

Heavy Vehicle National Law Amendment Bill 2012

Report No. 16

Transport, Housing and Local Government Committee

February 2013

Transport, Housing and Local Government Committee

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Abbreviations

ALC	Australian Logistics Council
AFM	Advanced fatigue Management
AgForce	AgForce Queensland Industrial Union of Employers
ALRTA	Australian Livestock and Rural transporters Association
ANZPAA	Australian and New Zealand Policy Advisory group
ATA	Australian Trucking Association
BFM	Basic Fatigue Management
COAG	Council of Australian Governments
COR	Chain of Responsibility
CPI	Consumer Price Index
CTP	Compulsory Third Party
FWP	Forward Work Program
HVNL	Heavy Vehicle National Law
HVNLA	Heavy Vehicle National Law Amendment Bill 2012
ICT	Information Communications technology
LHDA	LongHaul Drivers Association
NatRoad	National Road Transport Operators Association
NFF	National Farmers' Federation
NHVR	National Heavy Vehicle Regulator
NRFA	National Road freighters Association
NSW	New South Wales
NTC	National Transport Commission
PBS	Performance Based Standards
PCC	Parliamentary Counsels' Committee
QCAT	Queensland Civil and Administrative Tribunal
QTA	Queensland Trucking Association
SCOTI	Standing Council on Transport and Infrastructure
The Intergovernmental Agreement	Intergovernmental Agreement on Heavy Vehicle Regulatory Reform (2011)
TISOC	Transport and Infrastructure Senior Officials Committee
TMR	Department of Transport and Main Roads
WAHVA	Western Australian Heavy vehicle Accreditation

Chair's foreword

This report presents a summary of the Committee's examination of the Heavy Vehicle National Law Amendment Bill 2012.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland. The Committee received 13 submissions during the course of its Inquiry and held a public departmental briefing as well as a public hearing.

The Committee supports the development of a single, consolidated body of heavy vehicle national law as it will significantly reduce regulatory burden for the freight industry in Australia. The extensive consultation undertaken by the Heavy Vehicle Regulator and state and territory governments has ensured the majority of industry stakeholders are supportive of the national law process and are keen to see the new legislation passed by the relevant Parliaments.

The Committee has raised some concerns about individual provisions in the Bill, for example the new work diary requirements applying to journeys over 100 kilometres compared with the current Queensland requirements of over 200 kilometres, and the impact this reduction will have on Queensland drivers. However the Committee has accepted that there are significant benefits for industry which will be achieved through nationally consistent provisions across the nation. The Committee is of the view that to ensure the uniformity of the heavy vehicle legislation, the preferred approach is for state and territory governments to work together through the national process to agree in a cooperative manner on any future amendments to the National Law.

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 the Department of Transport and Main Roads and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



Mr Howard Hobbs MP
Chair

February 2013

Recommendations

Recommendation 1

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The Committee recommends that the Heavy Vehicle National Law Amendment Bill 2012 be passed.

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 and its primary areas of responsibility include transport, main roads, housing, public works and local government.¹

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.

1.1.1 Referral

The Assembly referred the Heavy Vehicle National Law Amendment Bill 2012 (HVNLA Bill) to the Committee on 13 November 2012. The Committee is required to report to the Legislative Assembly by 7 February 2013. The Assembly also passed the following motion on 13 November 2012:

*That the Transport, Housing and Local Government Committee, whilst considering the Heavy Vehicle National Law Amendment Bill 2012, also consider the appropriateness of the proposed national penalty regime in Queensland.*²

1.1.2 Inquiry process

The Committee held a public briefing by the Department of Transport and Main Roads (TMR) on Friday 30 November 2012 (see Appendix A for a list of witnesses) and a public hearing on Monday 21 January 2013 (see Appendix B for a list of witnesses who gave evidence at the hearing).

The Committee invited submissions by emailing 492 subscribers on the Transport, Housing and Local Government Committee's email subscriber list and emailing a further 22 identified stakeholders on 15 November 2012. The Committee received 13 submissions (see Appendix C for a list of submissions).

The transcripts of the public briefing and hearing, and submissions received by the Committee are available on the committee's webpage at:

<http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC>.

1.2 Policy objectives of the Heavy Vehicle National Law Amendment Bill 2012

The principal objective of the Heavy Vehicle National Law Amendment Bill 2012 (the HVNLA Bill) is to amend the *Heavy Vehicle National Law Act 2012* (the HVNL Act) including the Heavy Vehicle National Law (National Law) which is a schedule to the Act. The HVNL Act was passed by the Queensland Parliament on the 23 August 2012 with key provisions being proclaimed on 12 October 2012 to put into effect the National Heavy Vehicle Regulator (NHVR). The HVNL Act implemented the first stage of a single national system for heavy vehicle regulation through the creation of the National Heavy Vehicle Regulator (the Regulator).

¹ Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended 14 September 2012.

² Queensland Parliament, *Hansard Transcript*, 13 November 2012 p. 2486.

The HVNLA Bill aims to resolve policy or technical matters that remained unresolved at the time of passage of the HVNL Act. The HVNLA Bill retains the intent and substance of the majority of the provisions contained in the HVNL Act.³

When the Minister for Transport and Main Roads, the Hon. Scott Emerson MP, introduced the HVNLA Bill into the Queensland Parliament on the 13 November 2012 he informed the House that:

The HVNLA Bill contains several policy refinements and technical amendments, along with significant improvements over the first national law bill, including the following key policy changes:

- *the inclusion of an access framework to support more efficient Performance Based Standards vehicles, which currently operate through administrative arrangements;*
- *a more transparent, robust decision making framework for road access decisions, which includes improved clarity about the matters a road manager may consider, such as safety and what conditions can be applied when granting access;*
- *alignment with Council of Australian Governments' executive officer liability provisions, which are designed to promote good corporate governance while ensuring that liability for corporate fault is not applied to an individual unfairly or unreasonably;*
- *executive officer liability offences are a separate matter to chain of responsibility and these amendments do not in any way water down chain of responsibility provisions;*
- *inclusion of provisions to confirm the regulator as a national system employer for the purpose of the Commonwealth Fair Work Act 2009; and,*
- *finally, the creation of nationally consistent maximum penalties to replace the penalties implemented through the first bill, which were largely based on Queensland's current penalties.*

Development of these national penalties involved extensive consultation with jurisdictions and industry. The Standing Council on Transport and Infrastructure (SCOTI) will consider a report from a full review of maximum penalties at its first meeting in 2014.⁴

The Explanatory Notes to the HVNLA Bill explain that a significant renumbering of sections in the National Law has been undertaken in the Bill due to the introduction of a number of new proposed sections and the reconfiguration of a number of sections of the Act. Given the nature of the changes and the extent of the consequential renumbering, the Amendment Bill will substitute the National Law in its entirety. Where proposed sections in the Amendment Bill will replace sections in the Act, a reference to the section number has been included in the relevant note.⁵

Provisions dealing with the registration of heavy vehicles in Chapter 2 of the HVNLA Bill will not be proclaimed into force until the necessary national information and telecommunication infrastructure is in place. Until that point, the current local laws will continue to apply to manage registration functions. The application laws enacted by states and territories may modify or supplement terms used elsewhere in the National Law to ensure the appropriate integration of the local registration laws.⁶

³ *Explanatory Notes*, Heavy vehicle National Law Amendment Bill 2012, p.1.

⁴ Minister for Transport and Main Roads, Queensland Parliament, *Hansard Transcript*, 13 November 2012 p. 2484.

⁵ *Explanatory Notes*, Heavy vehicle National Law Amendment Bill 2012, p.1.

⁶ The HVNLA Bill 2012, *Explanatory Notes*, pp.1-2.

1.3 Heavy Vehicle National Law regulations

Section 669 of the Heavy Vehicle National Law Act 2012 (section 730 following assent of the Amendment Bill) requires regulations to be made by the Queensland Governor on the unanimous recommendation of responsible Ministers.

TMR has advised the Committee that National Regulations are planned for commencement at the same time as the National Law (currently anticipated for mid-2013). Preliminary drafts of the national regulations were publically released by the National Transport Commission (NTC) on 28 February 2011. This coincided with the release of the Heavy Vehicle National Law Draft Regulatory Impact Statement and an exposure draft of the National Law, with public comments submitted by 6 May 2011.

The full suite of draft National Heavy Vehicle Regulations have been prepared for consideration by the Parliamentary Counsels' Committee (PCC) and the Standing Council on Transport and Infrastructure (SCOTI). SCOTI is expected to vote on the regulations in early 2013. Future steps will be contingent on the outcomes of the deliberations of those two bodies. Fourteen industry representatives (including peak body representatives) have continuous access to all drafting instructions, issues raised and draft instruments as prepared. Any additional formal exposure periods will be undertaken at the direction of SCOTI.⁷

The Department of Transport and Main Roads (TMR) has advised that, subject to the passage of the HVNLA Bill through the Queensland Parliament, it is intended that the operational provisions of the *Heavy Vehicle National Law Act 2012* will be proclaimed on 1 July 2013. This is also the date for national implementation to ensure a smooth transition for industry. This proclamation date is dependent on the ability of other jurisdictions to achieve passage of their own application legislation, and completion of implementation tasks such as the information communications technology (ICT) systems to ensure the Regulator's readiness to commence full operations.⁸

On 9 November 2012, SCOTI agreed that all jurisdictions will have application laws in place to enable full operations to commence from 1 July 2013, noting that this excludes Western Australia (WA) as that jurisdiction is not a signatory of the Intergovernmental Agreement but has provided in principle support.

1.4 Definition of a heavy vehicle

TMR has advised the Committee that:

*The mass and dimension limits for heavy vehicles will be defined in the Heavy Vehicle (Mass, Dimension and Loading) National Regulations. These regulations have been drafted based on the approved national model laws that are currently implemented in Queensland through the Transport Operations (Road Use Management – Mass, Dimension and Loading) Regulations 2005 and various guidelines, such as the Guideline for Multi-combination Vehicles in Queensland, Form 1, Version 10.*⁹

⁷ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment B, pp.1-2

⁸ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment B, p.2.

⁹ See <http://tmr.qld.gov.au/Business-industry/Heavy-vehicles/Multi-combination-vehicles.aspx>

Specifically, the national regulations will provide for:

- *The prescription of mass requirements about heavy vehicles and components of heavy vehicles;*
- *The prescription of requirements (that are not prescribed mass requirements) about the use on roads of heavy vehicles under particular mass limits;*
- *The prescription of dimension requirements about a heavy vehicle (together with its equipment), a component of a heavy vehicle and the dimensions of a heavy vehicle's load;*
- *The prescription of requirements (that are not prescribed dimension requirements) about the use of a vehicle to which a dimension requirement applies;*
- *The prescription of loading requirements about the restraint or positioning of a load or any part of it on a motor vehicle or trailer; and*
- *The prescription of road conditions of a type to be imposed on class 2 heavy vehicle authorisation notices.*

It is TMR's intention to ensure that the current flexible access arrangements enjoyed by Queensland operators will continue following the implementation of the national regulations, either through inclusion in the regulations themselves or through notices that give effect to Local Productivity Initiatives.

All Local Productivity Initiatives currently operating in Queensland, such as the Livestock Loading and Grain Harvest Management schemes, will be retained following implementation of the National Law. The Regulator will review local productivity initiatives nationally with the intent of expanding them to other suitable areas of the country. The resulting application of productivity initiatives on a national basis, rather than state by state, will yield efficiency gains and a reduction in the cost of regulation.¹⁰

Recommendation 1

The Committee recommends that the Heavy Vehicle National Law Amendment Bill 2012 be passed.

¹⁰ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment B, p.1.

2 Examination of the Heavy Vehicle National Law Amendment Bill 2012

2.1 Policy issues

2.1.1 Industry support for the Bill

The Committee notes that the heavy vehicle industry is generally supportive of the National Law and the amendments proposed in the HVNLA Bill. The Committee acknowledges that the high level of support is due to the extensive consultation process undertaken with heavy vehicle drivers, trucking associations, logistics councils, insurers, road safety practitioners, fatigue experts and transport regulators over the course of the development of HVNL and during the development of the amendment Bill. Evidence of this support is provided below:

- The Australian Trucking Association (ATA) *“supports the Bill in its current state, based on the commitments in the NHVR Forward Work Program”*.¹¹
- The National Farmers’ Federation (NFF): *“..reconfirms its support for the establishment of a single national system of laws for heavy vehicles, to improve efficiency... and reduce administrative and regulatory burden for heavy vehicle operators. Timely passage through the Queensland Parliament early in 2013, without unnecessary delays, will be important to allow the National Heavy Vehicle Regulator (NHVR) to establish itself and work towards national uniformity.”*¹²
- The Australian Logistics Council (ALC) *“has strongly supported the development of a National Law that is expected to deliver over \$12 billion of productivity benefits... [and] requests the Committee recommend passage of the Bill, without amendment. This includes the provisions relating to executive officer liability”*.¹³
- The Queensland Trucking Association (QTA) supports the reform process: *“the work undertaken not only by the NHVR Project Office but by jurisdictions including Queensland and the National Transport Commission (NTC), engaging with industry representatives throughout the country, seeks to achieve outcomes which will deliver increased productivity and efficiency in the freight task and road safety outcomes.”*¹⁴
- The Australian Livestock and Rural Transporters Association (ALRTA) *“has been a strong supporter of the creation of the National Heavy Vehicle Regulator (NHVR).... And strongly supports the enactment of the Bill by the Queensland Parliament, without amendment and without delay. Urgency in the handling of this Bill remains important.”*¹⁵
- The National Road Transport Operators Association (NatRoad) *“is acutely aware of the 1,000+ issues that required amendment in the Heavy Vehicle National Law Amendment Bill 2012. NatRoad has been closely involved in consultations with the National Heavy Vehicle Project Office and the National Transport Commission during the policy development phase and drafting of the Bill. NatRoad supports the passage of the Heavy Vehicle National Law Amendment Bill 2012 in its current form.”*¹⁶

¹¹ ATA, *Submission No.2*, p.1.

¹² NFF, *Submission No.6*, p.1.

¹³ ALC, *Submission No.7*, p.1.

¹⁴ QTA, *Submission No.8*, p.1.

¹⁵ ALRTA, *Submission No.9*, p.1.

¹⁶ NatRoad, *Submission No.11*, p.1.

- AgForce Queensland Industrial Union of Employers (AgForce) “generally supports the introduction of the National heavy Vehicle Regulator...[but has] concerns regarding some sections of the legislation.”¹⁷

While there is general support for the HVNLA Bill, a number of specific issues were raised during the course of the Committee’s Inquiry. These are explored below.

2.1.2 Uniformity of legislation

In its submission the NFF “urges state governments to work cooperatively and not make changes to the legislation unilaterally. Any changes required by states should be delivered through a national process, with adequate review mechanisms.”¹⁸

TMR provides some background to this issue:

On 19 August 2011, the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform (the Intergovernmental Agreement), was signed by first ministers from Queensland and all other jurisdictions, excluding Western Australia, which gave in-principle support.

The Intergovernmental Agreement requires participating jurisdictions not to put in place legislation that derogates from the agreed national law without prior agreement of SCOTI.

It is Queensland’s intention to negotiate an acceptable national position in all cases and every effort is being made to ensure this happens. However, Queensland must legislate in the interests of Queensland, and ultimately, as it is not legally enforceable, the Intergovernmental Agreement does not restrict the government’s ability to do so in the event of future national policy not suiting Queensland’s unique operating environment.”¹⁹

Committee Comment

The Committee is of the view that the preferred approach for any future amendments to the National Law should be for state and territory governments to work cooperatively together through the national process to agree on amendments in order to ensure uniformity of heavy vehicle legislation. The Committee believes the Queensland Government should make every attempt to assist in negotiating a national position before making any unilateral amendments.

2.1.3 Adherence to the Forward Work Program

On 26 October 2012 an updated Forward Work Program (FWP) was released following endorsement by SCOTI.²⁰ Those issues that could not be addressed during consultation on the current amendment bill have been included in the FWP.

A number of submitters sought reassurance that commitments made on the FWP will be adhered to and will be resolved in a timely vision. Natroad’s support for the Bill is contingent on this²¹ and the ALC has also sought confirmation that issues listed in its submission are included in the FWP and that the Regulator and NTC have the resources to implement these reforms no later than the end of 2014.²²

¹⁷ AgForce, *Submission No.12*, p.1.

¹⁸ NFF, *Submission No.6*, p.1.

¹⁹ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, pp.2-3.

²⁰ The Forward Work Program has been published on the THLGC website -

<http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries>.

²¹ NatRoad, *Submission No.10*, p.1.

²² ALC, *Submission No.7*, p.1.

TMR advises:

A copy of the most recent Legislative Forward Work Program (FWP), approved by the Standing Council on Transport and Infrastructure (SCOTI) on 9 November 2012 is provided at Attachment C.²³

All 6 issues listed by the ALC are included in the FWP and TMR is committed to working closely with all stakeholders to progress the FWP.²⁴

Committee Comment

The Committee notes the Department of Transport and Main Roads advice that it is committed to working closely with stakeholders to progress the Forward Work Program.

2.1.4 Regulator's costs - staffing and resourcing

The Explanatory Notes accompanying the first Heavy Bill National Law Bill 2012, state that 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 HVNL Act 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.²⁵

The ALRTA raised a concern in its submission that governments have not yet provided clarity and certainty about the resourcing and budget that will be available to the NHVR, particularly from 1 July 2013 onwards.²⁶ At the Public Hearing, Ms Liz Schmidt from the ALRTA reiterated the importance of adequate resourcing:

In relation to the issue of the NHVR's capabilities and resourcing, the areas where the ALRTA expect the NHVR to produce results are complex. We see the NHVR as the most effective way for governments to ensure that the necessary skills, expertise and resources will be reliably and sustainably available to work within our industry. However, for this committee, a clear implication is that passage of the current bill is not of itself sufficient. To deliver the functions set out in the bill, the NHVR will need to be appropriately resourced. If the NHVR is not appropriately resourced, it may struggle to make a real difference. It risks being so overloaded with its day-to-day activities that it may fail to deliver meaningful change.

Risks regarding resourcing will be increased when decisions are taken late and for as long as the states have not legislated to provide powers to allow the NHVR to raise funds. The ALRTA is concerned that the national ministerial council has not yet provided clarity and certainty about the resourcing and budget that will be available to the NHVR from 1 July 2013 and onwards. We suggest that this committee may seek clarification from the NHVR on how it proposes to demonstrate to industry and to governments that its resourcing is adequate to deliver results from 1 July 2013 and in future years.²⁷

²³ Attachment C is available on the Committee website at <http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/>

²⁴ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-2, p.1.

²⁵ *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p.9.

²⁶ ALRTA, *Submission No.9*, p.3.

²⁷ Ms Liz Schmidt (ALRTA), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.4.

The ALC also recommends that the Committee satisfy itself that the Regulator has the necessary resources to provide services on 1 July 2013, and that the Regulator set out the functions to be performed by the Regulator, and states and territories under service agreements on full commencement of the national scheme.²⁸

TMR responded to the concerns raised by stakeholders with:

The NVHR is working closely with participating jurisdictions in developing strategies to ensure that the Regulator will be properly resourced and capable for full operational commencement.

The Intergovernmental Agreement states that all parties agree that all ongoing NHVR costs will be subject to full cost recovery from registered operators through the heavy vehicle charge or other direct recovery fees.

On 9 November 2012, SCOTI agreed to the NHVR start date of 21 January 2013, the methodology for financing the NHVR for initial activities (Release 1) from this date and, in principle, the methodology for funding the transition to full operations (Release 2). The financing for Release 1 operations is based on the previously agreed scope for Release 1.

SCOTI has also requested that the NHVR Board provide advice on financing requirements for Release 2 operations. The NHVR is developing a full budget, organisational structure and resource requirements to deliver the agreed scope for Release 2 operations from 1 July 2013 for SCOTI consideration in May 2013.

Attachment D²⁹ provides an outline of planned operations of the NHVR, and activities to be delivered by jurisdictions through service agreements at the national go live date estimated to be July 2013.³⁰

At the Public Hearing, Mr Martin from the National Road Freighters Association (NRFA) raised the issue of the transport industry's capacity to fund the new reforms:

The National Road Freighters Association as a group is not against the formation of a national regulator. However, we are concerned that it may become another massive bureaucracy that the transport industry is expected to fund... Ladies and gentlemen, the bin is empty. This industry is not a massive milking cow and every dollar our costs go up by affects the ability of this country to export, and if increases in costs do not stop before long we will be unable to compete in the international market. For the national regulator to be successful, a simple one-stop shop is essential, and correspondingly, state based bureaucracies must shrink.³¹

The NHVR Project Office advised the Committee on 3 August 2012 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.³²

²⁸ ALC, *Submission No.7*, pp.2-3.

²⁹ Available on the Committee's website at <http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries> and is attached to the Report as Attachment A.

³⁰ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, p.3.

³¹ Mr Russ Martin, NFRA, *Transcript*, 21 January 2013, THLGC Public Hearing on the HVNLA Bill 2012, p.3.

³² Mr Hancock, *Hansard transcript*, 3 August 2012, THLGC - Public briefing on the *Heavy Vehicle National Law Bill 2012*, pp.12-13.

The Explanatory Notes for the original Bill provides the details of the cost benefit analysis undertaken on the introduction of the new model law.

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.³³

At the Departmental Briefing held on 30 November 2012, TMR further advised that an assessment undertaken in late 2011 estimated the net benefit to the State from the introduction of the National Law will be approximately \$1.47 billion over the 2022 forward estimates period.³⁴

Committee Comment

The Committee notes it is the intention of the Regulator to administer the new regime within the current pool of funding but understands 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 also satisfied that cost benefit analyses clearly show a significant net benefit to industry following implementation of the new model law and the establishment of the Regulator.

2.1.5 Driver fatigue – work and rest hours

The current fatigue management laws in Queensland, New South Wales, Victoria and South Australia, are based on the national model fatigue laws which were finalised by the NTC in 2008. The model fatigue laws were adopted by Queensland and the other jurisdictions through amendments to the relevant transport laws in each State in 2008 and 2009.³⁵

The fatigue management approach in the National Law flows from the national fatigue model laws that were approved in 2008.³⁶ TMR has advised the Committee that under the National Law there are three work and rest hour options –

- Standard hours which provides regulated maximum work and minimum rest periods and allows drivers to work up to 12 hours in a 24 hour period.
- Basic Fatigue Management (BFM) which provides regulated maximum work and minimum rest periods for drivers of operators who hold BFM Accreditation under the National Heavy Vehicle Accreditation Scheme. Under BFM drivers may work up to 14 hours in a 24 hour period.
- Advanced Fatigue Management (AFM) which provides maximum flexibility for operators to determine the most appropriate work and rest hours schedule to suit their operations. To obtain AFM accreditation, the operator must be able to demonstrate that they have an

³³ *Heavy Vehicle National Law Bill 2012, Explanatory notes*, p.9.

³⁴ Mr Cridland (TMR), *Hansard transcript*, 30 November 2012, THLGC - Public departmental briefing on the Heavy Vehicle National Law Bill Amendment 2012, p.12.

³⁵ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, p.6.

³⁶ Minister for Transport and Main Roads, Queensland Parliament, *Hansard*, 13 November 2012 p. 2485.

appropriate fatigue management system in place to effectively manage their fatigue risks and obtain AFM accreditation under the National Heavy Vehicle Accreditation Scheme.³⁷

At the Departmental Briefing held on 30 November 2012, TMR advised that the fatigue management scheme in the current Bill has been improved by a new approach to Advanced Fatigue Management (AFM):

*The standard hours arrangements, the basic fatigue management arrangements, are the same as what is currently in place in Queensland in the Heavy Vehicle National Law Amendment Bill. What is different, and I personally think an improvement, is that we have got a new approach to advanced fatigue management.*³⁸

A number of concerns were raised in submissions about the model law fatigue management regulations including:

- A need for increased flexibility in driving, work and rest hours to respond to operating conditions, particularly with regard to continuous rest requirements.^{39 40}
- Every driver should be offered the flexibility of fourteen hours in twenty four and the freedom to work up to twelve days straight before a two day break becomes mandatory.⁴¹
- Changes to fatigue management should be made in consultation with industry, particularly regarding livestock transport, as there are also animal welfare issues to be considered.⁴²
- It is extremely important that fatigue management can deal with instances where a journey for cattle might be 14 hours and a driver's allowable driving hours are 12.⁴³
- There has to be a mechanism to allow for the driver to finish the journey rather than unloading the cattle when they only have a short distance left to travel as this will minimise stress on the animals and costs to the industry.⁴⁴
- BFM is not cost effective due to entry costs, training and record keeping requirements, and little advantage for long distances.⁴⁵
- BFM was implemented without practical assessment of the repercussions on drivers and their ability to do their work legally, safely and within commercial practices.⁴⁶
- AFM is costly and time consuming and has no real checks and balances to ensure that it meets the needs of the driver.⁴⁷
- Some transport companies are using questionable tactics to force drivers to work when they are tired.⁴⁸

³⁷ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, p.7.

³⁸ Mr Hancock (TMR), *Hansard transcript*, 30 November 2012, THLGC - Public departmental briefing on the *Heavy Vehicle National Law Bill Amendment 2012*, p.10.

³⁹ Mr Russell Martin, *Submission No.4*, p.1.

⁴⁰ Mr Ken Wilkie, *Submission No.10*, p.8.

⁴¹ Mr Ken Wilkie, *Submission No.10*, p.8.

⁴² AgForce, *Submission No.12*, p.2.

⁴³ AgForce, *Submission No.12*, p.2.

⁴⁴ AgForce, *Submission No.12*, p.2.

⁴⁵ Mr Ken Wilkie, *Submission No.10*, p.8.

⁴⁶ LHDA, *Submission No.13*, p.3.

⁴⁷ LHDA, *Submission No.13*, p.2.

⁴⁸ LHDA, *Submission No.13*, p.2.

Mr Ken Wilkie and Mr Russell Martin suggest the West Australian (WA) fatigue scheme may address the issues raised, as current Eastern standard fatigue regulations are too prescriptive.^{49 50}

AgForce submits that as Queensland is a geographically large state with requirements very different to states like Victoria, issues such as fatigue management should take the differences into consideration and there should be flexibility or alternatively set the regulations to the conditions of the state.⁵¹

The LongHaul Drivers Association (LHDA) suggests that the old regime of 12 hours work/driving should be reintroduced with a new AFM model put in place so that any transport company seeking to have drivers work beyond 12 hours would need to have a Fatigue Management study done, a template for operations drawn up with the guidance and acceptance of their drivers and approved by the Regulator.⁵²

In response to the suggestion by Mr Wilkie and Mr Russell that the WA fatigue management scheme would be a better model for work and rest hours, TMR advises:

Unlike other jurisdictions, in Western Australia, heavy vehicle driver fatigue is legislated under Workplace Health and Safety legislation and not Transport Legislation. Western Australia takes a different approach to fatigue management than that taken in the model laws, or by any other State or Territory. Under the Western Australian model, drivers have a work opportunity of up to 17 hours in a 24 hour period for a maximum of 3 consecutive days before being required to take a 24 hour rest period.

Accreditation under the WA Heavy Vehicle Accreditation (WAHVA) Scheme is mandatory for individuals and organisations that perform any transport task as part of a commercial business or for profit within Western Australia, including interstate operators.

Under the WAHVA, accreditation in both the fatigue and vehicle maintenance modules is compulsory. Whereas under NHVAS, accreditation is optional, and operators have a choice regarding which modules they wish to participate in.

WAHVA requirements for the fatigue management module are substantially the same as BFM, and similar costs for driver medicals, training and record keeping would be experienced by operators under each scheme. The costs to industry as a whole under the WA approach would be higher due to the mandatory nature of this scheme.

Both the model law and Western Australian fatigue management approaches were considered by a fatigue expert panel established to provide advice on the development of the ...HVNL. It was the recommendation of the fatigue expert panel that the HVNL fatigue management provisions be based on the national model fatigue law.....

Under the HVNL, the AFM accreditation scheme will be supported by a Risk Classification Framework, which will provide operators with the ability to develop flexible work and rest hours options using a risk trading approach. This will make entry to AFM accreditation more streamlined and cost effective for industry.

⁴⁹ Mr Russell Martin, *Submission No.4*, p.1.

⁵⁰ Mr Ken Wilkie, *Submission No.10*, p.8.

⁵¹ AgForce, *Submission No.12*, p.2.

⁵² LHDA, *Submission No.13*, p.3.

The National Heavy Vehicle Regulator is also developing a range of industry specific AFM Templates, which will provide operators the opportunity to adopt an “on the shelf” fatigue management system which has been designed to meet the needs of their particular industry, for example, the livestock transport industry.

Heavy vehicle driver fatigue is a significant road safety issue, with many heavy vehicle incidents occurring due to driver fatigue. The fatigue management provisions of the HVNL have been developed in consultation with independent fatigue experts and are designed to provide an appropriate balance between promoting industry productivity and efficiency, driver wellbeing and road safety.⁵³

In relation to the specific issues raised by AgForce on livestock transportation, TMR advises:

The NHVR and representatives from livestock transport companies nationwide have worked together to develop a proposed template of work and rest hours for implementation under the new national law. This template is designed to allow operators the flexibility to respond to common issues faced when moving a range of livestock types.

The proposed livestock transport template significantly aligns with the WA’s approach to fatigue management. When approved, any transport operator (including farmers with trucks to move their own cattle) will be able to use the proposed template as a model for their own AFM system.

In order to assess the operational viability of the proposed template prior to its approval, the NHVR intends to run a limited pilot in the first half of 2013.

The NHVR Project Office has spoken with livestock transporters and with Agforce representatives about their potential involvement of the trial and will continue to work with these groups to progress the pilot.⁵⁴

Ms Liz Schmidt (ALRTA) confirmed the development of a more flexible template at the Public Hearing held on 21 January 2013:

The Livestock Transporters Association of Queensland has been working very closely with Transport and Main Roads to formulate a fatigue management package that actually suits us. We have tried to do this for quite some time. But they have actually accepted that we have different issues, and there is a fatigue management package that is available to us as of now actually.... It follows along similar lines to Western Australia. I think that fatigue management package will be available across the industry, not only to livestock transporters, in the near future....

I think one of the issues that maybe the general trucking population has is that takes a little bit of putting together from a transport operator’s point of view. I am a family operator, and sometimes it is a little bit difficult to put together those kinds of things as an owner-operator. So we have worked towards making it very easy to pick up a template, if you like, and put it into our own business. So we are working towards that, and I think the National Heavy Vehicle Regulator will help us to go forward with that nationally. I am hoping it will.⁵⁵

⁵³ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, pp.6-8.

⁵⁴ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-2, pp.2-3.

⁵⁵ Ms Liz Schmidt (ALRTA), *Transcript – Public Hearing held on 21 January 2013*, pp. 4-5

In response to the concerns raised by the LHDA, TMR advises:

The fatigue management regime established under the Heavy Vehicle National Law establishes three work and rest hours options that heavy vehicle operators and drivers may elect to operate under; standard hours, Basic Fatigue Management (BFM) and Advanced Fatigue Management (AFM).

Standard hours provides prescribed maximum work and minimum rest requirements for drivers generally, and is the most commonly applied work and rest hours option. A driver operating under standard hours can work for a maximum of 12 hours in a 24 hour period and must have at least 7 hours of continuous rest within the same period.

For drivers to work under BFM or AFM, operators must first be accredited under the National Heavy Vehicle Accreditation Scheme and be able to demonstrate that they have an appropriate fatigue management system in place to mitigate the risks of drivers working in excess of the standard hours' Under BFM a driver may driver up to 14 hours in a 24 hour period and must have at least 7 hours continuous rest in that same 24 hour period.

While both standard hours and BFM prescribe maximum work and minimum rest times for drivers in legislation, under AFM, operators may elect to nominate work and rest hours that are tailored to suit the needs of their particular operation.

The model law approach to AFM which prescribed outer limits for work and rest has not been included in the HVNL. Instead, rather than prescribing outer limits for AFM the scheme relies on a risk classification system under which operators can offset high risk activities such as longer driving hours with fatigue limiting actions, for example, more frequent rest breaks or regular night rest breaks. The National Heavy Vehicle Regulator will be piloting the new AFM scheme early in 2013 and would welcome broad industry participation to assess the application of the risk classification system before it is introduced nationally with the HVNL.

Notwithstanding that the HVNL establishes prescribed maximum work and minimum rest hours, it also provides a general provision that requires that drivers not work while fatigued. This is a chain of responsibility offence with employers, operators and contractors all having a responsibility not to allow drivers to drive while fatigued. A driver can be considered fatigued even if they have not exceeded the prescribed maximum work and minimum rest periods and it is up to drivers and employers both to make an assessment of a driver's fitness for duty before a driver commences working and throughout his or her trip.

The HVNL places an obligation on all parties in the chain of responsibility to take all reasonable steps to ensure that a driver does not drive while fatigued. The maximum court imposed penalty for this offence is \$10,000. The HVNL also makes further specific offences for parties in the chain of responsibility to make demands on a driver, develop schedules or enter into contracts with a driver that would likely result in the driver breaching fatigue laws.

The issue of driver remuneration and the correlation between pay rates and road safety is outside the scope of the HVNL. This is an industrial relations issue that has been considered nationally and is covered under the federal Road Safety Remuneration Act passed in March 2012.⁵⁶

⁵⁶ TMR, Letter to the Transport, Housing and Local Government Committee dated 16 January 2013, pp.1-2.

Committee Comment

The Committee notes the concerns raised by stakeholders about the need for increased flexibility in relation to fatigue management regulation. The Committee supports the development of work and rest hour templates such as the proposed livestock transport template which aim to provide increased flexibility for transport operators with specific requirements.

2.1.6 Driver fatigue - record keeping obligations for under 100 kilometre work

Clause 318 of the Bill details the record keeping obligations for operators of fatigue related vehicles undertaking 100 km work under standard hours as they do not have to maintain a formal work diary.

AgForce submits “the current Queensland legislation allows 200 km and AgForce would not like to see a reduction in this limit. Queensland is a large state and in some cases for primary producers 100km does not even allow them to get to their nearest town, and in some farming operations, to their nearest depot”.⁵⁷

TMR’s written response to AgForce’s concerns as follows:

The national law requires drivers engaged in work that takes them more than 100km from their base to complete a work diary. This presents a change for some Queensland operators from the 200km radius limit that has previously applied in Queensland.

These provisions implement a recommendation from the Independent Expert Panel on Heavy Vehicle Policy established to overcome inconsistencies in transport laws across jurisdictions. By implementing a 200km limit Queensland legislation had derogated from the agreed national model law limit, this change is bringing Queensland back into line with the agreed national policy.

Drivers of large, multi- and heavy-combination vehicles already maintain work diaries due to the nature of the distances travelled and work requirements. The largest impact is estimated to be on medium-rigid operators, as these operators may be more likely to go over the 100km threshold.

Clause 357 provides for the Regulator to exempt drivers from work diary requirements. Clause 358 requires that the Regulator first be satisfied that the work diary requirements would be an unreasonable restriction on operations conducted by the driver, and that the class of work undertaken will not pose a significant risk to public safety or of the driver driving while impaired by fatigue.⁵⁸

Mr Richard Hancock (NHVR) provided further clarification at the Public Hearing:

In terms of work diary requirements, Queensland has had a change because of the heavy vehicle national law coming into place. It is reducing from 200 kilometres back to 100 kilometres. The regulator will have an exemption capacity. I am very familiar at a level with remote and regional operations that are often undertaken by local councils et cetera in maintaining very long lengths of road network, and that is just one circumstance. I would say to the committee that the regulator will be flexible in using those exemption powers, but it would need to be satisfied that the safety outcome that we are all looking for is not compromised by giving an exemption to a work diary requirement. The other thing I would say is that under occupational health and safety and other forms of regulation already

⁵⁷ AgForce, Submission No.12, p. 2.

⁵⁸ TMR, Written briefing to the Committee dated 21 December 2012, Attachment A-2, pp.3-4.

there is still a requirement for record keeping and that is not removed in any sense by the granting of an exemption by the regulator.⁵⁹

Committee Comment

The Committee is concerned that the requirement for a formal work diary process for operators of fatigue related vehicles undertaking work under standard hours which takes them more than 100 km from their base may not be flexible enough for smaller operators required to travel slightly longer distances, as is often required in large states such as Queensland.

The Committee notes the Regulator will have the power under Clause 357 and 358 to exempt drivers from the work diary requirements for up to 3 years if it is satisfied that these requirements would be an unreasonable restriction on the operations of the driver and that the class of work undertaken will not impose a significant risk to public safety or of the driver driving while impaired by fatigue.

The Committee encourages the Regulator to use this exemption power where ever possible to ensure maximum flexibility in the work diary requirements and to ensure unnecessary administrative burden is minimised.

2.1.7 Executive officer liability and chain of responsibility

The ATA submission supports a strong, but fair, approach to Executive Officer Liability and Chain of Responsibility.⁶⁰ Ms Liz Schmidt from the ALRTA reiterated at the Public Hearing held on 21 January 2013 that for the Regulator to deliver the results in areas that matter to the ALTRA it is essential that “Australia’s world-leading ‘chain of responsibility’ laws are not watered down”.⁶¹ She went on to state that:

We are looking for the NHVR to deliver further improvements in how trucking operators are treated by their customers and other parties in the supply chain. We are looking to the NHVR to ensure that the chain of responsibility is real and effective and that customers and other parties do not encourage or contribute to any illegal or unsafe activities. To achieve this, we expect the NHVR will need to have excellent investigative skills and a close understanding of commercial dealings in the trucking and logistics industries.⁶²

TMR has advised the Committee that:

Changes to offences for company directors and other corporate officers in the Amendment Bill has improved alignment with COAG’s Principles for Personal liability for Corporate Fault. These changes are designed to promote good corporate governance, while ensuring that liability for corporate fault is not applied to an individual unfairly or unreasonably.

Chain of Responsibility (COR) provisions in the National Law align with existing compliance and enforcement legislation. Review of directors’ liability offences to align with the COAG principles are a separate matter and do not directly impact on COR provisions. As such, the reduction in the number of offences in the National Law, to which directors’ liability applies, has not diminished the ability to enforce and prosecute COR offences. The directors’ liability

⁵⁹ Mr Richard Hancock (NHVR), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.17.

⁶⁰ ATA, *Submission No.2*, p.1.

⁶¹ Ms Liz Schmidt (ALTRA), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.3.

⁶² Ms Liz Schmidt (ALTRA), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.4.

offences that have been removed were minor or administrative in nature, such as the driver's completion of a work diary.

*The Legislative Forward Work Program.... provides for a review of the COR framework to be conducted in 2013.*⁶³

Clause 183 - Liability of employer etc. for contravention of mass, dimension or loading requirement

AgForce has raised a concern about whether Clause 183 is consistent with chain of responsibility legislation. If it is consistent with current chain of responsibility requirements, AgForce has no objections.⁶⁴

TMR has provided the following response:

*This clause replicates similar provisions in Queensland's current legislation under sections 57AA to 57C, and section 57H of the Transport Operations (Road Use Management) Act 1995 which establish extended liability offences in Queensland.*⁶⁵

Clause 203 – vehicle operations - speeding

AgForce has questioned whether Clause 203 (f) which imposes liability on persons who are most directly responsible for the use of a heavy vehicle for offences committed by the vehicle's driver exceeding the speed limit:

*...mean[s] that whoever engaged the heavy vehicle for a service is liable if the driver is caught speeding? If so we would object to this, as the driver's actions are outside the employing person's control. We consider this unreasonable unless there is evidence that the person who engaged the services of the heavy vehicle specifically asked or requested the driver to do so.*⁶⁶

TMR advises:

This chapter places obligations on others in the supply chain, such as employers, schedulers, consignors and loaders, to ensure that operational systems do not require a driver to breach speed limits in order to complete an assigned freight task.

Offences under this chapter are not infringeable and must be proven through court proceedings.

*This clause replicates similar provisions in Queensland's current legislation under section 163AA of the Transport Operations (Road Use Management) Act 1995.*⁶⁷

Clause 218 – commission of a speeding offence

AgForce has questioned how a driver of any vehicle can be prosecuted for an offence if it is not proven that they have committed an offence.⁶⁸

⁶³ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, pp.9-10.

⁶⁴ AgForce, *Submission No.12*, p.2.

⁶⁵ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-2, p.2.

⁶⁶ AgForce, *Submission No.12*, p.2.

⁶⁷ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-2, p.2.

⁶⁸ AgForce, *Submission No.12*, p.2.

TMR has advised that:

This clause relates to prosecution of others in the supply chain, not the driver, and it allows them to be held accountable for their obligations under this chapter without the need for a driver to have been convicted of a speeding offence.

This clause replicates similar provisions in Queensland's current legislation under section 163F of the Transport Operations (Road Use Management) Act 1995.⁶⁹

Committee Comment

The Committee is satisfied that the responses provided by the Department of Transport and Main Roads adequately deal with the issues raised in relation to executive officer liability and chain of responsibility.

2.1.8 Mapping and road closure advice

A number of stakeholders raised issues in relation to mapping and road closure advice.

The NFRA has suggested that when enforcement officers deem a road unsuitable for any trucks, signage should be on borders and as far north, south, east or west as possible of the road incident and detour options available.⁷⁰

TMR has advised that:

The NHVR intends to develop a harmonised road closure policy for enforcement officers to assist in the set up and enforcement of temporarily closed roads. This will be progressed as part of the Forward Work Program.⁷¹

At the Public Hearing Mr Hancock (NHVR) provided further information:

Can I just make a comment about mapping because I did hear that raised previously and I think it is quite significant. One of the tasks that we have in the next six months leading up to the middle of 2013 is to create a national mapping network. That will bring together all of the existing gazetted routes and maps that currently exist individually in every state and territory into one place which will be on the regulator's website. That means that no matter where you are travelling you can go to that website and you can see what coverage there is and what conditions there are on those parts of the road network that have had a gazettal or a notice put out over them by the individual road authorities up until that point. I am certainly hoping that that is an efficiency and an improvement for industry so that they do not have to ring more than one agency to try to work out where they can take a particular type of vehicle. That mapping feature will also incorporate any of the local government network mapping products that are currently out there at the present time. I really do think that that is a significant step forward.⁷²

Committee Comment

The Committee notes the advice that the Regulator is working toward creating a national mapping network by mid-2013.

⁶⁹ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-2, p.2.

⁷⁰ NFRA, *Submission No.5*, p.1.

⁷¹ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, p.2.

⁷² Mr Richard Hancock (NHVR), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, pp.16-17.

2.1.9 Vehicle operations, mass, dimension and loading

Clause 115 – proof of contravention of loading requirement

AgForce notes that currently the load restraint guide is a guide only and operators cannot be penalized if they do not secure their load as per the load restraint guide. They have asked for clarification on whether Clause 115 means that the only legal way to secure a load is as outlined in the Load Restraint Guide?⁷³

TMR has provided the following explanation:

This clause establishes ways in which evidence can be established for a load restraint offence. This clause is essentially identical to provisions in Queensland's current legislation under section 43 of the Transport Operations (Road Use Management – Mass, Dimensions and Loading) Regulation 2005.⁷⁴

Low loader floats

The NRFA has submitted that the NSW classification of low loader floats should accept permanent fixed decks for the purpose of carrying goods if the trailer manufacturers' rating accepts it as a low loader.⁷⁵ Mr Steven Smith (NRFA) provided further evidence at the Public Hearing:

New South Wales will not recognise a drop deck with a top deck on it.... There just seems to me to be an attitude problem in New South Wales. I do not think any other state has this regulation. So I cannot drive from North Queensland with a 24-tonne machine on my trailer that is heavily built for handling heavy weight into New South Wales. I cannot drive into New South Wales. They expect me to unload it at the border. You can get a lightweight built trailer that will take a 25-tonne machine and be legal weight all up but it is not built to carry it in the middle, whereas this trailer is but it is not allowed to because of the top deck. My trailer is even plated as a low loader and I am still not allowed to do it. They will not give me a permit.⁷⁶

Mr Ken Pitt (ASET) provided evidence at the Public hearing that this is an issue for his small transport company specialising in oversize and over dimension loads across Australia:

We have to have top decks. South Australia says we have to have 14 tonnes if we are over 42.5 tonnes. To gain that you must put weight sometimes over your drive. We have won cases in Goulburn court against the RTA in New South Wales and they still refuse to accept it.... We are not breaking their law. It is very specific. It says you can have a top deck for the purpose of carrying goods and equipment and such like. When we were in court—it was not a lengthy trial—the judge read it and said, 'I cannot see anything wrong with it.' But they refuse to accept it.⁷⁷

TMR provided the following explanation in its written response to the concerns raised in submissions:

⁷³ AgForce, *Submission No.12*, p.1.

⁷⁴ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-2, pp.1-2

⁷⁵ NRFA, *Submission No.5*, p.1.

⁷⁶ Mr Steven Smith (NRFA), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.5.

⁷⁷ Mr Ken Pitt (ASET), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.8.

This comment is relating to operations within NSW. The national law will provide the consistency sought by operators experiencing these types of issues.

Currently in Queensland operation of over-dimension low loaders is controlled under the Guideline for excess dimension - vehicles carrying indivisible articles, special purpose vehicles and vehicles that require a pilot or escort (Form 4) when laden with indivisible items, that is large items that cannot be broken down (eg. mining truck bodies). For operation un-laden, over-dimension low loaders may operate either under the Form 4 Guideline or individual permits depending upon the dimensions of the trailer.⁷⁸

At the Public hearing held on 21 January 2013 Mr Hancock (TMR) provided the further advice:

We have made quite substantial progress since the last time we appeared before the committee. Just last week there was general agreement amongst the states and territories for the body of the national regulations that will accompany the heavy vehicle national law. That in itself is a major step towards removing the inconsistencies or the differences between individual states and territories on wide load or mass dimension loading and more generally fatigue et cetera. So that agreement is now at a point where ministers will be asked to vote on those national regulations very shortly, potentially next month. That in a sense sets, if you like, a level playing field throughout Australia once those national regulations are in force.⁷⁹

Signage on vehicles

ASET drew the Committee's attention to the fact that it has received infringement notices in Queensland for use of fabric 'oversize' signs that are acceptable in other jurisdictions.⁸⁰

TMR's response in relation to the National Law explains:

The national law will provide the consistency sought by operators experiencing these types of issues. The use of flexible 'oversize' signs is not addressed in the national law, but this matter is covered in the draft national regulation for mass, dimension and loading which does provide for the use of flexible 'oversize' signs.

TMR recently allowed flexible signs for road trains under a class permit. However, the latest draft of the national regulation does not allow flexible signs for road trains. There is further work to be done to iron out inconsistencies in these areas.⁸¹

In response to a question taken on notice⁸² at the Public Hearing on the placement of flexible warning signs on excess dimension vehicles, TMR responded:

In Queensland, the rules for the placement of warning signs on oversize vehicles are contained in Form 4 - "Guideline for Excess Dimension - Vehicle Carrying Indivisible Loads, Special Purpose Vehicles, Vehicles that Require a Pilot or Escort" issued under the Transport Operations (Road Use Management Act 1995.

⁷⁸ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, p.5.

⁷⁹ Mr Richard Hancock (NHVR), *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.16.

⁸⁰ ASET, *Submission No.1*, p.1 and Ken Pitt (ASET) *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, pp.9-10.

⁸¹ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, pp.4-5.

⁸² Mr Howard Hobbs Committee Chair, *Hansard transcript*, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.16.

The Form 4 Guideline provides for the fitment of a rigid warning sign on the front of excess dimension vehicles and a flexible warning sign on the rear where the load prevents the fitment of a rigid sign. These rules have been in place since 2009 when the Form 4 Guideline was amended to reflect the requirements of the National Transport Commission's (Road Transport Legislation - Oversize and Overmass Vehicles) Regulations 2006.

In response to industry concerns about the inconsistent application of the National Model Law provisions across jurisdictions, TMR is currently in the process of amending the Form 4 Guideline to provide for the use of flexible signs on the front of oversize vehicles as well as the rear. The new Form 4 Guideline will be introduced in advance of the Heavy Vehicle National Law with the new Form 4 Guideline expected to be posted on the TMR website early February.

As a point of clarification, at the 2012 Estimates Committee Hearing for Transport, Housing and Local Government, an issue was raised regarding the fitment and size of flexible warning signs on road trains. This relates to a different signage issue which was resolved by amendment of the Form 1 - "Guideline for Multi Combination Vehicles and issue of a vehicle standards instruction", effective from 1 December 2012.⁸³

Committee Comment

The Committee is satisfied that regulations to be developed under the National Law will provide the consistency sought by heavy vehicle operators in relation to the issues raised about top loaders and signage.

2.1.10 Enforcement and training of enforcement officers

At the Public Hearing the ALTRA identified enforcement as one of the four critical areas where they are expecting the Regulator to produce results:

We look for the NHVR to ensure that our industry receives consistent, professional and transparent treatment from enforcement personnel across the country. We are looking for the NHVR to establish an authoritative compliance and enforcement strategy and related policies and procedures. We are looking for the NHVR to provide clear guidance on how personnel will take decisions and use their powers and how the actions and decisions of officers will be reviewed for consistency and appropriateness, particularly if a complaint or a concern is raised. To achieve this, we expect the NHVR will need to have excellent skills not only in the law but also in regulatory strategy and in management and oversight of compliance programs.⁸⁴

The NRFA submits that training must be supplied to enforcement officers before the new regulator or new laws are put into full swing.⁸⁵

TMR has indicated that such training is a priority:

Ensuring effective training of enforcement officers takes place before full commencement of the national law is a priority for TMR and will be a key part of implementing the service agreements between the Regulator and jurisdictions.

⁸³ TMR, Letter dated 30 January 2013, pp.1-2.

⁸⁴ Ms Liz Schmidt (ALTRA), Hansard transcript, 21 January 2013, THLGC - Public Hearing on the Heavy Vehicle National Law Bill Amendment 2012, p.3.

⁸⁵ NRFA, Submission No.5, p.1.

The NHVR will work closely with state and territory road transport agencies and police services in the months before the HVNL commences to develop and deliver appropriate information and education programs for authorised officers and enforcement officers.

Training will be delivered under a ‘train the trainer’ model to nominated representatives in police services and departmental road transport agencies. This will ensure maximum reach and that national training packages are supplemented with local material outlining the specific changes for each jurisdiction.

The range of training delivery channels includes face- to-face education sessions, online modules, quick guides and detailed workbooks. Training targets will also be supported after training through ongoing advice and support, and regular training information bulletins and exercises to test and apply their knowledge.

Following commencement of the HVNL, effectiveness of the training program will be evaluated and back-up training packages for NHVR staff and jurisdictions will be delivered to fill identified knowledge or skill gaps.⁸⁶

Committee Comment

The Committee notes that TMR has made the training of enforcement officers, including police officers, a priority action to be undertaken before the National Law is implemented.

2.1.11 Registration and Compulsory third party Insurance (CTP)

Provisions dealing with the registration of heavy vehicles in Chapter 2 of the Amendment Bill will not be proclaimed into force until the necessary national information and telecommunication infrastructure is in place. Until that point, the current local laws will continue to apply to manage registration functions. The application laws enacted by states and territories may modify or supplement terms used elsewhere in the National Law to ensure the appropriate integration of the local registration laws⁸⁷. The registration provisions in the HVNLA Bill set the broad outline for how the registration scheme will function in the future.

AgForce raised an issue in its submission about whether Clause 29 ‘Registration not evidence of Title’ is consistent with the existing legislation in Queensland and other states.⁸⁸

TMR advises that:

This clause replicates similar provisions in Queensland’s current legislation under section 18(8) of the Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010 which clarifies that the register does not establish legal title to a registered vehicle.⁸⁹

Suncorp has raised a concern that the Bill does not adequately address the interaction between national registration and state or territory based CTP insurance, specifically that the National Law ‘decouples’ registration and CTP. Another issue raised by Suncorp is that a registered operator will not be compelled to notify the Regulator about changes to garage address leading to inaccurate garage address records.⁹⁰

⁸⁶ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, pp.8-9.

⁸⁷ The HVNLA Bill 2012, *Explanatory Notes*, pp.1-2.

⁸⁸ AgForce, *Submission No.12*, p.1.

⁸⁹ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-2, p.1.

⁹⁰ Suncorp, *Submission No.3*, p.2.

TMR has advised the Committee that:

With regard to 'decoupling' concerns, the draft national regulations covering registration provide that when applying to the Regulator to register a heavy vehicle, a person must provide either evidence of compliance with third party insurance legislation applying to the vehicle or the amount of premium payable.

This maintains the link between CTP and registration under the national law. This provides the option for either a loose administrative linkage where a person sources CTP separate to registration, or a more intimate coupling of registration and CTP where the Regulator will collect and administratively manage the whole CTP transaction.

The draft regulations also address the concern about the absence of a positive obligation upon a registered operator of a vehicle to notify the Regulator about a change to a garage address. The regulations include a requirement to notify the Regulator within 14 days of a change of garage address and provide for an offence if this is not done.

There will be further consultation on the registration related national regulations prior to commencement of the Registration Chapter under the National Law which has been deferred at this stage to allow time for the development of a national information communications technology (ICT) solution.⁹¹

At the Departmental Briefing held on 30 November 2012, Mr Hancock (TMR) further reassured the Committee that:

The draft regulations that were exposed historically did have a requirement to notify a change of address. It seems unlikely that that requirement would ever be omitted. So to the extent that Suncorp and other motor accident insurers are still concerned about this possibility, they will continue to be involved in the development of the regulations. We have not made those regulations at this point, because we still think the ICT solution is some way off. As and when we think that the regulations need to be developed, there will be a completely transparent public process to do that and the MARCs will be involved.⁹²

Committee Comment

The Committee has noted the issues raised by Suncorp and has been advised by the Department and the Regulator that issues relating to registration will be the subject of continued consultation throughout the development of the registration regulations.

2.1.12 Consultation on HVNL regulations

The ALC has sought confirmation on when the regulations and other instruments which will unlock productivity benefits will be distributed in draft form for comment by stakeholders, specifically:

- the approved guidelines for class 2 heavy vehicle authorisations referred to in paragraph 156(4)(b) and
- the regulations setting out both the kind of road conditions and the circumstances in which it is appropriate to impose such conditions referred to in subclause 160(4).⁹³

⁹¹ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, p.4.

⁹² Mr Cridland (TMR), *Hansard transcript*, 30 November 2012, THLGC - Public departmental briefing on the *Heavy Vehicle National Law Bill Amendment 2012*, pp.3-4.

⁹³ ALC, *Submission No.7*, p.2.

TMR has advised:

The ministerial guidelines under section 156(4)(b) will be developed for approval by responsible Ministers, prior to full commencement of the Regulator, in consultation with jurisdictions and industry. It is anticipated draft ministerial guidelines will be available for consultation with jurisdictions and other stakeholders in February 2013.

Draft regulations have been prepared for consideration by SCOTI and the Parliamentary Counsel's Committee (PCC). SCOTI is expected to vote on the regulations in early 2013.

Future steps will be contingent on the outcomes of the deliberations of those two bodies.

Fourteen industry representatives (including peak body representatives) have continuous access to all drafting instructions, issues raised and draft instruments as prepared.

Any additional formal exposure periods will be undertaken at the direction of SCOTI.⁹⁴

Committee Comment

The Committee is impressed with the level of consultation that has taken place so far in the development of the National Law and is satisfied that this practice of extensive consultation will continue in relation to the proposed regulations.

⁹⁴ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, pp.5-6.

3 Penalties

The Assembly passed the following motion on 13 November 2012 when the HVNLA Bill was introduced into the Queensland Parliament:

That the Transport, Housing and Local Government Committee, whilst considering the Heavy Vehicle National Law Amendment Bill 2012, also consider the appropriateness of the proposed national penalty regime in Queensland.⁹⁵

The Committee has consequently sought information from the Department on the proposed penalty regime and asked submitters to make relevant submissions.

3.1 Background

Currently each state and territory has different penalties under their respective transport laws for what are essentially the same offences. The first Bill included Queensland penalties as an interim position pending the development of nationally agreed penalties. The Heavy Vehicle National Law aims to establish a national penalty framework for offences occurring under the law.

TMR has advised the Committee that:

One of the key principles behind the national reforms has been achieving 'the same outcome in the same situation' for industry. Current penalties do not align with this principle, with each state and territory having a different approach to heavy vehicle offences and penalties. This means that those involved in interstate freight could potentially be subject to different penalties for the same offence. It also means that different levels of deterrence apply for the same offences, creating an uneven playing field for operators and drivers.

Achieving nationally uniform penalties has also been further complicated by issues associated with the relativity of penalties to other offences of similar severity and corresponding light vehicle offences in each jurisdiction.

A national set of penalties means that all drivers, operators and participants in the supply chain are subject to the same penalties regardless of where they operate. This will promote consistency and transparency of enforcement across the country.

The penalties included in HVNL (Bill1) introduced to the Queensland Parliament in August 2012 were based on Queensland's existing heavy vehicle penalties. These were used as a 'placeholder' because, at the time the Bill was introduced, the process of negotiation and consultation with jurisdictions and industry of the national penalty framework was not yet finalised.

The national penalty framework and agreed national penalty values have since been agreed by SCOTI and are now included in the HVNL Amendment Bill before the Committee.⁹⁶

During the Departmental Briefing, Mr Cridland (TMR) explained to the Committee that harmonising the large number of penalties, across the different jurisdictions, had been a very difficult exercise:

.... I can assure you that no-one got everything they wanted out of this. It is a result that is the best result. People put aside their particular interests at a jurisdictional level, in their

⁹⁵ Queensland Parliament, *Hansard Transcript*, 13 November 2012 p. 2486.

⁹⁶ TMR, *HVNL Amendment Bill Penalty Level Comparison*, document tabled at the Departmental Briefing held on 30 November 2012, p.1.

*penalties that have been developed over the years in response to policy decisions, and came up with the best possible national system. It is great that the Minister has referred it to the committee. I think we would like to see that independent look at it. But I am just saying it has been a very difficult process just to get to this point.*⁹⁷

3.2 Types of penalties

3.2.1 Court imposed penalties

The court imposed penalties included in the National Law have been developed through the following process:

- The minimum and maximum penalties across all jurisdictions were tabulated and compared.
- The HVNL offences were then categorised by their type and severity and penalty amounts for each category then set based upon the most commonly occurring penalty amounts across the jurisdictions.
- Relativities between heavy and light vehicle penalties and impacts on the broader judicial regime were also considered to the extent possible within the timeframes.
- Extensive consultation and debate occurred between the NTC, state and territory transport authorities, Treasury Departments, Attorneys General offices, the Australian Government Solicitor's Office and the Heavy Vehicle National Regulator Project Office to determine firstly the categorisation of offences and then to negotiate appropriate and consistent penalty amounts for each category.
- The final court imposed penalties were agreed to and endorsed by jurisdictions at officer level and then by SCOTI ministers.
- Many jurisdictions use penalty units to specify the amount of penalties. As there is no national penalty unit, the Parliamentary Counsel's Committee recommended that the penalties be specified for each offence as a monetary value.⁹⁸

3.2.2 Infringement notices

SCOTI has agreed that imposing fines by way of an infringement notice recognises the advantages that flow to the community from the administrative efficiency obtained through an expedited process for dealing with common and less serious regulatory offences.

TMR has advised that there are different methods adopted for determining the appropriate level of infringement fines across Australia. However, as a general rule, an infringement fine is normally between set at between 10% and 20% of the maximum court imposed penalty. Currently among jurisdictions there are inconsistencies in the percentage applied for transport offences ranging from 5% to 45% of the court imposed maximum penalty.⁹⁹

⁹⁷ Mr Cridland (TMR), *Hansard transcript*, 30 November 2012, THLGC - Public departmental briefing on the *Heavy Vehicle National Law Bill Amendment 2012*, p.10.

⁹⁸ TMR, *HVNL Amendment Bill Penalty Level Comparison*, document tabled at the Departmental Briefing held on 30 November 2012, p.1.

⁹⁹ TMR, *HVNL Amendment Bill Penalty Level Comparison*, document tabled at the Departmental Briefing held on 30 November 2012, p.1.

The Committee has been advised that the infringement penalties and demerit points for the National Law were developed through the following process:

- A nationally consistent infringement percentage value of 10% was negotiated and agreed to with jurisdictions and industry stakeholders.
- As jurisdictions currently have different infringement and demerit schemes which dictate the rights of parties issued with penalties and how these penalties can be issued, withdrawn and discharged, it was agreed that infringement notices and demerit points will continue to be managed using current penalty regimes under existing jurisdictional law. That is for Queensland, the State Penalties and Sentences Act and Regulation will establish the infringement fines for offences under the HVNL.
- A draft schedule of the offences proposed to attract infringements and demerit points under the HVNL was developed and a preliminary comparison made against the current infringement and demerit regimes in jurisdictions.
- Extensive consultation and negotiation then occurred on the penalty levels between the NTC, state and territory transport authorities, Treasury Departments, Attorneys General offices and the Heavy Vehicle National Regulator Project.
- Office to determine the offences which would attract infringement notices and demerit point penalties under the HVNL.

3.3 Observations about the penalties

The information provided to the Committee by TMR indicates that 108 of the 323 of the court imposed maximum penalties will remain the same, 174 will increase and 149 will decrease. The Department also notes that of the 137 penalties that increase by more than 30%, 87 (64%) are for fatigue related offences. The following observations are provided by TMR:

For mass, loading and dimension (access) offences, penalties remain fairly consistent and comparablewith existing penalties in Queensland.

For fatigue related offences, the majority of court imposed maximum penalties will increase, however the corresponding infringement notice penalty will decrease.

For minor or administrative matters such as how and when information is recorded in a work diary, penalties are substantially lower....

Serious fatigue offences, such as severe and critical breaches of work and rest hours will attract significantly higher penalties under the HVNL... While the increase is substantial, it does reflect the serious road safety risks and prevalence for fatigue as a contributing factor in heavy vehicle fatal road crashes. The HVNL does not provide infringement penalties for severe and critical offences which must be proceeded against in court.

For compliance and enforcement related offences, such as disobeying a direction or providing false or misleading information, these offences have been categorised as severe and attract high court imposed penalties, but because of their significant nature, will not be the subject of infringement penalties.¹⁰⁰

¹⁰⁰ TMR, *HVNL Amendment Bill Penalty Level Comparison*, document tabled at the Departmental Briefing held on 30 November 2012, pp.3-4.

The Committee also sought clarification from the Department about the approach to increasing penalties through application of an indexation formula. TMR advised that during the development of the National Law, certain jurisdictions recommended the National Law implement a method of increasing penalty amounts that accorded with increases in Consumer Price Index (CPI) as those jurisdictions already provide for annual indexation of penalties in their laws. This method was preferred as it provides a transparent, consistent and objective means for increasing penalties. In addition, as directed by SCOTI there will be a review of the national penalties framework in 2014. The NTC has advised that this review will include considerations about the use of monetary penalties over penalty units and the appropriateness of increasing monetary penalties by CPI.¹⁰¹

3.4 Benefits to Industry

During the Departmental Briefing held on 30 November 2012, TMR advised the Committee that there are significant benefits for industry that will be achieved through introducing nationally consistent penalties:

One of the key principles behind the national law is achieving the same outcome in the same situation, regardless of where you operate. National penalties mean drivers and operators know they will be treated equally no matter where they are operating in the country.

This amendment bill establishes national penalties for offences occurring under the national law. It will replace the interim penalties from bill 1, which were largely based at the time on Queensland's existing penalty arrangements. Just to give you some of the numbers, there are 323 offences and penalties contained in the national law, of which 171 attract an infringement notice penalty. In comparing the national penalties to the current Queensland situation, there are 174 court imposed maximum penalties increasing under the national law and 149 decreasing. The majority of those increased maximum penalties are for fatigue related offences and reflect the serious safety consequences of driving while fatigued. Conversely, infringement notice penalties increase for only 39 offences, while for 132 offences infringement penalties decrease under the national law. Many of those decreasing penalties relate to more common, minor or administrative offences. This appropriately reflects that offences attracting high penalties should be considered by a court, whereas offences of a lesser nature should be dealt with by infringement notice.

*To assist the committee further, the department has prepared a table on national penalties, which includes a full comparison to the current Queensland penalties.*¹⁰²

3.5 2014 Review of penalties

Penalties were not specifically raised in submissions received by the Committee or in the Public Hearing with the exception of the ATA which noted support for the "current penalties being reviewed so that more minor offence penalties are in line with deterrence theories".¹⁰³

TMR has advised the Committee that SCOTI agreed on the 18th May that the Transport and Infrastructure Senior Officials Committee (TISOC) would undertake a further review of the maximum penalties by the first meeting of SCOTI in 2014. The Terms of reference were developed

¹⁰¹ Letter from Mark Cridland (Deputy Director-General TMR), dated 29 January 2013, pp.1-2.

¹⁰² Mr Cridland (TMR), *Hansard transcript*, 30 November 2012, THLGC - Public departmental briefing on the *Heavy Vehicle National Law Bill Amendment 2012*, p.2. The table on national penalties can be found at <http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries>.

¹⁰³ ATA, *Submission No.2* p.1.

by the NTC and agreed by SCOTI on 9 November 2012. The review is included on the NTC's Forward Work Program which will investigate and make recommendations on the national penalties framework.¹⁰⁴

Committee Comment

The Committee has noted that while a number of penalties are to be increased in the HVNLA Bill, others have been reduced. The Committee accepts that the penalties contained in the Bill constitute a compromise which reflects the best possible national system at this stage.

The Committee notes that the evidence it received during its examination of the Bill did not raise significant concerns with the penalty regime and that the penalties contained in the Bill will be further reviewed by SCOTI in 2014.

¹⁰⁴ TMR, *Written briefing to the Committee dated 21 December 2012*, Attachment A-1, p.2.

4 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' 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 considered the fundamental legislative principles issues stemming from the *Heavy Vehicle National Law Amendment Bill 2012* and identified several potential departures from these principles which are explored below.

4.1 Rights and liberties of individuals

4.1.1 Use of force by an authorised officer

The Committee sought clarification that the National Law does not allow the use of force against persons when an Authorised Officer is exercising powers under sections 518 and 519.

TMR has advised the Committee that Section 491(l) 'Use of force against persons', explicitly establishes that Chapter 9 does not authorise the use of force against persons. The only circumstance where force against person is permissible is where police officers are authorised to use force against a person under a jurisdiction's Application Act, which applies the National Law (Schedule (HVNL) of the Bill. Although not part of the current Bill, it is proposed that police officers will be authorised to use force in the circumstances set out in the *Police Powers and Responsibilities Act 2000*. That Act contains the appropriate checks and balances for ensuring that the use of force is appropriate and police officers have the necessary training and experience regarding the use of force. In summary, only police officers will be able to use force against persons under the National Law, with other authorised officers (often known as Transport Inspectors) not authorised to use force against persons.¹⁰⁵

4.1.2 Executive Officer Liability

The Committee sought clarification from TMR about whether the Bill is consistent with the Council of Australian Governments' (COAGs) principles and guidelines for directors' liability while noting that section 636 of the Bill has been drafted to comply 'as far as practicable' with the COAG guidelines.

TMR advised the Committee that the drafting of section 636 is the result of extensive consultation and negotiation with industry, the NTC, the NHVR Project Office, State and Territory Governments and the Federal Government. This drafting also reflects amendments recommended in legal advice obtained from the Australian Government Solicitors Office. Further:

The Department is satisfied that the Bill reflects the closest alignment with the COAG principles within the challenging timeframe of the reform. The Department of Premier and Cabinet, as well as the Department of Justice and Attorney-General were consulted extensively and supported the current drafting, on provision that a comprehensive review occur as part of the Forward Work Program (FWP).

¹⁰⁵ Letter from Mark Cridland (Deputy Director-General TMR), dated 29 January 2013, p.2.

*The Department will recommend to the NTC and the NHVR that the Report and the Committee's final report be fully considered during the FWP review of the Executive Officer Liability provisions. This review is due to commence in March 2013.*¹⁰⁶

Committee Comment

The Committee has noted that the Department of Transport and Main Roads has committed to recommend to the National Transport Commission and the Regulator that the Committee's report be fully considered during the Forward Work Program review of the Executive Officer Liability provisions which is due to commence in March 2013.

4.1.3 Chain of responsibility

The Committee sought advice regarding section 183, which extends liability for a mass, dimension or loading offence committed by a driver to other parties such as employers, operators and loading managers. The main concern related to the reversal of the onus of proof and the implications this has for causation, the presumption of innocence, and requirements to prove mental elements of the offence.

In response, TMR advised that the reverse onus of proof was a key component of the nationally agreed model law upon which section 183 is based. The reverse onus of proof in the Bill is consistent with the law as it currently exists in Queensland legislation (see sections 57B and 57C of the *Transport Operations (Road Use Management) Act 1995*). Any changes to the Chain of Responsibility (COR) need to be carefully considered, as COR is a central and important component of the heavy vehicle regulatory framework. Further TMR is of the view that:

Elimination of the reversal of onus for COR offences will create significant barriers to proving liability for COR participants, impacting the viability of the COR regime, which is deemed essential to ensuring public safety.

*However, it is acknowledged that applying a reversal of onus standard should be narrowly applied and only in circumstances where public safety concerns outweigh the impact the standard has on fundamental rights. The Department will recommend to the NTC and the NHVR, that the Committee's final report be fully considered during the FWP review of the COR provisions. This review is due to commence in March 2013 as part of the FWP, and a national taskforce is currently being established for this purpose.*¹⁰⁷

Committee Comment

The Committee has noted that the Department of Transport and Main Roads has committed to recommend to the National Transport Commission and the Regulator that the Committee's report be fully considered during the Forward Work Program review of the Chain of Responsibility provisions which is due to commence in March 2013.

¹⁰⁶ Letter from Mark Cridland (Deputy Director-General TMR), dated 29 January 2013, p.2.

¹⁰⁷ Letter from Mark Cridland (Deputy Director-General TMR), dated 29 January 2013, p.3.

4.1.4 Complexity of legislative scheme

The Committee raised the issue of the complexity of the legislative scheme, and asked for clarification from the Department about how implementation difficulties, and for the heavy vehicle industry, compliance difficulties could be avoided. A number of areas were identified as making the legislation more complex including the system of exemptions, COR and extended liability for individuals.

TMR provided the following advice:

Some of the complexity stems from the need to provide flexibility for industry through exemptions from requirements of the National Law. Exemptions include permits and notices for a vehicle to access a road, vehicle standards exemptions, and exemptions from fatigue requirements.

Permits and notices essentially provide two different levels of exemption, the first applying only for the permit holder and the second being available to all persons. This allows flexibility for the heavy vehicle industry, as permits can be issued where it is only appropriate that an exemption apply for a single specific circumstance, while a notice can be issued for broader applications.

When providing an exemption from requirements that exist to manage risks such as the potential for a vehicle crash, it is necessary to make specific conditions to manage the risk in an alternate manner. In order to ensure conditioning of exemptions occurs consistently, the legislation restricts the kind of conditions that may or must be applied in different circumstances.

While it is acknowledged that the various systems of exemptions create some complexity, they also enable greater flexibility beyond what the legislation would otherwise provide, and are for this reason warranted. With regard to COR and extended liability for individuals, as noted above, these are to be reviewed as part of the FWP.

The Department will recommend that as part of this process, consideration should be given to making the requirements less complex. Some of the complexity has arisen in the process of developing nationally consistent legislation among the jurisdictions of Australia, and because many of the more technical elements within the law were previously managed through subordinate legislation, such as guidelines. Escalation of this subject matter into primary law and regulations improves parliamentary scrutiny, and provides the heavy vehicle industry with greater certainty of requirements going forward.

It should be noted that while some complexity remains in the provisions, there is a significant overall reduction in complexity and benefit for business and industry that will be subject to a single, consistent National Law rather than different laws in each jurisdiction. Industry's strong support for the legislation is based on their belief that the movement to a national regulator will significantly reduce the regulatory burden and red tape under the current system. Further, the NHVR's website will be a hub for clearly explaining the requirements with which the heavy vehicle industry must comply, and a significant education program is part of the full operational implementation of the NHVR.¹⁰⁸

¹⁰⁸ Letter from Mark Cridland (Deputy Director-General TMR), dated 29 January 2013, pp.3-4.

Committee Comment

The Committee has noted that the Department of Transport and Main Roads has committed to recommend to the National Transport Commission and the Regulator that consideration be given to making the requirements in relation to Chain of responsibility and extended liability less complex during the 2013 Forward Work Program review.

4.1.5 Clear and Precise

The Committee raised a that the definitions of 'emission control system' and 'tamper' are unclear due to the Bill introducing changes to the definition of 'emission control system' which lead to it becoming broad and vague.

TMR advised the Committee that:

The changes relate to removal of examples and moving of the definition of relevant emission' to the definitions section. Though the example has been removed, the definition of relevant emission has been expanded in an attempt to make the requirement more precise.

In relation to the definition of 'tamper', the [Committee] points out that the National Law prescribes four different meanings and this is confusing and unnecessarily complex. In an effort to be precise, tamper has been defined differently for provisions concerning different technical equipment or systems, and the differing ways in which the law applies to those systems. This matter will be referred to the NTC for consideration as part of the FWP.¹⁰⁹

Committee Comment

The Committee has noted that the Department of Transport and Main Roads intends to recommend to the National Transport Commission and the Regulator that consideration be given to the definitions for 'emission control system' and 'tamper' during the 2013 Forward Work Program review.

¹⁰⁹ Letter from Mark Cridland (Deputy Director-General TMR), dated 29 January 2013, pp.5-6.

Appendices

Appendix A – List of witnesses at the Public Briefing Friday 30 November 2012

Witnesses
Mr Mark Cridland, Deputy Director-General, Policy Planning and Investment, Department of Transport and Main Roads
Mr Peter Caprioli, Director, Heavy Vehicle Strategy, Department of Transport and Main Roads
Mr Richard Hancock, Chief Executive Officer, National Heavy Vehicle Regulator
Mr Ray Hassall, Principal Manager, Legislation and Policy, National Heavy Vehicle Regulator Project Office

Appendix B – List of witnesses at the Public Hearing Monday 21 January 2013

Witnesses
Mr Steven Smith, Qld Director, National Road Freighters Association
Mr Kenneth Wilkie, Delegate, National Road Freighters Association
Mr Russell Martin, Practitioner, National Road Freighters Association
Ms Liz Schmidt, Vice-President, Australian Livestock and Rural Transporters Association
Mr David Simon, Chair Australian Trucking Association and Board Member Qld Trucking Assoc.
Mr Peter Garske, CEO, Queensland Trucking Association
Mr Ken Pitt, Director, ASET Services – All Size Equipment Transport Services
Mr Charles Burke, CEO, AgForce Qld Industrial Union of Employers
Ms Nina Murray, Grain Policy Director, AgForce Qld Industrial Union of Employers
Mr Jon Vallance, CTP Commercial Underwriter, Commercial Insurance, Suncorp
Mr Michael Mailloux, Executive Director Road Strategy, Department of Transport and Main Roads
Mrs Kelli Cumming, Senior Manager Strategy Policy, Department of Transport and Main Roads
Mr Ryan Goff, Senior Manager Strategic Policy, Department of Transport and Main Roads
Mr Richard Hancock, Chief Executive Officer, National Heavy Vehicle Regulator
Mr Ray Hassall, General Counsel, National Heavy Vehicle Regulator

Appendix C – List of submissions

Sub #	Submitter
1	ASETS – All Size Equipment Transport
2	Australian Trucking Association
3	Suncorp Group Limited
4	Mr Russ Martin
5	National Road Freighters Association
6	National Farmers' Federation
7	Australian Logistics Council
8	Queensland Trucking Association Ltd
9	Australian Livestock and Rural Transporters Association
10	Mr Ken Wilkie
11	NatRoad – National Road Transport Operators Association
12	AgForce Queensland Industrial Union of Employers
13	Long Haul Drivers Association

Attachment A – Legislative Forward Work Program

ISSUED: 26 October 2012



POST JULY 2013

UPDATED LEGISLATIVE FORWARD WORK PROGRAM

INTRODUCTION

1. **On 18 May 2012 SCOTI agreed the Legislative Forward Work Program (FWP) and that TISOC develop an agreed timetable for delivery. The FWP has since been updated and a timetable is outlined in the tables below.**
2. Delivery of any element of the FWP may require future amendments to the HVNL and regulations, which will be subject to approval by SCOTI.
3. On 27 September 2012, TISOC agreed that the NTC working with the High Level Reference Group and Project Office review the FWP.
4. Proposed lead agency responsibility for the carriage of the FWP is consistent with the findings of the draft Review of NTC and Other Bodies. Final responsibility for the carriage of the FWP is to be determined by SCOTI in November 2012.
5. It is envisaged that industry, the NHVR Board and NHVR Chief Executive Officer will seek to have an appropriate level of input to the FWP on an ongoing basis.
6. Timelines for the implementation of approved project outcomes will be subject to scoping sessions with industry and the NHVR.
7. The FWP will feature regular reporting of progress to TISOC and SCOTI.
8. Further work is required regarding the consultation, engagement, working structures, funding and more detailed timeframes for the items in the FWP.

NATIONAL INDUSTRY PRODUCTIVITY PACKAGES

9. A key issue for Jurisdictions and Industry is the delivery of ongoing productivity gains from the establishment of the NHVR. This is indicated by the identification of the NHVR reform as part of the national competition reforms to establish a seamless national economy.
10. The existing authority given to the NHVR to progressively review, harmonise and promote wider availability of 'local productivity initiatives' will be an important mechanism to meet this ambition. In the main, this will involve review of approvals granted by gazette or permit.
11. The current arrangements for review of LPs and the existing commitment to have a Legislative FWP is intended to provide industry with greater confidence that productivity issues will remain a key ongoing focus of the NHVR and NTC.

12. To achieve this, it is suggested that the review of Local Productivity Initiatives and the future consideration of productivity related elements of the FWP can be made more visible by presenting these as 'National Industry Productivity Packages' (NIPS). These would be developed in conjunction with jurisdictions and industry.
13. The FWP would require the NHVR and NTC to develop NIPS based on workable but challenging timeframes for each year of operation. Formal approval of NIPS would be via SCOTI where necessary.

TABLE 1 NATIONAL INDUSTRY PRODUCTIVITY PACKAGES (NIPS)

The following NIPS have been put forward for consideration with <u>NIP 1</u> to be considered for implementation from July 2013 (Release 2 national 'go live' date) and <u>NIP 2</u> in the first year of operation post the national 'go live' of the NHVR. **	Priority	Timeframe for implementation of approved outcomes ⁱ	Proposed Lead Agency ⁱⁱ
Modular A/B-triples on the road train network without a requirement for IAP.	NIP 1	July 2013	NTC
HML without requirement for IAP.	NIP 1	July 2013	NTC
Develop consistent standards and operating arrangements for tri-axle dollies.	NIP 1	January – July 2013	NHVR
Recognition for operator's integrated GPS systems and/or industry accreditation schemes in the regulatory environment as reasonable steps defence, alternatives to written work diaries, evidence of speed management, and as an alternative risk management approach to IAP, etc. This will recognise and compliment the 'Entry Options' Initiative currently being undertaken by NSW and TCA.	NIP 1	July 2013	NTC
Allow up to one tonne of mass to be transfer between tri-groups or from tandem to tri-groups in a combination so long as gross mass of combination is within it legal limit. (that is, one tri-group may be up to 1 tonne over mass provided another group is under by the same or more).	NIP 1	July 2013	NTC
Extension to the Modular A/B-triple network, outside existing road train routes.	NIP 2	2013/2014	NHVR
Quad axle semi-trailer to be general access at 24 tonnes GML and 27 tonnes at HML, and a quad axle should be allowed in the A-trailer of a B-double at 24 tonnes GML and 27 Tonnes HML on all suitable B double routes.	NIP 2	2014	NTC
Allowing 6 & 7 axle truck and dogs at PBS mass limits without PBS.	NIP 2	2014	NTC
Automatic access to PBS approved vehicles at the relevant level once engineering evidence of compliance is held.	NIP 2	2014	NTC
Proven twin steer prime-movers and tri-drives configurations to be accommodated in prescriptive national rules.	NIP 2	2014	NTC

** Noting that work on NIP 1 will commence in November 2012 involving NTC, NHVR, jurisdictions and industry. As a result some items may have an earlier timeframe for implementation than that shown above.

REGULATORY ITEMS

14. In addition to the NIPS, there are currently identified potential legislative, regulatory and policy reforms put forward by Jurisdictions (J) and Industry (I) for consideration post 1 July 2013 as briefly outlined in Table 2 below.

TABLE 2 REGULATORY ITEMS

Item	Action Priority items are identified for appropriate consideration during the first year of operation post the national 'go live' of the NHVR.	Priority	Timeframe for implementation of approved outcomesⁱ	Proposed Lead Agencyⁱⁱ
Fatigue (J)	<ul style="list-style-type: none"> • Ongoing refinements to the Risk Classification System and Risk Trading Methodology established as part of the reforms to revised AFM. • Continuation and finalisation of the Residual Risk Assessment related to Counting Time. • Requirement for Annual Risk Management Plans. 	<p>Priority</p> <p>Priority</p> <p>TBD</p>	<p>2013/2014</p> <p>2013/2014</p> <p>TBD</p>	<p>NHVR</p> <p>NTC</p> <p>NHVR</p>
Vehicle Inspection Regimes (J) (I)	<ul style="list-style-type: none"> • Action to further assess linkages between inspection regimes and safety outcomes post the IEP recommendation to Ministers to maintain existing vehicle inspection regimes. 	Priority	2013/2014	NTC
Chain of Responsibility (J) (I)	<ul style="list-style-type: none"> • The establishment of a taskforce by no later than March 2013 comprised of NTC, NHVR, industry and jurisdiction members to examine the opportunity to achieve an improved CoR that is more effective and fair, by redrafting the law to be principally based upon affirmative statutory duties including. <ul style="list-style-type: none"> • Examine the potential benefits of positive duties in providing clearer guidance to individuals and organisations regarding their obligations, and establishing appropriate accountability relative to influence and role. • Better interaction between HVNL and OH&S laws to avoid duplication • Develop the drafting instructions necessary for this change to legislation. 	Priority	2013/2014	NTC (With assistance from NSW)

Item	<p style="text-align: center;">Action</p> <p>Priority items are identified for appropriate consideration during the first year of operation post the national 'go live' of the NHVR.</p>	Priority	Timeframe for implementation of approved outcomes ⁱ	Proposed Lead Agency ⁱⁱ
<p>Chain of Responsibility (I)</p>	<p>Further amendments to the HVNL proposed by ATA, beyond those achieved in Bill 2:</p> <ul style="list-style-type: none"> • Provide a defence against mass charges for operators that rely on weight certificates from certified private weighbridges or weight measurements from approved weighing equipment. • Breaking the Seal - notification methods by the Regulator. • Notification of offences committed by drivers to the employers of the driver or the operator of the vehicle being driven by the driver. This will enhance the ability to manage regulatory obligations for parties with extended liability. The means by which this access could be expedited, without inappropriately curtailing generally applicable privacy requirements, should be considered. 	<p>Priority</p> <p>Priority</p> <p>Priority</p>	<p>2013</p> <p>2013</p> <p>2013</p>	<p>NTC</p> <p>NHVR</p> <p>NTC</p>
<p>Executive Officer Liability (I)</p>	<p>Further analysis of Executive Officer Liability and the onus of proof as part of the considerations of the above Taskforce.</p>	<p>Priority</p>	<p>2013/2014</p>	<p>NTC</p>
<p>Access Decision Making (I)</p>	<p>Amendments to the HVNL proposed by ATA:</p> <ul style="list-style-type: none"> • Provide default outcomes if road managers do not meet the decision making deadlines in the HVNL. • Require road managers to act reasonably when they require a route assessment, and require route assessment fees to be reasonable. • Enable dissatisfied applicants to appeal decisions to external appeal bodies like QCAT. • Require the regulator to ask road authorities to reconsider access applications when they are rejected by a road manager on grounds that do not comply with the approved guidelines. 	<p>(Not supported by NHVR Project Board)</p> <p>Priority</p> <p>(Not supported by NHVR Project Board)</p> <p>Priority</p>	<p>TBD</p> <p>2013/2014</p> <p>TBD</p> <p>2013/2014</p>	<p>NTC</p> <p>NHVR</p> <p>NTC</p> <p>NHVR</p>

Item	<p style="text-align: center;">Action</p> <p>Priority items are identified for appropriate consideration during the first year of operation post the national 'go live' of the NHVR.</p>	Priority	Timeframe for implementation of approved outcomes ⁱ	Proposed Lead Agency ⁱⁱ
	<ul style="list-style-type: none"> • Harmonise accreditation requirements standards for the performance of pilot and escort functions, the circumstances under which these requirements are applied through the HVNL and the ability of government agencies to adequately respond to pilot and escort requirements. • National consistency in the regulation of over-dimensional vehicles. Note further information regarding this issue will be provided prior to tabling of FWP to SCOTI. 	Priority	2013/2014	NTC
		Priority	2014	NTC
IAP (TCA)	<p>TCA and jurisdictions have identified a range of issues for inclusion in the FWP that are necessary to maintain or improve the integrity of the scheme (that forms part of the HVNL):</p> <ul style="list-style-type: none"> • Greater certainty and efficiency could be obtained in relation to the notice to be provided by operators to drivers advising them of IAP monitoring. • A review of the HVNL provisions affecting governance of TCA and the IAP to ensure the scheme reflects contemporary principles of public administration and supports the objectives of the reform. The review would extend to an assessment of the merits of statutory decision-making powers, statutory rights of notification, review and appeal, and transparency provisions (but not encompassing policy questions about whether and when to adopt regulatory telematics applications). • Development of a more permanent response to the changes in TCA's operational practice in relation to service provider audits would bring the process into line with TCA's reasonable business requirements and ensure adherence to privacy protection and related principles that underpinned the agreement to the previous arrangements. 	Priority	<p style="text-align: center;">TBD</p> <p style="text-align: center;">TBD</p> <p style="text-align: center;">2013/2014</p>	<p style="text-align: center;">NHVR</p> <p style="text-align: center;">NTC</p> <p style="text-align: center;">NTC</p>

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<p>Recognition of non government accreditation schemes and Industry Codes</p> <p>(I)</p>	<ul style="list-style-type: none"> Amendments to the HVNL proposed by ATA for recognition of TruckSafe in the NHVR and other robust industry codes. 	Priority	2013/2014	NTC
<p>National Performance Measures</p> <p>(J) (I)</p>	<p>Ongoing strengthening and refinement of the National Performance Measures Framework and National Performance Standards that the NHVR and its service agreement partners are responsible for delivering as part of achieving IGA.</p>	Priority	2013 and 2014	NHVR
<p>Productivity Gains</p> <p>(I)</p>	<p>Industry via recent correspondence to the QLD Premier and Qld Minister is seeking that the FWP include a requirement for the public reporting of changes or savings to the resourcing of state government agencies arising from this reform.</p>	Requires further assessment by TISOC and SCOTI	TBD	NHVR & Road Authorities
<p>Registration and Plates</p> <p>(J) (I)</p>	<ul style="list-style-type: none"> FIRS be continued and enhanced to ensure FIRS operators are not disadvantaged proposed by ATA. Further work to be funded and undertaken regarding the possible approaches and options to achieving a national heavy vehicle registration system including a cost benefit analysis and timeline assessments. Resolution of remaining issues related to CTP insurance. 	To be repealed ⁱⁱⁱ	<p>Following implementation of national registration under HVNL</p> <p>May 2013</p> <p>TBD</p>	<p>C/Wealth</p> <p>NHVR</p> <p>NHVR</p>
<p>Enforcement</p> <p>(J)</p>	<ul style="list-style-type: none"> Ongoing improvements to enforcement powers available to NHVR, Police and Road Managers. Amendments to the Heavy Vehicle National Law to enable Authorised Officers to: <ul style="list-style-type: none"> Elicit a broader range of information from a 'responsible person' relevant to Chain of Responsibility investigations. Compel attendance of 'responsible persons' at interviews. 	Priority	2014	NTC
		Priority	2013/2014	NTC

Item	Action Priority items are identified for appropriate consideration during the first year of operation post the national 'go live' of the NHVR.	Priority	Timeframe for implementation of approved outcomes ⁱ	Proposed Lead Agency ⁱⁱ
Interaction with industrial laws (J) (I)	<ul style="list-style-type: none"> The HVNL should be reviewed to ensure it interacts effectively with the <i>Fair Work Australia Act</i>; particularly in its operation in relation to the prevention of victimisation of or discrimination against drivers (regardless of legal basis on which they are engaged). 		TBD	NTC
Bus Industry (I)	<ul style="list-style-type: none"> Review of the operation of the national legislative scheme whereby buses with a Gross Vehicle Mass (GVM) of less than 4.5 tonnes fall outside the terms of the HVNL. Unplanned services and rail replacement not fitting into the definition of an emergency under the HVNL. Provision for bus and coach operators to continue to provide these services with a level of reasonable protection in the legislation is required to ensure maintenance of current service levels. Work diary exemptions for the government contracted bus and coach services with a radial distance from base limit 200km for buses as is the case currently in Queensland. Clarification on the regulation and recording requirements for the rounding off rest breaks. There is a impact on the delivery of timetabled passenger services, bus driver shifts, cost and efficiency. Streamline the approach to obtaining road network access for controlled access buses (buses >12.5m up to 14.5m). There is currently a lack of consistency between the states in regard to the rear overhang and frontal swing requirements for buses to obtain a controlled access permit. Despite the AVSR some states, most notably Queensland and NSW have allowed greater rear overhang provisions <p>In relation to vehicle mass and loading, increases in bus mass limits should be considered to reflect changes in passenger requirements even if it is necessary for the industry to pay an incremental registration price to achieve the increase.</p>	<p>Priority</p> <p>Priority</p> <p>Priority</p>	<p>TBD</p> <p>2013/2014</p> <p>2013/2014</p> <p>TBD</p> <p>TBD</p> <p>2013/2014</p>	<p>NTC</p> <p>NTC</p> <p>NHVR</p> <p>NTC</p> <p>NHVR</p> <p>NTC (HVCI long term)</p>

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<p>Ethical Standards QLD (J)</p>	<p>The NHVR to develop appropriate ethical standard requirements and code of conduct.</p> <p>Note this item on the FWP was sought by QLD Public Service Commission as part of support for HVNL Amendment Bill.</p>	Priority	January 2013	NHVR
<p>Review of Maximum Penalties SCOTI</p>	<p>A national penalties framework has been included in the Amendment Bill and was the result of a substantial amount of collaborative effort and goodwill of all parties involved. On 18 May 2012 SCOTI requested TISOC to undertake a thorough review of the maximum penalties that takes into account relativities with light vehicle penalties and jurisdictional penalty frameworks, with a report to SCOTI with recommendations for ongoing penalties for the HVNL at its first meeting of 2014.</p>	Priority	Report to SCOTI at its first meeting in 2014	NTC

ⁱ Implementation timeline aligned to Release 2 national 'go live' date of July 2013 and subject to scoping of a project implementation plan with industry and the NHVR.

ⁱⁱ Proposed lead agency subject to SCOTI endorsement and review with industry.

ⁱⁱⁱ COAG directive to repeal FIRS when national registration system is implemented.