup> Western Australia Police, *Submission No.2* p.1

<sup>45</sup> *Ibid*, p.6.

<sup>46</sup> Western Australia Police, *Submission no.2* p.1

*because of a whole host of reasons, but I think that is an acceptable outcome that we can certainly manage in a national regulatory sense.*<sup>47</sup>

Towards the end of the briefing this issue was further clarified by TMR:

*The way the law governs the activities of police officers has been the subject of a lot of consultation. As you would be aware, those police officers have quite serious powers given to them and they take them very seriously. They are very sensitive to the way this law applies to them. As it stands, police officers can issue those defect notices. They will continue to be able to do so. There will probably be some standardisation of forms and so forth, but the legal obligations that apply to an authorised officer of the regulator and a police officer are identical. The only significant difference I think you would want to be alive to is that there is the capacity for Queensland, for example, to determine which other police services can withdraw, cancel or amend a defect notice issued by a Queensland police officer. I believe there are different levels of training given within different jurisdictions and it would be up to the police commissioner to determine whether he or she was satisfied with those standards and make a recommendation to the government to allow whichever of those jurisdictions he or she was comfortable with to withdraw, cancel or amend. Obviously there are productivity benefits attached to that. If you have to drive back to Queensland to get the local police officer to pull a defect notice when it has been fixed then if that is not part of your business operations it is going to be a cost. That is what we wish to avoid.*<sup>48</sup>

#### **Committee comment**

The committee is satisfied with the process that is being put in place for dealing with the defect notice issue.

#### **2.15 Local operators and local transport needs**

In February 2012, the NFF made a submission to the previous TLGC committee that raised a range of issues about local operators and local transport needs, including the importance of seasonal registration to primary producers. They are particularly keen to maintain local productivity variations and concessions so as not to disadvantage a particular region, state or territory.

*A significant amount of freight transport occurs locally, and it is important that the move to develop nationally consistent laws for heavy vehicles does not disadvantage local operators or fail to take account for local transport needs.*<sup>49</sup>

The committee sought advice from the NHVR Project Office and were advised by Mr Richard Hancock, Project Director, that:

*I have personally been to talk to the National Farmers Federation. They had a whole range of issues around whether decisions will still get made locally and whether their members will still be able to deal with the same people they are dealing with today. The broad answer is yes. The national regulator will have a system of service agreement arrangements with VicRoads and other type agencies throughout the country, so if the local farmer has got a good working relationship with his local VicRoads regional office for permitting issues or vehicle issues, he can still go there and talk to the same people he has been talking to. If it is a permit that is required, ultimately the regulator will issue the permit but that does not in any sense prevent that local contact from happening in the future. That is a pretty*

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<sup>47</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.6.

<sup>48</sup> Mr Hassall, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.15.

<sup>49</sup> NFF, *Submission no. 9* p.2.

*important aspect. I think the NFF were concerned that all decision making would come to Brisbane and you would lose the benefit of all the local knowledge, and that was never, ever going to be the case. I think I have been quite successful in trying to explain to the NFF that that certainly will not happen.*<sup>50</sup>

In a letter to the NFF dated 30 July 2012, the NHVR Project Office advised that while the NHVR will have staff located at its corporate office in Brisbane. Front line functions such as customer service and heavy vehicle enforcement will be mainly delivered through service agreements with states and territories and from existing locations and outlets. They also advised that it is not within the scope of the NHVR Project Office to review or change the existing arrangements about seasonal registration within states and territories.<sup>51</sup>

### **Committee comment**

The committee notes the advice from the NFF that the NHVR Project Office has been working with them to resolve their concerns and they believe discussions are heading in the right direction.<sup>52</sup>

### **2.16 Transparency of decision-making**

The HVNL Project Office provided the following response to the committee regarding issues raised by the NFF and others about the way in which the regulator will operate.

*The other aspect for the NFF and I think generally through all the submissions was how transparent the decision making of the regulator will be. That relates to a whole host of issues including the permitting process and the way that applicants and others can view and be involved with the permitting process. That will be quite transparent. In fact, applicants will be able to track their permits through the system basically by logging on—a bit similar to the way you log on for internet banking—and they will be able to track where their permit applications are and who is looking at them. Aspects of the service agreements that the regulator has with states and territories will be publicly disclosed and will be on the regulator's website, which we are currently in the process of building. So having had all of those conversations with the NFF and understanding that they themselves reflect the sorts of issues that many other organisations were raising, I think we have given a better sense around those.*<sup>53</sup>

The NHVR Project Office has sent a letter to the NFF that:

*Under the HVNL decisions on road access will continue to be made by road managers. These decisions must contain a statement of reasons to ensure the applicant is aware of the reasons to ensure the applicant is aware of the reason for not granting access. Decisions on the technical aspects of the vehicle, including assessment of Performance Based Standards applications, will shift from states and territories to the NHVR. Where an applicant is unhappy with a decision, they may seek an internal review of that decision via the NHVR. Decisions will not be subject to review by an external body.*<sup>54</sup>

<sup>50</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.6.

<sup>51</sup> Letter from the NHVR Project Office to the NFF attached to NFF, *Submission no.14*, p.2.

<sup>52</sup> Covering letter NFF, *Submission no. 14*, p.2.

<sup>53</sup> Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.6.

<sup>54</sup> Letter from the NHVR Project Office to the NFF attached to NFF, *Submission no.14*, p.2

### **Committee comment**

The committee notes the discussions that have taken place with the NFF and other stakeholders on the issue of transparency of decision-making. The committee also notes the advice from the NFF that the NHVR Project Office has been working with them to resolve their concerns and they believe discussions are heading in the right direction.<sup>55</sup>

### **2.17 Separation of heavy vehicle registration and Compulsory Third Party (CTP) Insurance**

The Suncorp Group raised a concern in its submission regarding the transition to a national registration scheme and the resulting practical implications this may have for state-based Compulsory Third Party (CTP) schemes. Suncorp believes there is potential that registrations will shift to the state with the lowest CTP premiums, leading to market volatility and threaten the ongoing viability of CTP schemes nationally. Suncorp recommends a more rigorous approach to ensuring the accuracy of nominated garaging addresses.<sup>56</sup>

The NHVR Project Office advised the committee that this issue will be addressed in the proposed HVNL amendment bill.

*In general terms, the garaging address for the home jurisdiction will be required to be notified to the regulator when there is any transfer of registration..... {The regulator} will require any change in that garaged address to be notified to the regulator and require the party to hold the CTP premium or public liability insurance, as it is in some jurisdictions, when they make that change.<sup>57</sup>*

### **Committee comment**

The committee notes that this issue will be dealt with in the HVNL amendment bill, which is due to be introduced to Parliament later in 2012.

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<sup>55</sup> Covering letter, NFF *Submission no.14*, p.2.

<sup>56</sup> Suncorp Group, *Submission no.5*, p.2.

<sup>57</sup> Mr Hassall, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.13.

### 3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee notes that while there are a number of FLP breaches in the bill, considering the provisions of the bill as a whole, it is apparent that efforts have been directed to achieving a balance between the bill’s objectives and the need to be able to robustly enforce its provisions whilst according sufficient protections for the rights and liberties persons who will be subject to the National Law.

As outlined in the explanatory notes:

*The principle objectives of this Bill are to reconcile variations in state heavy vehicle laws to a single, unified approach applicable across all states and territories, and to establish an independent National Heavy Vehicle Regulator to administer these laws.*

...

*Generally, the Bill has sufficient regard to the rights and liberties of individuals as required by subsection 4(2) of the Legislative Standards Act 1992 (LSA). Nonetheless, it has not entirely eliminated all potential breaches of the fundamental legislative principles.<sup>58</sup>*

The bill is a component part of National Scheme Legislation and was originally introduced by the previous State government as the *Heavy Vehicle National Law Bill 2011*.<sup>59</sup>

#### 3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

##### 3.1.1 Penalties

The bill includes a number of proposed penalties.

These listed penalty amounts are comparatively less heavy than those provided for in the Work Health and Safety legislation. However, the criminal penalties are serious for persons in the chain of responsibility, and more so when there additionally is taken into account the provisions in Chapter 10 of the bill for a range of other sanctions that can be imposed by the courts on convicted offenders in respect of contraventions of the heavy vehicle national law. Those sanctions include prohibition and commercial benefit penalty orders. Under a prohibition order, a convicted person can be prevented for up to 1 year from having a state responsibility associated with road transport. With a commercial benefit penalty order the convicted person can be ordered by a court (which will undertake the estimate on evidence presented by the prosecution) to pay as a fine an amount up to three times the amount estimated to be the gross commercial benefit obtained or that would have been obtained from the commission of the offence.

<sup>58</sup> *Heavy Vehicle National Law Bill 2012, Explanatory Notes*, pp. 9-10.

<sup>59</sup> This Bill lapsed when Parliament was dissolved in 2012.



TMR responded:

*Queensland consequential amendments to the [Penalties and Sentences Act 1992] will provide different mechanism for the [heavy vehicle national law: HVNL] penalties so that when the Queensland penalty unit is updated, the penalties in the HVNL are not. Penalties in the HVNL will only be amended following approval by SCOTI.*

### **Committee comment**

The committee notes that the penalty amounts in the bill have not been expressed in penalty units to ensure consistency across jurisdictions.

#### **3.1.2 Exclusion of defence of honest and reasonable mistake**

There are numerous offence provisions included in the bill<sup>60</sup> which exclude the defence of honest and reasonable mistake of fact provided for in section 24 of the *Criminal Code Act 1899*.<sup>61</sup> In its place is substituted a reasonable steps defence. For the defence to be available, a defendant will be required to prove that he/she did not know, and could not reasonably be expected to have known, of the contravention, and that either all reasonable steps were taken to prevent the contravention and or alternatively there were no steps the defendant could reasonably have taken to prevent the contravention.

Exclusion of the defence of honest and reasonable mistake, which is not uncommon in regulatory type legislation, is contended to be 'less objectionable', given the making available of the reasonable steps defence.<sup>62</sup> This approach admittedly:

*[E]xposes defendants to an absolute liability offence, without access to a defence for making an honest and reasonable mistake of fact or attempting to avoid breaches. For instance, clauses 153 and 154 create chain of responsibility offences against parties for non-compliance with mass requirements that apply to heavy vehicles. These clauses attach liability for breaches to those persons considered influential in ensuring compliance...<sup>63</sup>*

As explained in the explanatory notes, this approach is for enforcement and public interest reasons:

*The reasonable steps defence ... is available if the defendant can prove that they did not know, and could not reasonably be expected to have known of the contravention, and they either took all reasonable steps to prevent the contravention or there were no steps the person could reasonably be expected to have taken to prevent the contravention. Its availability to all parties in the chain of responsibility is considered a reasonable benefit to justify the exclusion of no-fault criminal defences. ... In some circumstances where reasonable steps have not been taken, it is considered inappropriate for a defendant to rely on a no fault criminal excuse such as mistake of fact. The defendant should be exposed to absolute liability if they are not actively taking steps to ensure that their actions do not cause or contribute to on-road breaches.*

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<sup>60</sup> See proposed clauses 67, 68, 75, 78, 84, 92, 113, 114, 132, 133, 153, 154, 157, 158, 161-164, 172, 189, 220, 221, 224, 226, 228, 230, 231, 233, 234, 256, 257, 281-283, 285, 289, 291, 292, 294, 295, 306,-308, 348-351 and 420.

<sup>61</sup> The defence is otherwise available in respect of any simple offence: *Criminal Code*, section 36. See proposed clauses 67, 68, 75, 78, 84, 92, 113, 114, 132, 133, 153, 154, 157, 158, 161-164, 172, 189, 220, 221, 224, 226, 228, 230, 231, 233, 234, 256, 257, 281, 282, 283, 285, 289, 291, 292, 294, 295, 306,-308, 348-351 and 420.

<sup>62</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, pp.11-12.

<sup>63</sup> *Ibid*, p. 12.

*The approach is also considered to be in the public interest as the requirements to which the offences relate are mainly prescriptive in nature and align with the general purpose of public safety assurance. The parties in the chain of responsibility should be able to identify the actual on-road breaches that may result from their activities and then apply appropriate measures to manage the risk of an on-road breach.*<sup>64</sup>

### 3.1.3 Chain of responsibility and extended liability

Associated with the exclusion of the defence of mistake is the imposition in the bill of automatic criminal liability on persons in the chain of responsibility.

Accordingly, the bill provides that an offence committed by:

- a corporation is also committed by each executive officer of the corporation;
- a partnership is committed by each of the partners;
- an unincorporated association is committed by each member of the management committee.<sup>65</sup>

This approach is based on the following reasons:

*[clauses] extend liability to the management of operators and other parties in the chain of responsibility and reverse the onus of proof, requiring the individual management officers or partners to prove they were not in a position to influence the relevant conduct or exercised reasonable diligence to ensure compliance. It is noted that the intent of these provisions is to allow prosecutions to better target those chiefly responsible for the breaches of road law and to enhance the effectiveness of the law by deterring offending behaviour.*

*There are compelling public policy reasons to require managers to prove that they exercised due diligence or were not in a position to influence the relevant conduct. Firstly, the chain of responsibility provisions, including the provisions to capture managers, extend liability for prescriptive offences that are important to ensuring that heavy vehicles used on public roads are used in a safe manner. Extending the liability is intended to ensure parties in a position to control, influence, prevent or encourage on-road breaches are discouraged from such behaviour and more importantly take active steps to prevent on-road breaches.*

*Secondly, the chain of responsibility provisions ... are intended to allow for the prosecution of all parties whose actions, or inactivity, may cause on-road breaches. All parties in the supply chain including the managers in that chain, should be subject to similar requirements and expected to prove that they take reasonable action, whether it be reasonable steps or due diligence, to prevent on-road breaches.*

*Thirdly, extending liability to managers is fairer as many parties in the transport industry, and especially operators, are small business where the controlling mind of the manager cannot be distinguished from the business. ... There are other parties that will be substantial businesses and the managers of these businesses may in the absence of these provisions not be subject to the same encouragement to prevent on-road breaches.*

*Fourthly, these prescriptive offences have relatively low penalties compared to other laws that impose criminal responsibility on managers – such as Work Health and Safety Laws.*<sup>66</sup>

The imposition of automatic criminal liability and reversal of the onus of proof clearly conflict with the long accepted principle that a person is presumed innocent of an offence until guilt is positively proved to the criminal standard. This established normative principle is reflected in the provisions of

<sup>64</sup> Ibid, p. 12.

<sup>65</sup> See proposed clauses 576, 577, 578 and 579 of the Heavy Vehicle National Law Bill 2012.

<sup>66</sup> Heavy Vehicle National Law Bill 2012, Explanatory notes, pp. 14-15.

the United Nations *International Covenant on Civil and Political Rights* to which Australia is a signatory.

Provisions of the bill further extend liability for mass, dimension and loading requirements, fatigue offences and speeding offences to persons other than the driver and operator of a heavy vehicle, i.e. owners of heavy vehicles, employers of drivers, prime contractors of self-employed drivers, schedulers, goods consignors and consignees, goods packers, goods loading managers, goods loaders and unloaders.<sup>67</sup> These provisions derive from existing model legislation developed by the National Transport Commission and those already located in Queensland legislation. The principle underlying these provisions:

*This extension of liability ensures that all parties responsible for conduct which affects compliance are made accountable for failure to discharge that responsibility.*<sup>68</sup>

In its response, TMR provided:

*The Chain of Responsibility (COR) framework is based closely on model law which was adopted by Queensland and most other jurisdictions. Though some adjustments have been made during the development of the Amendment Bill, time has not allowed for an intensive review for the COR framework. The COR framework is reasonably complex and its effective operation is critical for achieving road safety objectives of the law.*

*There are diverse views nationally among industry and government regarding how COR should be structured, particular in relation to the reversal of the onus of proof. To enable a comprehensive consideration of the COR framework, it has been placed on the national Forward Work Program for review.*<sup>69</sup>

#### **Committee comment**

With the greater exposure to criminal liability of executive officers of corporations, the very widely defined term 'executive officer' in the bill which is broader than that of 'officer' in the *Corporations Act 2001* (Cth), the committee considers that further consideration ought be given on the chain of responsibility and reversal of onus of proof provisions. This is because of their reach and potential to result in unfairness to individuals made culpable under its provisions. The committee notes TMR's response that this issue generally has been placed on the national Forward Work Program.

#### **3.1.4 Extension of time to institute proceedings**

Proposed clause 647 extends the time to commence proceedings for an offence from the usual period of 1 year to 2 years. This may infringe the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes provide:

*Strong road safety enforcement grounds exist to justify the extension of time. The proposed amendment recognises that in some cases, due to the nature of the chain of responsibility offences, it might take longer to identify other parties in the chain. Generally, the process involved in determining who the other parties are in the chain can take up to 18 months alone. Therefore, to allow enforcement action to be taken against other parties in the chain, it is necessary to extend the time to commence proceedings from 1 to 2 years. A shorter limitation period may discourage enforcement of the chain of responsibility provisions and*

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<sup>67</sup> See proposed clauses 153, 154, 189, 231 and Chapter 6, Part 6.2 of the *Heavy Vehicle National Law Bill 2012*.

<sup>68</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p. 20.

<sup>69</sup> Email response received from TMR on 9 August 2012.

*result in the traditional practice of only enforcing against the driver and perhaps the operator to continue.*<sup>70</sup>

#### **Committee comment**

The committee is satisfied that the extension of time to institute proceedings appears justified given TMR's advice that it can take up to 18 months to determine the other parties in the chain of responsibility.

#### **3.1.5 Cost recovery principles**

Where an application for mass or dimension authority is sought, there is requirement under the bill for payment of a fee for the route assessment if one is required under the jurisdictional law applicable to the road manager. A route assessment will not be undertaken and consent given until the fee is paid.<sup>71</sup>

Limitations are not placed on the fee such as that it be a 'reasonable' or that it otherwise specifically reflect cost recovery principles.

The explanatory Notes provide:

*... it is reasonable justified for the regulator to be able to recover the costs which generally relate to individualised routes that are relevant only to the applicant concerned. The costs to the road manager in conducting these one-off route assessments need to be recoverable. It is noted that in some jurisdiction there is no fee or the fee is lower than the cost of providing the service so that the operators are not discouraged by the high costs and possible resort to illegal use of roads.*<sup>72</sup>

TMR responded:

*There is considerable variation nationally regarding the fees collected for route assessments, ranging from a cost recovery approach, to charging of only a nominal fee.*

*For this reason, decisions about route assessment are to remain a matter for each jurisdiction. It is expected however that national consultation will continue between the National Heavy Vehicle Regulator and jurisdictions to provide guidance about setting appropriate fees for route assessments.*<sup>73</sup>

#### **Committee comment**

It is unclear why principles for the setting of fees that will accommodate different circumstances cannot be enshrined in the heavy vehicle national law, However, the committee acknowledges the intention that any charges are to reflect the cost of providing the service.

#### **3.1.6 Privacy**

Division 4 in Part 9.4 of the bill confers a power on an authorised officer to require a responsible person for a heavy vehicle to provide information not only about the vehicle, its load and equipment but also personal details i.e. personal information, about any other responsible person for the vehicle. The reason for the power is stated to be for the purpose of identification of each person

<sup>70</sup> Heavy Vehicle National Law Bill 2012, Explanatory notes, p. 18.

<sup>71</sup> See proposed clause 137 of the Heavy Vehicle National Law Bill 2012.

<sup>72</sup> Heavy Vehicle National Law Bill 2012, Explanatory notes, p.16.

<sup>73</sup> Email response received from TMR on 9 August 2012.

responsible for commission of an offence who will be taken under the heavy vehicle national law to also have committed an offence unless they prove that they took reasonable steps.<sup>74</sup>

The explanatory notes provide:

*Personal information is necessary to ensure the effectiveness of the heavy vehicle enforcement. The power granted under this provision is cast in narrow terms and extends only to information that is relevant to the regulator's functions. For example, the information sought will relate to a current or intended journey of the vehicle and will include the location of the start; the route and the location of the destination of the journey or intended journey, as well as personal information about the person. This provision is essential in enabling authorised officer to easily identify registered operators for enforcement purposes.*<sup>75</sup>

TMR responded:

*Identification of persons in the [Chain of Responsibility: COR] is critical to effective enforcement against persons other than the driver. Without adequate power to identify COR participants, enforcement would be unfairly skewed towards enforcement of drivers who are easily identifiable at the road side, and who are following the directions of other COR participants.*<sup>76</sup>

#### **Committee comment**

The committee notes that the scope of this power, while perhaps appearing excessive, is essential for the purposes of identifying each person responsible for commission of an offence.

#### *3.1.7 Administrative powers are sufficiently defined and subject to review*

Section 4(3)(a) of the *Legislative Standards Act 1992* requires that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

##### 3.1.7.1 Reviews of decisions

While there is provision for internal review of decisions of road managers they are not subject to further merits review.<sup>77</sup> Persons aggrieved with a decision in that category will be limited to seeking judicial review from a court on questions of law only and not be able to pursue further merits review. The National Heavy Vehicle Regulator will be required to refer applications for internal review of decisions made by a road manager to that road manager.

Proposed clause 581 of the bill provides that decision of an authorised officer to seize a thing or issue an embargo notice is not reviewable. It is conceded that decisions of this kind can have considerable impact on individuals and business and would normally be expected to be reviewable and similar decisions under other transport legislation in Queensland are reviewable. It is conceded also that other avenues such as the Ombudsman and the courts for scrutinising such decisions may not be or as effective as merits review. However, the justification provided in favour of this approach is that:

*[T]his fairly represents the policy position on this issue. The expected limited use of embargo notices and the availability of other avenues for reviewing in appropriate actions with respect to such notices should be adequate.*<sup>78</sup>

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<sup>74</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p. 24.

<sup>75</sup> *Ibid*, p. 25.

<sup>76</sup> Email response from TMR received 9 August 2012

<sup>77</sup> See proposed clauses 581, 583, 588 and 589 of the Heavy Vehicle National Law Bill 2012.

<sup>78</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, pp.25-26.

Further:

*The lack of review for decisions by authorised officers who are police regarding the giving of and amendment of improvement notices is justified on the basis that it was not intended that the Heavy Vehicle National Law impose additional review requirements on the actions of police officers that are inconsistent with existing practice.*<sup>79</sup>

#### **Committee comment**

The committee has considered the bill and has noted the reasons provided in the explanatory notes for the decision not to provide for a review of decisions to seize a thing or issue an embargo notice. In particular, the committee has noted that jurisdictions may already have existing arrangements that adequately provide for a review process.<sup>80</sup>

#### 3.1.7.2 Stay of decisions

Proposed clauses 583 and 589 provide for stay of decisions of the National Heavy Vehicle Regulator or an authorised officer.<sup>81</sup> They exclude though stay of reviewable decisions by the National Heavy Vehicle Regulator made on public safety grounds. That can fairly be regarded as appropriate given the reference made to '*the potential impact on public safety*'.<sup>82</sup> Provisions are not included also for stay of decisions of a road manager, but this may also be considered appropriate on grounds of public safety. The decisions concern amendment of road conditions or cancellation of dimension authority. The explanatory notes provide:

*[T]he initial grant of an exemption confers above 'as of right' access to some heavy vehicle operators. This extends the ability of the operator to access a road network beyond that which is accessible to others. When there is evidence that the exemption or authorization is unsafe and needs to be cancelled or amended it is important such decision is implemented as quickly as possible.*

*... this approach is consistent with the nationally agreed position that a person should not be able to appeal the decisions of road managers regarding access to their road network. A road manager's decision regarding access to their road network is based on comprehensive and specialized engineering assessments reports about safety risks and risks of damage to road infrastructure. One of the underlying reasons for refusing to grant access may be a potentially risk to their road infrastructure, which includes bridges where the granting of the access may expose other road users to serious harm.*

*[A]ll exemptions are issued subject to the express condition of amendment or cancellation. This express condition is coupled with the requirement that notice of any amendment or cancellation must be given to the person 28 days prior to the amendment or cancellation coming into force. . [T]his safeguard reasonably allows those relying on an exemption to manage the risk of a possible amendment or cancellation and sufficient time to adjust their business activities accordingly.*<sup>83</sup>

#### **Committee comment**

The committee has considered the objectives of the bill and the explanatory notes. The committee considers that it appears reasonable to exclude stays for decisions made by a road manager.

<sup>79</sup> Ibid, p.26.

<sup>80</sup> Ibid, p.25-26.

<sup>81</sup> Authorised officers are appointed under proposed clause 433. They include persons within a class prescribed by the National Regulations.

<sup>82</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p.17.

<sup>83</sup> Ibid, pp.17-18.

### 3.1.8 Delegation of administrative power

Section 4(3)(c) of the *Legislative Standards Act 1992* requires legislation to allow the delegation of administrative power only in appropriate cases and to appropriate persons.

#### 3.1.8.1 Load Restraint Guide

The *Load Restraint Guide* (LRG) promotes safe carriage loads on heavy/road vehicles. Provision is made in the bill for the National Transport Commission to gazette the LRG and thereby be given recognition in establishing the commission of heavy vehicle load offences. There is a related issue as to whether correctly construed proposed clause 96 alternatively confers legislative power on the National Transport Commission.

With the exercise of administrative powers it is an accepted principle that there generally needs to be in place an appropriate chain of accountability. The committee considers that possible concerns with proposed clause 96 may be considered to be satisfied in the context of the bill being for a national law, incorporating model law provisions including the clause, the National Transport Commissioner's functions and powers, and reporting relationship to the Ministerial Council under the *National Transport Commission Act 2003* (Cth):<sup>84</sup>

*The explanatory notes provide:*

*[T]he current edition of the [LRG] was approved for release by the ATC<sup>85</sup> ... after consultation by the [National Transport Commission] and the Roads and Traffic Authority of [NSW] with stakeholders. ...[T]he performance standards in the [LRG] have been available and used since 1994 and a number of jurisdictions have implemented a law substantially the same as clause 96.<sup>86</sup>*

#### 3.1.8.2 Powers of delegation and subdelegation

Proposed clause 602 contains provisions for the National Heavy Vehicle Regulator to delegate any of its functions to a broad range of persons, including (a) the chief executive officer (CEO) of an entity of a department of government of a participating jurisdiction, or the Commonwealth; or (b) the CEO of or another staff member of the National Heavy Vehicle Regulator. Subdelegation to an 'appropriately qualified' person which is appropriately defined will also be permitted.

The explanatory notes provide:

*Broad delegation and subdelegation powers are necessary to ensure that the regulator is able to delegate its functions to existing state or territory transport agencies; and in some circumstances to other government agencies or external contractors used by the existing state or territory transport agencies. The administration of the Bill requires extensive resources due to the wide range of subject matters covered, the volume of administrative tasks, and the need to administer this law in remote areas. It will not be possible for the regulator to engage its own staff to perform all administration tasks required by the Bill on its commencement. Also, administering the heavy vehicle registration scheme in isolation from the administration of the light vehicle registration scheme is not necessarily practicable or cost effective in all circumstances.*

*The regulator will also still be legally accountable for all decisions made by its delegates and subdelegates. Administrative arrangements will be in place to ensure that the delegates and subdelegates are complying with business rules and other directions of the regulator.<sup>87</sup>*

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<sup>84</sup> *National Transport Commission Act 2003* (Cth) Pt 2

<sup>85</sup> The former Australian Transport Council.

<sup>86</sup> *Heavy Vehicle National Law Bill 2012, Explanatory Notes*, p.14

<sup>87</sup> *Ibid*, p. 11.

**Committee comment**

The committee has considered the objectives of the bill and the explanatory notes. The committee considers that the use of administrative arrangements will significantly reduce the impact of any potential breach of this FLP.

**3.1.9 Reversal of the onus of proof in criminal proceedings**

Section 4(3)(d) of the *Legislative Standards Act 1992* requires that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

A number of clauses reverse the onus of proof.<sup>88</sup> For example, proposed clause 639 reverses the onus of proof in proceedings against an employer where the employer is alleged to have (essentially) unfairly dismissed or otherwise prejudiced an employee or prospective employee in retaliation for information given to, or a complaint made to, a law enforcement authority exercising powers under this law. Subsection (3) of this clause provides that, in a proceeding for such an alleged offence, if all the facts constituting the offence other than the reasons for the defendant's actions are proved, '*the defendant has the onus of proving that the defendant's action was not for the reason alleged in the charge for the offence.*'

Of this reversal of onus, the explanatory notes provide:

*The prosecution only has to show an employee or prospective employee was dismissed after they helped or gave information to an agency or made a complaint about a contravention or alleged contravention. The defendant has to prove that the dismissal was not for the reason that the employee or prospective employee helped a public agency. The reversal of onus potentially infringes the rights and liberties of individuals. However, the reversal is justified on the basis that the employer is best placed to explain the reason for taking the adverse action against the employee or prospective employee. This is considered necessary to deter employers from taking adverse action, and to encourage employees and prospective employees to help enforce this law without fear of adverse action being taken against them.*<sup>89</sup>

Another justification given for the reversal of the burden of proof is that it is essential for the enforceability and effectiveness of the national law.<sup>90</sup> In circumstances where the reversal applied in relation to complying with container weight declarations, it was considered that it would not be too onerous for an operator to keep relevant records.<sup>91</sup>

**Committee comment**

The committee has considered the objective of the bill and the rationale given in the explanatory notes. The committee is not satisfied that the rationale given adequately justifies the reversal of onus onto provisions.

**Point of clarification 1**

The committee seeks clarification from the Minister for Transport and Main Roads on why there is a need to reverse the onus of proof for the heavy vehicle industry as in clauses 96, 162, 222, 225, 263, 266, 268, 465, 504, 511, 514, 517, 554, 560, 568-571, 575-580, 639, 650, 651, 654 and 663 of the bill rather than relying on existing legislative protections that apply to employer/employee relations.

<sup>88</sup> See proposed clauses 96, 162, 222, 225, 263, 266, 268, 465, 504, 511, 514, 517, 554, 560, 568-571, 575-580, 639, 650, 651, 654 and 663.

<sup>89</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p.15.

<sup>90</sup> *Ibid*, p. 14.

<sup>91</sup> See proposed clause 162 *Ibid*, p.14.



### 3.1.10 Powers to enter premises

Section 4(3)(e) of the *Legislative Standards Act 1992* requires that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Powers of entry exercisable without a warrant are included in a number of provisions in the bill.<sup>92</sup> For example, proposed clause 469 allows an authorised officer to enter and inspect a heavy vehicle for monitoring purposes and includes power to inspect, examine or film any part of the heavy vehicle. Search powers such as this would normally be contained in the relevant clause with a proviso that the search powers do not extend to any parts of the vehicle which are used as living quarters by its driver, such as any part of the vehicle where a driver might sleep during a long journey. Without such protection, this clause could potentially infringe the rights and liberties of individuals as it invades a person's right to privacy.

#### **Committee comment**

The committee has considered the objective of the bill and the explanatory notes in relation to proposed clause 469 and considers that it appears reasonable.

### 3.1.11 Immunity from proceedings or prosecution without adequate justification

Section 4(3)(h) of the *Legislative Standards Act 1992* requires that legislation should not confer immunity from proceeding or prosecution without adequate justification.

Proposed clause 638 confers immunity from personal liability on a protected person (as defined in section 638(3)) for anything done or omitted to be done in good faith when done/purported to be done in the exercise of a function under this Law. Any liability that would normally attach to that person for the act/omission, attaches instead to the National Heavy Vehicle Regulator.

#### **Committee comment**

The committee considers that provisions such as this would also require that the person on whom immunity is conferred not have acted negligently or recklessly. Thus this provision confers immunity/protection over and above what might be considered typical. The committee therefore recommends the clause be amended to include such a provision.

#### **Recommendation 2**

The committee recommends that the Minister for Transport and Main Roads amend Clause 638 of the bill to provide that immunity from personal liability is excluded in circumstances where the protected person has acted negligently and/or recklessly.

### 3.1.12 Clear and unambiguous drafting

Section 4(3)(k) of the *Legislative Standards Act 1992* requires legislation is unambiguous and drafted in a sufficiently clear and precise way.

The heavy vehicle national law is a work in progress, it is contended that the current Bill and regulations will suffice to:

*[P]rovide the legislative framework for the establishment of the National Heavy Vehicle Regulator as well as the substantive consolidation of model laws into a single body of Law.*

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<sup>92</sup> See proposed clauses 446-448, 450-453, 469 and 470 of the *Heavy Vehicle National Law Bill 2012*.

*However, some policy or technical matters remain unresolved either due to their complexity or the inability of the participating jurisdictions to reach agreement.<sup>93</sup>*

It was explained to the committee that an amendment bill will be introduced following this Bill which will include a range of drafting and technical amendments.<sup>94</sup>

*There were approximately 1,018 issues raised in response to the first bill, which is the bill that is being considered here. On examination of those, approximately 500 would have been regarded as drafting or technical issues—so matters that were not high-order policy issues but issues needing to be amended in the amendment bill, which is the subsequent bill that has just been explained.*

...

*The amendment bill ... will be introduced into Queensland parliament at some point following the assent of this bill that you are considering at the moment. Obviously that is subject to cabinet approval and the agreement of SCOTI as well. The way that the regulator will be implemented is the creation first of the regulator in Queensland, being the host jurisdiction. This bill does that. Each of the other jurisdictions will pass application legislation. So they will effectively just reflect the legislation that has passed through Queensland. Western Australia are different. They will have mirror legislation. So they will take the whole bill into their parliament and pass the bill verbatim, rather than just refer to the bill that was tabled in Queensland.<sup>95</sup>*

### 3.1.13 Definitions

There are a very substantial number of definitions of terms in the bill that direct the reader to look up another clause to ascertain the term's meaning, for example, in Chapter 6, '100km work' has the meaning given by section 258(1).

## 3.2 Institution of Parliament

### 3.2.1 Delegation of administrative power in appropriate circumstances to appropriate persons

Section 4(4)(a) of the *Legislative Standards Act 1992* requires that legislation should allow the delegation of legislative power only in appropriate cases and to appropriate persons.

As a general comment, the committee notes that the bill places considerable reliance on subordinate legislation and statutory instruments.

A number of clauses (29, 96, 98, 119, 236 and 327) in the bill confer legislative power on the National Transport Commission (NTC), a Commonwealth statutory authority constituted under the *National Transport Commissioner Act 2003* (Cth). It is a function of the NTC to develop model legislation developed in accordance with the agreement between the Commonwealth and the states and territories entered into in relation to the Act.<sup>96</sup>

<sup>93</sup> *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p.3.

<sup>94</sup> *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, p.3.

<sup>95</sup> *Ibid*, p.3.

<sup>96</sup> *National Transport Commission Act 2003* (Cth), sections 4, 6 and 7. The model legislation prepared by the National Transport Commission does not have statutory force. It is the intent of the Commonwealth legislation that model legislation (and legislative instruments) are put into effect by state and territory Legislation.

### 3.2.2 Delegated legislative power subject to scrutiny by the Legislative Assembly

Section 4(4)(b) of the *Legislative Standards Act 1992* requires that legislation sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

Most of the proposed clauses discussed above (29, 98, 119, 236 and 327) also potentially breach this FLP. These clauses provide for delegated legislative power to be made through the publication of gazette notices. This means they will not be subject to scrutiny by the Queensland Legislative Assembly. They will not be tabled in the Parliament as they will not by statutory definition constitute subordinate legislation.<sup>97</sup>

In response, TMR stated:

*Though gazettal notices will not be subject to direct parliamentary scrutiny, the Bill contains provisions which constrain the circumstances they may deal with and how they may be amended or cancelled. For example, s123 constrains the conditions which can be placed upon a class 2 heavy vehicle authorization (notice).*

*Gazettal Notices provide benefits to heavy vehicle operators exceeding the general requirements of the legislation such as road access. As such they need to be flexible to deal with the constantly changing characteristics of the road network. Requiring parliamentary scrutiny for every change concerning matters covered by gazettal notices would be impractical and unproductive for industry and government.<sup>98</sup>*

### 3.2.3 Amendment of an Act only by another Act ('Henry VIII' provision)

Section 4(4)(c) of the *Legislative Standards Act 1992* provides that legislation should only authorise the amendment of an Act only by another Act, i.e., not by using subordinate legislation. This is what is commonly referred to as a 'Henry VIII clause'. A Henry VIII clause is a clause of an Act of Parliament which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action. The committee noted that the use of Henry VIII clauses is justifiable to facilitate the application of National schemes of legislation.<sup>99</sup>

The committee has identified proposed clauses 2, 29, 98, 119, 236 and 327 as relevant.

The commencement clause (clause 2) is an example of a Henry VIII clause; it provides for the heavy vehicle national law to be commenced by a date fixed by the Queensland Governor by proclamation. That aspect of the clause is not controversial and accords with accepted Queensland practice. However proposed clause 2(2)(a) is out of the ordinary to the extent that it modifies the operation of section 15DA of the *Acts Interpretation Act 1952*. Proposed clause 2(2)(a) alters from the date of assent deferral of the otherwise automatic commencement of the heavy vehicle national law from 1 to 2 years, and proposed clause 2(2)(b) enables a regulation to be made to extend before the automatic commencement date the commencement of the heavy vehicle national law from 2 to 3 years from date of assent.

The explanatory notes submit that:

*The extension of the automatic commencement is considered necessary to provide maximum flexibility, given the number of variables that may lead to an unexpected delay to commencement. The potential breach of clause 2 has been made less objectionable by limiting the delayed commencement to a maximum of 3 years from the assent day.<sup>100</sup>*

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<sup>97</sup> *Statutory Instruments Act 1992*, section 9(1).

<sup>98</sup> Email response received from TMR 9 August 2012.

<sup>99</sup> Scrutiny Committee 1997, *The use of Henry VIII clauses in Queensland Legislation*, paragraph 5.9.

<sup>100</sup> *Heavy Vehicle National Law Bill 2012, Explanatory Notes*, p.10.

Other Henry VIII clauses in the bill that might be overlooked are those concerned with gazettal of exemptions. One empowers the National Heavy Vehicle Regulator by Commonwealth Gazette notice to exempt for a period of not more than 1 year a category of heavy vehicles from the requirement for heavy vehicles to be registered. Given the legal effect of such a provision is to carve out a statutory exemption from the statutory requirement to register heavy vehicles and provide for a rule, the provision could reasonably be viewed as a Henry VIII clause.

TMR responded:

*The recent Bill does not modify Commonwealth Acts or provide for delegated legislation making power to modify Commonwealth Acts. However it does provide for delegated legislation making power to alter, for the purposes of the [heavy vehicle national law: HVNL], Queensland Acts including the Information Privacy Act 2009, the Public Records Act 2009 and the Right to Information Act 2009.*

*This approach is justifiable because of the national nature of the HVNL scheme. In particular, legislation designed specifically for operation in Queensland may not effectively translate in an operational sense and consequently regulations may be needed. This approach is consistent with other national schemes. Any regulations made to modify the operation of the oversight provisions will only impact on the regulator and will have no impact on the operation of the oversight Acts on existing Queensland bodies. Also, the Queensland Parliament continues to have the ability to scrutinise any national regulations.<sup>101</sup>*

#### **Committee comment**

The committee considered the objective of the bill, Explanatory Notes and TMR's response in considering the significance of the delegation of power and the use of Henry VIII clauses. The committee considers that any potential FLP issues are justified on the basis that the bill is implementing a national scheme. The committee considers the bill will provide substantial benefits to the nation and economy which has been enacted in the interests of cooperative federalism in order to more effectively address national concerns and priorities.

### **3.3 Explanatory notes**

Part 4 of the LSA details the requirements for explanatory notes. Subsection 22(1) requires that when introducing a bill in the Legislative Assembly, a member circulate to members and explanatory note for the bill. Section 23 requires an explanatory note for the bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

Explanatory notes were tabled when the bill was introduced. The notes were fairly detailed and considering the length and complexity of the bill generally provide the information required by section 23 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins. The explanatory notes further disclose that a RIS was prepared and released and considerable consultation has taken place with relevant stakeholders.

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<sup>101</sup> Email response received from TMR on 9 August 2012.

## References

AgForce, *Submission no.17*

Australian Livestock and Rural Transporters Association, *Submission no.11*

Australian Heavy Vehicle Repairers Association, *Submission no.4*

Australian Trucking Association, *Submission no.16*

Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement*, May 2009

Department of Infrastructure and Transport, *Road freight estimates and forecasts in Australia: interstate, capital cities and rest of state*, research report 121, 2010  
*Hansard transcript*, 30 Nov 2011, TLGC - Public briefing on the *Heavy Vehicle National Law Bill 2011*

Department of Transport and Main Roads, email to the THLGC dated 9 August 2012

*Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*

*Heavy Vehicle National Law Bill 2012, Explanatory notes*

NHVR Project Office. (2012) – *Questions and answers for Industry*. Accessed on 8 August 2012 from [http://nhvr.gov.au/wp-content/uploads/20120627\\_Industry-QandA\\_FINAL\\_v0.41.pdf](http://nhvr.gov.au/wp-content/uploads/20120627_Industry-QandA_FINAL_v0.41.pdf)

NHVR Project Office. (2012) – *Laws* Accessed on 6 August 2012 from <http://nhvr.gov.au/laws/>.

NHVR Project Office - letter to the National Farmers Federation dated 30 July 2012

National Farmers Federation, *Submission no. 9*

National Road Freighters Association, *Submission no.13*

*National Transport Commission Act 2003* (Cth)

Queensland Audit Office, *Submission no.15*

Suncorp Group, *Submission no.5*

Queensland Parliament, 2012, *Record of Proceedings*, Brisbane 31 July

Scrutiny Committee 1997, *The use of Henry VIII clauses in Queensland Legislation*

*Statutory Instruments Act 1992*

Transport for NSW, *Submission no.1*

Western Australia Police, *Submission No.2*

## Appendices

### Appendix A – List of Submissions

Sub #	Submitter	Date received
1	Transport for NSW	3 January 2012
2	Western Australia Police	12 January 2012
3	Vic Roads	20 January 2012
4	The Australian Heavy Vehicle Repairers Association (AHVRA)	25 January 2012
5	Suncorp Group Limited	3 February 2012
6	Australian Trucking Association (ATA)* *Note this submission was replaced by submission no.16.	6 February 2012
7	Submission withdrawn	N/A
8	National Road Transport Operators Association	10 February 2012
9	National Farmers Federation (NFF) * * Note this submission was replaced by submission no. 14.	14 February 2012
10	Australian Logistics Council	6 August 2012
11	Australian Livestock and Rural Transporters Association	7 August 2012
12	Queensland Trucking Association	7 August 2012
13	National Road Freighters Association	7 August 2012
14	National Farmers Federation* * Note this submission replaced submission no. 14	7 August 2012
15	Queensland Audit Office	7 August 2012
16	Australian Trucking Association (ATA)* *Note this submission replaced submission no. 6	7 August 2012
17	AgForce Queensland	7 August 2012

## **Appendix B – Planned Operations of the National Heavy Vehicle Regulator from 1 January 2013.**

### Improving Efficiency of Doing Business

- *National Office in Brisbane CBD with NHVR support staff located in states and territories to support jurisdictions and industry transition to the NHVR.*
- *One Stop Shop Web site that will receive and process all applications for [Performance Based Standards] PBS and NHVAS Accreditation Modules utilising consistent forms and processes.*
- *NHVR staff providing support to applicants preparing PBS applications, working through the PBS approval process (NHVR expert panel) and with PBS approved vehicles gaining access to the road network.*
- *Ministerial Guidelines and other national guidelines available to assist industry with the preparation of access applications and decision making.*

### Improving Productivity and Safety

- *Pilots of the [Advanced Fatigue Management] AFM Risk Classification System that provides additional fatigue management flexibility and safety (subject to further approval) and other services of the NHVR that will commence operation in July 2013.*
- *National vehicle inspection standards developed and maintained by the NHVR.*
- *Implementation of approved national Local Productivity Initiatives.*
- *Implementation of approved National Industry Productivity Packages.*

### Providing Information and Communications

- *National Call Centre service available 7 days per week to provide information and take complaints regarding the HVNL, Regulations and operations of the NHVR and related matters.*
- *One Stop Shop Web site that will provide all information regarding the HVNL, Regulations, and operations of the NHVR including services to be available from July 2013.*
- *Links on the NHVR website to state and territory on-line registration information.*
- *Ongoing communications campaign to inform jurisdictions and industry of the operations of the NHVR.*
- *Specific Chain of Responsibility education campaign for industry (including supply chain participants).*

### Having Input

- *Opportunities for industry participation in the ongoing consultation processes and systems of the NHVR such as industry forums, events, workshops and on-line market research and feedback that will cover productivity, safety and efficiency in heavy vehicle operations and regulation.*
- *Opportunities for industry participation in the development of the National Compliance and Enforcement Strategy.*

*Please note that the above functions and activities at 1 January 2013 are dependant on the passage of the HVNL in QLD and finalisation of Finance and Funding Strategy for the NHVR.*

SOURCE: TMR email to the THLGC dated 9 August 2012.

**Appendix C – Witnesses at public briefing – 30 November 2011**

<b>Witnesses</b>
Mr Peter Caprioli, Director, Freight and Vehicle System Strategy, TMR
Mr Mark Cridland, Associate Director-General, Policy and Planning, TMR
Mr Bruce Ollason, General Manager, Road System Management, TMR
Mr Angus Draheim, Assistant Project Director, NHVR Project Office
Mr Richard Hancock, Project Director, NHVR Project Office
Mr Keith Ryan, Acting project Director, HVNL, National Transport Commission



**Appendix D – Witnesses at public briefing – 3 August 2012**

<b>Witnesses</b>
Mr Peter Caprioli, Director, Freight and Vehicle System Strategy, TMR
Mr Richard Hancock, Project Director, NHVR Project Office
Mr Raymond Hassall, Principal Manager, Legislation and Policy, NHVR Project Officer
Mr Bruce Ollason, General Manager, Road System Management, TMR