

Heavy Vehicle National Law and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018.

Summary

Heavy vehicle matters

The *Heavy Vehicle National Law Act 2012* (the Act) commenced on 10 February 2014 and provides a single national law for the consistent regulation of heavy vehicle operations across most of Australia. The Act also established the National Heavy Vehicle Regulator (NHVR) to administer the Heavy Vehicle National Law (HVNL) contained in the Schedule to the Act.

All Australian states and territories, except Western Australia and the Northern Territory, are participating jurisdictions for the purposes of the HVNL and have applied the HVNL as a law of each of their jurisdictions.

The HVNL is the cornerstone of the Council of Australian Governments' (COAG) national heavy vehicle reform agenda and ensures industry can operate across state borders without conflicting regulatory requirements.

The HVNL regulates matters relating to the operation of heavy vehicles such as mass and dimensions, vehicle safety standards, drivers' fatigue management, heavy vehicle accreditation and the use of intelligent transport systems. The HVNL also places obligations on identified off-road parties involved in the transport and logistics chain (chain of responsibility parties), and includes enforcement powers and administrative provisions.

The Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 (the Bill) amends the HVNL to create a positive due diligence obligation on executive officers that will apply to all safety related offences and to require the NHVR to maintain a database of heavy vehicles.

The Bill also makes the following amendments:

- development of a national operator fleet dataset of registered heavy vehicles;
- allowing Queensland to continue performing registration related functions for heavy vehicles beyond 1 July 2018;

- providing a one-off exemption from vehicle registration duty for heavy vehicles transitioning from the Federal Interstate Registration Scheme to the Queensland registration scheme; and
- minor or technical changes resulting from the maintenance process for the HVNL that remove unnecessary administrative or regulatory burdens.

Road safety and other matters

In 2016, 250 people were killed and an estimated 6400 were seriously injured on our roads. Death and serious injuries on Queensland's roads continue to cause significant devastation for individuals, families and the broader community. As a result, improving safety on our roads must be a priority.

The Bill amends the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) and the *Transport Planning and Coordination Act 1994* (TPC Act) to improve road safety by:

- increasing penalties for driving offences involving death or grievous bodily harm;
- allowing a registered operator of a vehicle to be notified of offences committed in their vehicle by another person; and
- allowing a police officer who conducts a roadside test for drug driving to also conduct any subsequent saliva analysis.

In addition, the Bill will make amendments relating to the duties of drivers involved in crashes. The Bill also makes amendments to improve customer identification processes for the learner licence online training and assessment program (PrepL).

Policy objectives and the reasons for them

Heavy vehicle matters

The Bill contains amendments to implement a key heavy vehicle policy initiative relating to extending positive executive officer due diligence obligations to all major safety related duties in the HVNL, as endorsed by the Transport and Infrastructure Council (the Council). These amendments will:

- bring executive officer liability under the HVNL more in line with the officers' duty provisions under the Model Work Health and Safety Act (WHS Act) by focussing the obligation of executive officers on safety related matters;
- encourage a more proactive approach to addressing heavy vehicle safety risks;
- reduce regulatory complexity and compliance costs associated with having two different approaches to executive officer liability in the WHSA and the HVNL;
- limit the obligations on executive officers to those that have a direct safety link;
- cover all major safety duties in the HVNL; and
- not increase the range of parties covered or the scope of executive liability.

The Bill also requires the NHVR to maintain a database of heavy vehicles that will enable the identification of a heavy vehicle registered under a law of a participating jurisdiction and the registered operator of the vehicle. Other jurisdictions (Western Australia and Northern Territory) may include their heavy vehicle information on the database.

The Bill also includes several minor and technical amendments to:

- reduce administrative or regulatory burden for the NHVR and/or the heavy vehicle industry;
- clarify existing requirements to aid interpretation of the HVNL;
- improve the enforceability of the HVNL; and
- address technical drafting issues.

Road safety and other matters

Penalties for careless or dangerous driving offences involving death or grievous bodily harm

While education and awareness campaigns are essential to Government's strategies to improve road safety, the deterrent effect of penalties such as fines, demerit points, licence suspension and disqualifications also plays a vital role in encouraging safe driving and responding to unsafe or inappropriate road user actions.

As part of recommendations 32 and 33 of the Transport, Housing and Local Government Committee's *Report No.39 – Inquiry into Cycling Issues*, the Committee recommended that the Department of Transport and Main Roads (TMR) make recommendations for future law reform to improve safety for vulnerable road users and consider the introduction of specific provisions and tougher penalties related to a driver leaving the scene of a crash.

Following the Committee's recommendations, an interdepartmental committee was established comprising officers from TMR, the Department of Justice and Attorney-General (DJAG) and the Queensland Police Service. The interdepartmental committee made recommendations which reflect recommendations 32 and 33 of the Parliamentary Committee's report. These recommendations included increases to penalties, including the introduction of a minimum disqualification period, where death or grievous bodily harm is the result of careless or dangerous driving. The penalty for failing to remain at the scene of an incident where the driver ought reasonably to have known a person was killed or grievously injured was also recommended to be increased.

In 2015, the State Coroner made recommendations relating to offences involving careless driving causing death or grievous bodily harm. Since that time there have been inquests into road fatalities where Coroners have also raised issues regarding the legislative options available to courts for responding to careless driving.

Allowing the registered operator of a motor vehicle to be notified of any driving offences committed in their vehicle.

Action 12 in the *Queensland's Road Safety Action Plan 2017-19* recognises the potential benefit of parental or caregiver influence in supporting young people becoming safe and responsible drivers. Often a young person's early independent driving occurs in a vehicle registered in a parent or caregiver's name. However, often the registered operator of the vehicle is unaware of the driving behaviour of the driver.

Similarly, there are many other circumstances where a registered operator allows another person to use their vehicle, including, for example where employees use business vehicles.

If a parent or employer is aware of unsafe driving practices, they are in an ideal position to influence driver behaviour and contribute to road safety outcomes. This may occur through conversations about safe driving or by them making informed decisions about the use of their vehicle. However, there are currently no provisions within the TORUM Act that would support the release of this information to the registered operator.

Allowing a police officer who conducts a roadside saliva test of a driver to also conduct any subsequent saliva analysis.

In practical terms, the officer who conducts a roadside drug test is usually the same officer who arrests the offender. Currently, under section 80(8J) of the TORUM Act, when testing for drug driving offences, the police officer who operates a subsequent saliva analysing instrument must not be the same officer who arrested the driver or who performed the preliminary roadside saliva test.

At the commencement of Queensland roadside drug testing, the legislative requirement for two officers to be involved provided for corroboration of questions asked of the driver and of indicia displayed by the driver. It also provided a safeguard to enable the public to build confidence in new roadside drug testing procedures.

The expansion of roadside drug testing means testing is able to be conducted in remote areas of Queensland where, in some circumstances, only a single police officer may be deployed. As a result, the current requirement may cause practical difficulties where a second authorised officer is not readily available to operate the analysing instrument. In those instances, the testing officer may have to travel to a police station in another town or call on an off-duty officer to operate the analysing instrument in order to satisfy the requirement.

Since December 2013, new approved saliva analysing instruments have been introduced across the State. The new instruments are extremely accurate and have a memory function that retains records in relation to the analysis performed and results obtained. The technological advances mean the process is sufficiently transparent without the need for a separate officer to undertake any subsequent saliva analysis. As a result, the restriction preventing the roadside officer operating the analysing instrument is no longer necessary.

Clarifying duties of drivers involved in crashes

In addition to the new penalties for leaving the scene of an incident that resulted in a death or grievous bodily harm to a person, the Bill will also amend duties of drivers involved in crashes by:

- clarifying that a driver involved in an incident where someone is dead or apparently dead, must remain at the scene; and
- moving provisions about driver duties to provide information to police and others involved in a crash from the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* to the TORUM Act. This will mean the obligations of drivers involved in crashes are collocated.

Improving the customer experience for persons participating in the learner licence online training and assessment program (PrepL)

Currently, section 28EH of the TPC Act sets out various periods of time that TMR may retain a person's digital photo and digitised signature. For example, where an application for a driver licence is granted, the licence holder's photo and signature may be kept for up to 30 years.

PrepL is being trialled and is intended to replace the current written road rules test for class C (car) learner licence applicants. Learner licence applicants are able to undertake the program at their own pace and will have up to one year to complete the course. At any time during that year they may attend a licence issuing centre to lodge their application for the learner licence and to have their digital photo and digitised signature recorded in readiness for the issue of the licence on completion of the PrepL program.

However, the current legislative provisions are not clear about how long TMR can retain the photo and signature, potentially resulting in applicants having to re-attend licence issuing centres to have their digital photo and digitised signature re-taken. The amendments will allow the photo and signature to be retained for up to one year to cater for those who may take the maximum permitted period to complete PrepL.

Achievement of policy objectives

Heavy vehicle matters

The policy objective of extending positive executive officer due diligence obligations to all major safety related duties in the HVNL is primarily achieved by amending section 26D to include a definition of *safety duty*. This definition includes the existing primary duties under section 26C for which an executive officer has a due diligence obligation as well as the other major safety duties imposed under other sections of the HVNL. Sections 26C and 26D are contained within the Heavy Vehicle National Law and Other Legislation Amendment Act 2016, and are to commence by proclamation.

The policy objective of having the Regulator maintain a database of heavy vehicles is achieved by repealing the un-commenced Chapter 2 that deals with registration of heavy vehicles under the HVNL and inserting a new Part 12.2A in Chapter 12 of the HVNL that requires the NHVR to maintain such a database. Consequential amendments are made to information sharing provisions to ensure there is no impediment to the sharing or disclosure of information between the NHVR and state/territory registration and enforcement agencies for these purposes.

Consequential amendments are also being made to the HVNL and Queensland's application provisions to reflect the repeal of chapter 2 of the HVNL. These changes also reflect that registration related functions will continue to be performed by participating states and territories (rather than the NHVR).

In conjunction with the proposed amendments to HVNL registration, the Federal Interstate Registration Scheme (FIRS) will be closed. That is, all registration functions for heavy vehicles will be maintained and administered directly by each state and territory, based on a vehicle's garage address. Legislation to repeal FIRS is expected to be passed by the Australian Parliament before 1 July 2018, in time for Queensland to continue performing registration related functions for all heavy vehicles beyond that date.

The closure of FIRS will require all heavy vehicles registered under FIRS to transition to state/territory-based registration systems during a transition window from 1 July 2018 to 30 June 2019. Consequently, the proposed Bill will also amend the *Duties Act (Qld) 2001* to provide a one-off exemption from vehicle registration duty for heavy vehicles transitioning from FIRS to the Queensland registration scheme.

The Bill addresses several operational, minor or technical drafting issues that will improve roadside enforcement, reduce compliance burden for industry and reduce the administrative burden for the NHVR, including:

- clarifying what is a minor risk breach in relation to vehicle ground clearance requirements;
- allowing operators to make certain documents available electronically;
- clarifying certain record keeping requirements for drivers and their record keepers;
- clarifying information sharing provisions; and
- providing that new penalties in the HVNL are indexed in the same manner as existing penalties.

Road safety and other matters

The Bill proposes to improve road safety by:

- increasing penalties for driving offences involving death or grievous bodily harm to appropriately reflect the seriousness of the offences;
- allowing a registered operator of a vehicle to be notified of offences committed in their vehicle by another person so they can make informed decisions about who can drive their vehicle; and
- allowing a police officer who conducts a roadside test for drug driving or who arrests a person for a saliva analysis to also conduct any subsequent saliva analysis to improve efficiency in management of drug driving offenders.

In addition, the Bill makes amendments to improve customer identification processes for participants in PrepL. Further the Bill makes amendments to clarify the duties of drivers involved in crashes.

Alternative ways of achieving policy objectives

Heavy vehicle matters

The Bill amends existing provisions of the HVNL to further enhance its clarity and operability.

In endorsing these national heavy vehicle reform policy initiatives, Council considered how effective implementation of the policy initiatives could be best achieved and the potential advantages of legislative change over implementation through other administrative options.

Moving to a proactive culture of safety that minimises complexity and difficulty in the interpretation of executive officer liability for safety obligations can only be achieved through legislative amendment. This approach is consistent with the approach adopted in other national safety legislations.

Similarly, the requirement for the NHVR to maintain a database of heavy vehicles can only be achieved through legislative amendment.

Road safety and other matters

The approach outlined in the Bill is considered the most efficient and effective way of achieving the policy objectives.

Estimated cost for government implementation

Heavy vehicle matters

The reform of the executive officer liability for safety and related obligations under the HVNL will require the development of reference material and training for authorised officers as well as education and compliance guidelines for the heavy vehicle industry.

The implementation of the database of heavy vehicles will require development of reference material and training for staff of the NHVR and state and territory agencies, as well as the development and ongoing maintenance of the database.

Implementation of the Bill will be the responsibility of the NHVR with the support of state and territory road transport and police agencies.

Implementation costs of all reforms in the Bill will be met within existing budget allocations of the NHVR and state and territory agencies.

Road safety and other matters

The cost of implementing the proposed reforms will be minimal and will be met from existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Clauses in the Bill which potentially raise fundamental legislative principles issues are discussed below.

Heavy vehicle matters

The extension of executive officers liabilities to due diligence requirements are consistent with the executive officer liability scheme as agreed between the jurisdictions for the HVNL - there are already extensive executive officer liabilities under the HVNL (that were inserted via an amendment Bill in 2016) and the extension of that liability to due diligence requirements is 'Phase 2' of those reforms. Executive officer liabilities are a potential fundamental legislative principles (FLP) breach, but it is justified on the basis that the requirements ensure positive steps are taken by executive officers to ensure their organisation meets safety obligations under the HVNL.

The Bill will insert a new offence (new section 319A) for failing to meet general requirements about driver recording and giving information to the record keeper. This new offence naturally follows the preceding offence at section 319 which deals with the records the record keeper must have. The maximum penalty for the new offence is \$3000, which is consistent with the various other penalties under the HVNL which range from \$1500 to \$20000.

The \$3000 is consistent with the maximum penalty for other record-keeping related offences for drivers under the HVNL (for example, see section 341). The new offence also contains a reverse onus provision (it provides that the defendant must provide the reasonable excuse) which raises an FLP issue. However, this can be justified on the basis that the defendant is best-placed to provide such an excuse and is within the defendant's knowledge, and it is consistent with the operation of other offences in the HVNL.

The amendments in clause 8 insert new subsections into section 31 of the *Heavy Vehicle National Law Act 2012*. This is a section that is specific to Queensland's application of the HVNL. These subsections allow for evidence about heavy vehicle registration matters to be given by evidentiary certificate. These evidentiary certificate provisions are currently provided for in section 63 of the Act. However, since that section is in a division of the Act that is being omitted by the Bill, the provisions are being transferred into section 31.

This amendment potentially raises an FLP that legislation should not reverse the onus of proof. However, this amendment is justified because the evidentiary certificates relate to matters that are non-contentious. This evidence is extracted by records maintained by the chief executive of TMR as the road authority for Queensland. The use of the evidentiary certificates provide cost savings through not having to call a witness for issues that are not in dispute. Finally, the evidence in the certificate is not conclusive and the defence can challenge the evidence.

Road safety and other matters

Increased penalties

The Bill increases a number of existing penalties relating to careless or dangerous driving and failing to remain at the scene of an incident, particularly where there has been an incident resulting in death or grievous bodily harm. The proposed penalties include increased maximum monetary fines, increased maximum terms of imprisonment and minimum driver disqualification periods. These amendments may raise fundamental legislative principle issues relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*).

As mentioned above, the changes to penalties were developed by an interdepartmental committee in response to recommendations in the former Transport, Housing and Local Government Committee's *Report No.39 – Inquiry into Cycling Issues*. In developing these penalties, the interdepartmental committee took into account the seriousness of the offences and comparisons with similar offences in Queensland and interstate. The penalties are also broadly consistent with the State Coroner's recommendations mentioned above.

Importantly, the imposition of fines and terms of imprisonment up to the new maximums are within the remit of the courts, who are best placed to determine appropriate penalties after consideration of the circumstances of the particular offence. The courts will also have

discretion to impose disqualifications exceeding the new minimum mandatory disqualifications if they deem it appropriate.

The proposed penalty regime is designed to encourage increased awareness of the importance of safe driving behaviour, and the penalties are considered proportionate to the seriousness of the offences. The penalties also encourage drivers to behave appropriately at the scene of an incident, particularly where someone is seriously injured or deceased.

Privacy issues relating to notification to registered operator

The Bill allows the chief executive to notify a registered operator of offences committed in their vehicle by another person. These amendments may raise fundamental legislative principle issues relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*) particularly relating to privacy.

It is not unusual for the registered operator of a vehicle to become aware of offences committed in their vehicle by another person. Currently, registered operators are notified when a camera detected offence is committed in their vehicle, even if the offence was committed by someone else. In 2015, 861,843 camera detected infringement notices were issued compared to 657,610 handwritten infringement notices. So the majority of infringement notices for traffic related offences are already sent to the registered operator.

Importantly, the amendments only allow the chief executive to provide the registered operator with information about the name of the driver and the nature, time and location of the offence. The limited type of information that can be provided will minimise any impact on the offender's privacy.

Protections already exist for persons who have particular privacy concerns. For example, a victim of domestic violence may apply to TMR to have their record suppressed. If a person's record is suppressed then notification of their offence will not be released to the registered operator.

The approach in the Bill is justified because keeping registered operators informed will facilitate improved conversations about road safety with the persons who use their vehicles. Fleet operators will be able to have conversations with their drivers about safe driving behaviour expected in work vehicles and parents or carers will be able to more effectively monitor the behaviour of newly licensed young drivers using the family car. Ultimately these conversations and the ability to make better decisions about who uses their vehicles, and how their vehicles are used, will lead to better road safety outcomes.

Simplifying testing for drug driving

The proposal to simplify the testing for drug driving will mean the police officer who conducts a roadside drug test, or who arrests a driver for careless or dangerous driving, will also be able to do a subsequent saliva analysis to test for drugs. This may raise fundamental legislative principles issues relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*).

The current section 80(8J) reflects the sentiment when the Queensland roadside drug testing program commenced in Queensland. The requirement for two officers to be involved ensured there was corroboration of questions asked of the driver and of indicia displayed by the driver.

It also provided a safeguard for confidence by the public in new roadside drug testing procedures.

Since December 2013, new approved saliva analysing instruments have been introduced across the State. The new instruments are extremely accurate and have a memory function that retains records in relation to the analysis performed and results obtained.

As mentioned above, the technological advances mean the process is sufficiently transparent without the need for a separate officer to undertake any subsequent saliva analysis. As a result, the restriction preventing the arresting or roadside officer (usually the same officer) operating the analysing instrument is no longer necessary. The outcome from these amendments is consistent with the approach for testing for drink driving offences.

Consultation

Heavy vehicle matters

The amendments to the HVNL were developed by the National Transport Commission in consultation with the NHVR and state and territory government transport and enforcement agencies. Consultation was also undertaken with peak transport industry organisations and other key stakeholder representatives, including the Queensland Trucking Association and the Local Government Association of Queensland.

While Western Australia and the Northern Territory are not participating jurisdictions at this time, they have been consulted on the development of these amendments.

Stakeholders have indicated support for these amendments.

Road safety and other matters

In relation to the road safety and other amendments, consultation has been undertaken with relevant non-Government stakeholders, including the RACQ and the Queensland Law Society and the Queensland Council for Civil Liberties.

The RACQ indicated that the proposed amendments to increase the penalties for careless driving offences involving the death or grievous bodily harm of a person are on balance keeping with community expectations and are consistent with drivers wanting to see accountability for driving behaviour. The RACQ also supports the other proposed road safety amendments.

The Queensland Law Society questioned the necessity of the proposed amendments to increase the penalties for careless driving offences involving death or grievous bodily harm. The Queensland Law Society believes that the current legislation can adequately deal with driving offences involving death or grievous bodily harm, and that the judicial system is best placed to administer justice. It has also expressed concern that the proposal to notify a registered operator of traffic offences in their vehicle is an unwarranted intrusion into the individual privacy of a person.

The Queensland Council for Civil Liberties recognised the community disquiet about offences involving death or grievous bodily harm but noted that the vast majority of careless driving offences involve momentary inattention, and not intent, where deterrence and rehabilitation are

not factors. The Council also noted that it has a longstanding opposition to any form of mandatory punishment, including mandatory licence disqualifications. On the proposal to notify a registered operator of traffic offences in their vehicle, the Council accepted that owners of vehicles have an interest in knowing whether their vehicles are being driven safely. It noted, however, that the subject of the disclosure also has rights. The Council welcomed the existing protections available for those who have particular privacy concerns, such as victims of domestic violence.

The Queensland Trucking Association (QTA) was also consulted about the proposals relating to notifying registered operators of offences and simplifying testing for drug driving offences. The QTA indicated support for these proposals.

Consistency with legislation of other jurisdictions

Heavy vehicle matters

The HVNL is national scheme legislation that, once commenced in Queensland, will be applied in all participating states and territories.

The Bill will ensure the consistent and equitable regulation of the heavy vehicle industry is maintained across participating jurisdictions.

Road safety and other matters

The penalties for offences causing death or grievous bodily harm were developed having regard to similar offences in other Australian jurisdictions.

In relation to notification of registered operators, the only other jurisdiction that has anything similar is South Australia which allows involved parties to be notified about prescribed offences committed in heavy vehicles.

Notes on provisions

Part 1 Preliminary

Clause 1 states that when enacted, the Bill will be cited as the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018*.

Clause 2 provides for commencement of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018*.

Part 2 Amendment of Duties Act 2001

Clause 3 states that Part 2 amends the *Duties Act 2001*.

Clause 4 amends section 387. Subsection (1) is amended to align the language of the provision with the new exemption in the new subsection (2). New subsection (2) provides an exemption from vehicle registration duty where a heavy vehicle previously registered under the *Interstate Road Transport Act 1985* (Cwlth) applies to register in Queensland between 1 July 2018 and 30 June 2019. The conditions of the provision ensure that it operates where the heavy vehicle is registered under the *Interstate Road Transport Act 1985* (Cwlth) immediately before the application is made, the application is the first application to register the vehicle in a State, and the application is made by the same person in whose name the vehicle is registered under *Interstate Road Transport Act 1985* (Cwlth). New subsection (3) provides subsection (2) will not apply if the sole or dominant purpose of the application is to avoid the imposition of vehicle registration duty. New subsection (4) inserts a definition of **heavy vehicle**.

Part 3 Amendment of Heavy Vehicle National Law Act 2012

Clause 5 states that Part 3 amends the *Heavy Vehicle National Law Act 2012*.

The amendments in Part 3 are to provisions that relate to the application of the Heavy Vehicle National Law (HVNL) in Queensland.

Clause 6 inserts a new definition for **National Law** in section 3 (Definitions) of the Act.

Clause 7 amends section 4 to insert words to clarify that the scheduled HVNL applies as a law of Queensland subject to the modifications in specified parts of the Act.

Clause 8 amends section 31 to insert additional evidentiary certificate provisions in relation to heavy vehicle registration matters. These provisions are currently contained in section 63 which is in Part 6, division 4 of the Act. This division was inserted to reflect the delayed commencement of chapter 2 of the HVNL, which is the chapter in the schedule to the Act that deals with registration. However, as registration responsibility will remain with participating jurisdictions, rather than transferring to the National Heavy Vehicle Regulator (NHVR), chapter 2 of the HVNL is being omitted (see clause 17). Similarly, part 6 division 4 of the Act is being omitted (see clause 11). Since the evidentiary certificates in relation to registration

matters are to have ongoing effect in Queensland, clause 8 transfers these provisions to section 31 which lists out other evidentiary certificates.

Clause 9 inserts new section 42A. It provides authorisation for section 688(1)(e) of the HVNL for payment of the regulatory component of the heavy vehicle registration into the NHVR Fund, where the regulatory component means those charges as prescribed by schedule 2 of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*. The authority to pay the regulatory component into the NHVR Fund is currently provided for in section 62 of the Act. This section is in Part 6 division 4 which is being omitted by clause 11 of the Bill.

Clause 10 inserts a new part 4A, containing new sections 42B, 42C and 42D. This part contains a modification of the HVNL for the purpose of applying the modified provision as a law of Queensland. The modification is in new section 42D. This new section contains what is currently provided for in section 61(2)(b). Section 61(2)(b) is in Part 6, division 4 of the Act. This division was inserted to reflect the delayed commencement of chapter 2 of the HVNL which is the chapter in the schedule to the Act that deals with registration. However, as registration responsibility will remain with participating jurisdictions, rather than transferring to the NHVR, chapter 2 of the HVNL is being omitted (see clause 17). Similarly, part 6 division 4 of the Act is being omitted (see clause 11). Because it is necessary to retain what is currently provided for in section 61(2)(b), clause 10 provides for this in the new section 42D.

The purpose of the amendment is therefore simply to relocate an existing modification rather than to introduce a new modification. The effect of the modification is that section 598 of the HVNL is taken to allow a court to cancel a registration but not to suspend a registration of a heavy vehicle in relation to which an offence has been committed.

Clause 11 omits part 6, division 4 of the Act. This division was inserted to reflect the delayed commencement of chapter 2 of the HVNL which is the chapter in the schedule to the Act that deals with registration. However, as registration responsibility will remain with participating jurisdictions, rather than transferring to the NHVR, chapter 2 of the HVNL is being omitted (see clause 17). Part 6, division 4 is therefore no longer necessary and is being omitted.

Part 4 Amendment of Heavy Vehicle National Law

Clause 12 states that Part 4 amends the Heavy Vehicle National Law (HVNL) as set out in a schedule to the *Heavy Vehicle National Law Act 2012*.

Clause 13 is a consequential amendment to section 4 of the HVNL resulting from the omission of Chapter 2 (see clause 9). Chapter 2 provides for registration of heavy vehicles under the HVNL, but this chapter has not commenced. Section 4 will be amended to provide that the object of the Law is to be achieved by a regulatory framework that does not include the national registration of heavy vehicles but does include the keeping by the Regulator of a database of heavy vehicles (see clause 31).

Clause 14 makes several amendments to definitions in section 5 of the HVNL.

Due to the omission of Chapter 2, the following definitions are no longer required and are omitted:

- conditionally registered
- insurer
- registered operator
- registration
- registration authority
- registration exemption
- registration item
- registration number
- unregistered heavy vehicle permit
- vehicle register
- vehicle registration duty
- vehicle registration duty legislation
- wrecked
- written-off

The following new definitions that are required for the purposes of the register of heavy vehicles are inserted:

- database of heavy vehicles
- registered operator
- registration
- registration authority
- registration item
- registration number
- unregistered heavy vehicle permit.

Clause 15 is a consequential amendment to section 6 resulting from the omission of Chapter 2 and removes the reference to registration under this law.

Clause 16 amends section 26D to extend the current positive due diligence obligations of executive officers in relation to safety duties under section 26C, to all offences that executive officers are currently liable for under section 636(2). The amendments cover all major safety offences in the HVNL (which have a direct safety link and that executive officers are able to manage as part of their role) and do not expand the scope of executive officer liability.

This will bring executive officer liability under the HVNL more in line with the officers' duty provisions under the Model Work Health and Safety Act.

The amendments will reduce regulatory complexity and compliance costs associated with having two different approaches to executive officer liability in the HVNL.

Clause 17 omits Chapter 2 which deals with registration of heavy vehicles under the HVNL. Chapter 2 has not commenced. Part 2.3, requiring the Regulator to keep a database of heavy vehicles has been inserted into Chapter 12 as new Part 12.2A.

Clause 18 contains consequential amendments to sections 60(3) and 60(4) of the HVNL resulting from the omission of Chapter 2. The amendments replace references to the Regulator with references to the (state or territory) registration authority.

Clause 19 is a technical amendment to section 105 that clarifies that a breach of a dimension requirement that relates to a vehicle's ground clearance is a minor risk breach for the purposes of enforcement of the HVNL.

Clause 20 is a technical amendment to the definition of *special purpose vehicle* in section 116. The amendment clarifies which vehicles are exempt from prescribed mass or dimension requirements. The current wording is ambiguous. The amendment captures the intent of the provision, being that the exemption is to apply to a vehicle provided it was not built for a purpose of transporting goods by road.

Clause 21 updates the form in which information may be provided to an authorised officer under section 192A to include having documents available for examination on an electronic device.

Clause 22 amends section 319 and requires the driver's record keeper – for a driver undertaking 100km work under standard hours - to record the driver's base and, if the base changes, the date on which the change occurred. This information is required to be recorded to establish that a driver is in fact undertaking 100km work.

Clause 23 inserts a new section 319A into the HVNL. The new section requires a driver undertaking only 100km work under standard hours who is not their own record keeper, to provide required information to their record keeper within 21 days. The obligation is taken to be satisfied if the record keeper obtains the information in another way.

The information to be provided to the record keeper is consistent with the information the driver is obliged to record if they are their own record keeper. The new provision addresses a current anomaly in the HVNL regarding record keeping.

Clause 24 contains a consequential amendment to section 520 resulting from the omission of Chapter 2. The amendment replaces reference to registration item, label or other thing under this law to registration item, label or other thing under an Australian road law.

Clause 25 contains a consequential amendment to section 521 resulting from the omission of Chapter 2. The amendment replaces reference to registration item, label or other thing under this law to registration item, label or other thing under an Australian road law.

Clause 26 contains a consequential amendment to section 522 resulting from the omission of Chapter 2. The amendment omits subsection (6), which provides for the suspension of registration. Subsection (6) is omitted as the HVNL will no longer deal with registration.

Clause 27 contains a consequential amendment to section 525 resulting from the omission of Chapter 2. Section 525 is amended to remove the definition of **Registration authority** as this term will be defined in section 5.

Clause 28 is a consequential amendment to section 527(1)(i) resulting from the omission of Chapter 2. The amendment provides that registration may only be cancelled by a registration authority under an Australian road law.

Clause 29 is a consequential amendment to section 551 resulting from the omission of Chapter 2 Registration. The amendment replaces all references to *this law* in this section with a reference to an *Australian road law*.

Clause 30 is a consequential amendment to section 569(1)(f) resulting from the omission of Chapter 2. The amendment provides that the garaging address for a heavy vehicle must be the garaging address recording on a vehicle register however named maintained by a registration authority.

Clause 31 is a consequential amendment to section 598(5) resulting from the omission of Chapter 2 Registration. The amendment ensures that if a court convicts a person against an offence under the HVNL that the registration authority for the heavy vehicle is notified of the decision to make an order.

Clause 32 is a consequential amendment to section 636, omitting executive officer liability provisions. This results from the inclusion of new section 26D which will contain all the executive officer liability provisions.

Clause 33 is a consequential amendment to section 637, omitting executive officer liability provisions. This results from the inclusion of new section 26D which will contain all the executive officer liability provisions.

Clause 34 is a consequential amendment to section 638, omitting executive officer liability provisions. This results from the inclusion of new section 26D which will contain all the executive officer liability provisions.

Clause 35 is a consequential amendment to section 653 resulting from the omission of Chapter 2. The amendment omits a reference to approved guidelines regarding registration exemptions.

Clause 36 is a consequential amendment to section 658(2)(b) resulting from the omission of Chapter 2. The amendment omits references to registration and substitutes a general provision allowing the Regulator to provide services to a State or Territory relating to functions of the Regulator under the HVNL.

Clause 37 is a consequential amendment to section 659 resulting from the omission of Chapter 2. The amendment omits a reference to registration and substitutes a general provision allowing the Regulator to provide the necessary administrative functions for the operation of the HVNL and to maintain a database of heavy vehicles.

Clause 38 contains amendments to section 660 to clarify information sharing between the Regulator, participating jurisdictions and the Commonwealth. The amendments allow the Regulator to give information to a participating jurisdiction or the Commonwealth as well as provide for a government agency that receives information from the Regulator to use the information.

Clause 39 inserts new Part 12.2A and new sections 686A and 686B. Section 686A requires the Regulator to keep a database of heavy vehicles and for registration authorities in participating jurisdictions to provide the Regulator with information relevant to keeping the database. Section 686B provides that the Regulator may give information included in the database of heavy vehicles to a registration authority, police force or police service of a participating jurisdiction or another Australian jurisdiction. This provision is necessary to make information sharing powers explicit.

Clause 40 omits section 688(2) & (3) and inserts a new section 688(2) to remove the definition and application of the money received for a road use component of the charges payable for the registration of heavy vehicles. The new section 688(2) restates that money received by the Regulator under an agreement is not payable into the Fund.

Clause 41 contains consequential amendments to section 711 resulting from the omission of Chapter 2. The amendments omit redundant subsections that refer to the Regulator issuing certificates containing registration information.

Clause 42 inserts new section 737A. The new section ensures that new penalties inserted into the HVNL are indexed annually in the same manner as existing penalties. This amendment clarifies the intended operation of the law in relation to indexation of penalties.

Clause 43 contains a consequential amendment to schedule 4 resulting from the inclusion of new section 26D which will contain the executive officer liability provisions. The offences currently set out in schedule 4, column 3 are now included in the definition of *safety duty* in section 26D.

Part 5 Amendment of State Penalties Enforcement Regulation 2014

Clause 44 states that part 5 amends the *State Penalties Enforcement Regulation 2014*.

Clause 45 inserts into schedule 1 of the *State Penalties Enforcement Regulation 2014* an entry for sections 319A(2) and 319A(5) of the *Heavy Vehicle National Law (Queensland)*. This allows an infringement notice to be issued for a breach of these sections. The penalty infringement amount for an offence under section 319A(2) is \$300.

Clause 45 also inserts infringement notice amounts in schedule 1 of the *State Penalties Enforcement Regulation 2014*, for offences under the *Transport Operations (Road Use Management) Act 1995*, including implementing a four penalty unit infringement notice amount for the offence careless driving (under section 83 of the Act). This infringement notice can only apply if the careless driving did not result in the death or grievous bodily harm of a person. *Clause 45* also omits the entries for infringement notices for section 287 (2) and (3) of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* as these offences are transferred to section 93 of the Act.

Part 6 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 46 indicates part 6 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 47 inserts a new section 77AAA to allow the chief executive to advise a registered operator of a vehicle of offences committed in the registered operator's vehicle by another person. The notification to a registered operator will only be available by electronic communication, such as email. If there is more than one registered operator for a vehicle, only the first nominated registered operator will be able to be notified.

Clause 48 omits section 80(8J) to allow police officers who conducted a roadside saliva test, arrested the person, or required the person to provide the specimen, to also conduct subsequent saliva analysis.

Clause 49 replaces the existing penalty provision for careless driving of a motor vehicle. While the previous penalty will continue to apply to instances of careless driving that did not result in death or grievous bodily harm, increased penalties will otherwise apply. In particular a person who is unlicensed at the time of committing an offence of careless driving that results in death or grievous bodily harm will be subject to a maximum penalty of 160 penalty units or 2 years imprisonment. A person will not be considered unlicensed merely because their license expired within the 5 years prior to the offence.

Clause 50 amends section 86(3) to ensure persons who commit the offence of dangerous operation of a vehicle where death or grievous bodily harm has occurred (see s328A(4) of the *Criminal Code*) will be disqualified from holding or obtaining a driver licence for certain periods.

In addition, this clause makes consequential changes to sections 86(3A) to 86(3F).

Clause 51 amends section 92(1)(c) to clarify that a driver who is involved in an incident where a person is dead or apparently dead, must remain at the scene. The amendment to section 92(1)(c) also inserts new penalties regarding duties of drivers in incidents that result in death or grievous bodily harm to a person.

Clause 52 inserts section 93 about the duties of a driver involved in a crash, to ensure drivers must stop and provide information to other drivers, vehicle owners and police in certain circumstances. These provisions reflect provisions previously in the *Transport Operations (Road Use Management – Road Rules) 2009* but have been collocated with the duties of drivers involved in incidents in section 92 to make it easier for drivers to locate their obligations.

Clause 53 inserts Part 21 Transitional provisions for *Heavy Vehicle National Law and Other Legislation Amendment Act 2018*. New section 230 clarifies that the amendments in section 86 apply to an offender convicted under s328A(4) of the *Criminal Code* only if the offence is committed after the commencement. Similarly, proposed section 231 ensures the new section 92(2) will only apply to convictions for offences under section 92(1)(a) after commencement.

Part 7 Amendment of Transport Operations (Road Use Management – Road Rules) Regulation 2009

Clause 54 indicates part 7 amends the *Transport Operations (Road Use Management – Road Rules) Regulation 2009*.

Clause 55 omits section 287 of the *Queensland Road Rules* as the provision has been moved to section 92 of the *Transport Operations (Road Use Management) Act 1995*.

Part 8 Amendment of Transport Operations (Road Use Management - Vehicle Registration) Regulation 2010

Clause 56 states that part 8 amends the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (Vehicle Registration regulation).

Clause 57 inserts a ground into schedule 7 of the Vehicle Registration regulation for the cancellation of the registration of a registered heavy vehicle. This ground is currently reflected in section 60(b) of the *Heavy Vehicle National Law Act 2012* which is in part 6, division 4 of the Act. This division was inserted to reflect the delayed commencement of chapter 2 of the HVNL, which is the chapter in the schedule to the Act that deals with registration. However, as registration responsibility will remain with participating jurisdictions, rather than transferring to the National Heavy Vehicle Regulator, chapter 2 of the HVNL is being omitted (see clause 17). Similarly, part 6 division 4 of the Act is being omitted (see clause 11). The ground to cancel a heavy vehicle based on a failure to produce or allow a heavy vehicle to be inspected as required under section 522 of the HVNL is being retained by the insertion of the ground into schedule 7 of the Vehicle Registration regulation.

The amendment makes it clear that prior to a vehicle's registration being cancelled the chief executive must give the relevant person written notice stating that a ground will exist to cancel the registration at the end of 14 days after the date of the notice if a person does not comply with the requirement to produce a heavy vehicle for inspection. Prior to the actual cancellation of a heavy vehicle's registration, however, the registered operator is given the opportunity to show why the registration should not be cancelled. This is provided for under section 19 of the *Transport Operations (Road Use Management) Act 1995*.

Part 9 Amendment of Transport Planning and Coordination Act 1994

Clause 58 indicates part 9 amends the *Transport Planning and Coordination Act 1994*.

Clause 59 inserts a definition for **creation date**. **Creation date** replaces the term **relevant day** previously located in 28EH(4). This clause also inserts a cross reference to the new section 28EI in the definition of **retention period**.

Clause 60 amends the section heading and inserts cross references to the new section 28EI in section 28EH. It also omits section 28EH(4) as the term **relevant day** has been replaced by **creation date** in section 28E.

Clause 61 inserts new section 28EI to deal with retention of digital photos and digitised signatures for persons applying for a learner licence before completing an online road rules test (PrepL). Section 28EI(2) applies a 1 year retention period, unless a longer period is prescribed. Section 28EI also facilitates the prescription of retention periods for other prescribed matters.

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