



Heavy Vehicle National Law Amendment Bill 2019

Report No. 22, 56th Parliament

Transport and Public Works Committee

May 2019

Transport and Public Works Committee

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Abbreviations

Acts as referred to	Note that all Acts referred to in this report are Queensland Acts unless stated otherwise.
ADR	Australian Design Rules
Bill	Heavy Vehicle National Law Amendment Bill 2019
COAG	Council of Australian Governments
committee	Transport and Public Works Committee
DTMR/TMR/department	Department of Transport and Main Roads
GVM	Gross Vehicle Mass
HVNL	Heavy Vehicle National Law
HVNL Act	<i>Heavy Vehicle National Law Act 2012</i>
LSA	<i>Legislative Standards Act 1992</i>
MVSA	<i>Motor Vehicles Standards Act 1989 (Cwlth)</i>
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
OQPC	Office of the Parliamentary Counsel
OSOM	Oversize Overmass
PBS	Performance Based Standards
QTA	Queensland Trucking Association
RVSA	<i>Road Vehicles Standards Act 2018 (Cwlth)</i>
TIC	Transport and Infrastructure Council
VIN	Vehicle Identification Number

Chair's foreword

This report presents a summary of the Transport and Public Works Committee's examination of the Heavy Vehicle National Law Amendment Bill 2019.

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

On behalf of the committee, I thank the organisation who made the written submission on the Bill. I also thank our Parliamentary Service staff and the Department of Transport and Main Roads for their assistance.

I commend this report to the House.

A handwritten signature in black ink that reads "Shane King". The signature is written in a cursive, slightly slanted style.

Shane King MP
Chair

Recommendations

Recommendation 1

2

The committee recommends the Heavy Vehicle National Law Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Transport and Public Works Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001*¹ and the Standing Rules and Orders of the Legislative Assembly.²

The committee's primary areas of responsibility are:

- Transport and Main Roads
- Housing, Public Works, Digital Technology and Sport.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Heavy Vehicle National Law Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly by the Minister for Transport and Main Roads, Hon Mark Bailey MP, and referred to the committee on 2 April 2019. The committee is required to report to the Legislative Assembly by 23 May 2019.

1.2 Inquiry process

On 9 April 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. One submission was received and is listed in Appendix A.

The committee received a public briefing about the Bill from the Department of Transport and Main Roads (DTMR/TMR/department) on 29 April 2019. A transcript is published on the committee's web page. A list of officials is contained in Appendix B.

The submission, correspondence from the department and transcript of the briefing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The policy objectives of the Bill are to:

- maintain currency, improve administrative efficiency and reduce complexity of the Heavy Vehicle National Law (HVNL)
- implement the final elements of the 2017 decision of the Transport and Infrastructure Council (TIC) to amend the HVNL to improve the productivity of the road network and freight fleet by increasing allowed volume on certain heavy vehicles where mass is not the constraint
- maintain currency and continued application of heavy vehicle in-service standards
- make minor and technical amendments³

¹ Note that all Acts referred to in this report are Queensland Acts unless stated otherwise.

² *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

³ Explanatory notes, p 2.

1.4 Consultation on the Bill

The explanatory notes identify that the amendments were developed by the National Transport Commission (NTC) and the National Heavy Vehicle Regulator (NHVR) in consultation with state and territory government transport and enforcement agencies. Consultation was also undertaken with peak transport industry organisations and other key stakeholder representatives. Stakeholders have indicated support for these amendments. The explanatory notes also state that, while Western Australia and the Northern Territory are not participating jurisdictions at this time, they were consulted on the development of the amendments.⁴

The explanatory notes also state that stakeholders have indicated support for the amendments.⁵ The committee received one submission, from the Queensland Trucking Association (QTA), who advised:

The QTA supports key amendments of the Heavy Vehicle National Law Amendment Bill 2019 including:

- *Consequential amendments arising from the enactment of the Commonwealth Road Vehicles Standards Act 2018, which will repeal the Motor Vehicle Standards Act 1989;*
- *Amendments that promote consistency between a vehicle defect notice and a self-clearing defect notice;*
- *The recognition of modifications to heavy vehicles approved in nonparticipating jurisdictions;*
- *Enhancing functions of the National Heavy Vehicle Regulator and authorised officers.*
- *Productivity improvement by allowing certain semitrailers greater access to the road network where mass is not a constraint which will reduce the need for permits or notices.*
- *Performance Based Standards (PBS) vehicles travelling on unauthorised routes to be treated consistently with other OSOM vehicles on that road.*⁶

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the department, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Heavy Vehicle National Law Amendment Bill 2019 be passed.

⁴ Explanatory notes, p 6.

⁵ Explanatory notes, p 6.

⁶ Submission 1, p 1.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Background

The Council of Australian Governments (COAG) has been driving a national program of micro-economic reform in a range of sectors to produce single regulatory environments throughout Australia. As part of these reforms, COAG agreed to establish the NHVR and national law to regulate all vehicles over 4.5 tonnes Gross Vehicle Mass (GVM). The *Heavy Vehicle National Law Act 2012* (HVNL Act) established NHVR to administer the HVNL, which is contained as the Schedule of the HVNL Act. Queensland is the host jurisdiction to lead implementation of the HVNL and the NHVR. All Australian states and territories, except Western Australia and the Northern Territory, are participating jurisdictions and have applied the HVNL as law in their jurisdictions. Any amendments are considered and approved by the TIC⁷.

The original HVNL Bill was introduced into the Queensland Parliament in July 2012 and passed in August 2012. Key provisions of the Act were proclaimed in October 2012 and the HVNL and related regulations commenced in February 2014. The reform agenda is a multi-staged process with further amendments being made in February 2013, May 2013, September 2015 and November 2014.

Further amendments were made to the HVNL in June 2018 and September 2018. The committee considered these amendments in Report No 4, tabled on 20 April 2018, and Report No 7 tabled on 28 June 2018.⁸

DTMR confirmed that the proposed amendments contained in this Bill were endorsed by the TIC in November 2018 and March 2019.⁹ The NHVR advised that they anticipate further amendments will be introduced.¹⁰

The NTC is currently in the process of reviewing the HVNL. The review commenced in early March 2019 with the issuing of the first of eight issues papers. The department confirmed the review was approved by the TIC in May 2018.¹¹

DTMR advised that there is no statutory review included in the legislation and committed to providing advice to the NTC on this issue.¹² DTMR confirmed:

*The Heavy Vehicle National Law Act (HVNL) does not have review periods incorporated into the provisions of the legislation. Primary legislation can be reviewed periodically under the authority of a responsible minister, or ministers, or through legislated provisions within an Act. The review of the HVNL was approved by responsible ministers through the Transport Infrastructure Council in May 2018, with the Terms of Reference endorsed in October 2018.*¹³

⁷ The Transport and Infrastructure Council (TIC) brings together Commonwealth, State, Territory and New Zealand ministers with responsibility for transport and infrastructure issues, as well as the Australian Local Government Association.

⁸ Refer Transport and Public Works Committee, 56th Parliament, *Report No 4 – Heavy Vehicle National Law and other Legislation Amendment Bill 2018*, April 2018 and Transport and Public Works Committee, 56th Parliament, *Report No 7 – Heavy Vehicle National Law Amendment Bill 2018*, June 2018.

⁹ Public briefing transcript, Brisbane, 29 April 2019, p 1.

¹⁰ Public briefing transcript, Brisbane, 29 April 2019, p 4.

¹¹ Public briefing transcript, Brisbane, 29 April 2019, p 6.

¹² Public briefing transcript, Brisbane, 29 April 2019, p 4.

¹³ Department of Transport and Main Roads, correspondence dated 7 May 2019, p 2.

DTMR also confirmed that there has been no specific funding allocated towards the review.¹⁴ However, DTMR advised:

As the passage of the HVNL is through the Queensland Parliament, the Department of Transport and Main Roads (TMR) has a dedicated team to manage legislative reform, and coordinate with the National Transport Commission any reforms to the legislation. The review of the HVNL being led by the National Transport Commission is one of the bodies of work undertaken by this team.

TMR participation in the HVNL Review includes up to four staff within the dedicated legislative reform team at any given time. The review is considered a ‘business as usual’ core activity for the team, with costs absorbed by TMR as part of the existing budget allocation.

TMR estimates the team salary and on-costs attributed to this work over the period of the review (2019 and 2020) is approximately \$559,230 over the two-year review period.¹⁵

The first issues paper is currently out for consultation which closes on 31 May 2019. Figure 1 outlines the proposed review issues papers and Figure 2 provides a summary of the anticipated timeline for the review.

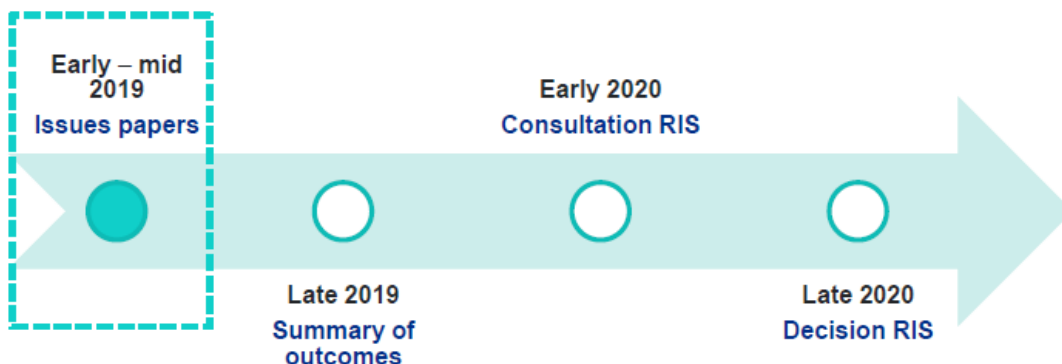
Figure 1: HVNL review issues papers

Foundation	What is regulated				How to regulate		Other
Risk-based regulation	Fatigue	Safe vehicles	Safe people and practices	Suitable routes	Accrediting operators	Managing compliance	Other policy matters



Source: National Transport Commission, Issues Paper – A risk-based approach to regulating heavy vehicles, March 2019, p 14¹⁶

Figure 2: HVNL review anticipated timeline



Source: National Transport Commission, Issues Paper – A risk-based approach to regulating heavy vehicles, March 2019, p 15.

¹⁴ Public briefing transcript, Brisbane, 29 April 2019, p 6.

¹⁵ Department of Transport and Main Roads, correspondence dated 7 May 2019, p 2.

¹⁶ Issues paper available at: [https://www.ntc.gov.au/Media/Reports/\(36FCC036-E3B4-F885-CBE5-CB9DF08E308D\).pdf](https://www.ntc.gov.au/Media/Reports/(36FCC036-E3B4-F885-CBE5-CB9DF08E308D).pdf)

2.2 Cost of implementation

The explanatory notes identify that implementation of the Bill will be the responsibility of the NHVR with the support of state and territory road transport and territory road agencies, and costs will be met within existing budget allocations of these agencies.¹⁷

2.3 Commencement

The explanatory notes identify that the proposed commencement date of Part 2, containing the consequential amendments arising from the Commonwealth *Road Vehicles Standards Act 2018* (RVSA) is 10 December 2019 and the remainder of the provisions, contained in Part 3, will commence on a day to be fixed by proclamation.¹⁸

When introducing the Bill, the Minister advised that:

*The RVSA was assented to on 10 December 2018 and will commence on 10 December 2019.*¹⁹

The department confirmed that, in respect to Part 2, the commencement date was selected as it aligns with the proposed commencement date of the RVSA.²⁰

DTMR confirmed that the commencement of Part 3 of the Bill will be by proclamation and the NHVR will consult with participating jurisdictions to confirm the agreed date. DTMR advised:

*It is anticipated that, subject to parliamentary processes, the provisions in Part 3 of the Bill will commence at least three months after assent, but not before February 2020. This will allow for the Regulator and jurisdictions to undertake necessary implementation tasks prior to commencement, including providing advice to industry.*²¹

2.4 Proposed amendments

The explanatory notes detail that the Bill will amend the HVNL Act to implement national agreed reforms or necessary amendments to:

- make consequential amendments arising from the enactment of the RVSA, which will repeal the Commonwealth *Motor Vehicle Standards Act 1989* (MVSA)
- improve consistency between a vehicle defect notice and a self-clearing defect notice
- enable the recognition of modifications to heavy vehicles approved in nonparticipating jurisdictions
- provide that the giving of advice, information and education are functions of the NHVR and authorised officers
- improve productivity by allowing certain semitrailers greater access to the road network where mass is not a constraint
- ensure that a Performance-Based Standards (PBS) scheme vehicle travelling 'offroute' (i.e. on a road without authorisation under the HVNL and where not otherwise permitted) is treated consistently with other over mass or over dimension vehicles on that road.²²

¹⁷ Explanatory notes, p 4.

¹⁸ Explanatory notes, p 6.

¹⁹ Queensland Parliament, Record of Proceedings, 2 April 2019, p 929.

²⁰ Public briefing transcript, Brisbane, 29 April 2019, p 7.

²¹ Department of Transport and Main Roads, correspondence dated 7 May 2019, p 3.

²² Explanatory notes, p 2.

The Bill also makes a range of minor or technical amendments that remove unnecessary administrative or regulatory burdens, will help improve the enforceability of the HVNL, correct minor errors and ensure the HVNL remains contemporary and fit for purpose.²³

With regard to the roll out of national legislation in rural and remote areas, the department advised:

It is certainly a focus for us to make sure that whenever anything is being rolled out. Obviously the national heavy vehicle law is delivered and administered by the National Heavy Vehicle Regulator, so they have a number of things that they do. Certainly from TMR's perspective we want to make sure that we continue to support businesses in those areas and make sure that they are able to comply without having to travel great distances.²⁴

2.4.1 Operational, minor and technical drafting issues

The explanatory notes state that the Bill addresses a number of operational, minor and technical drafting issues that will improve roadside enforcement, reduce the compliance burden for industry and reduce the administrative burden for the NVHR by:

- including 'self-clearing defect notice' in the definition of 'vehicle defect notice'
- inserting new definitions for 'advice purposes', 'minor defect notice', 'major defect notice', and 'self-clearing defect notice'
- removing minor inconsistencies between major and minor defect notices and self-clearing defect notices, including, but not limited to, the timeframe for the driver to provide the notice to the operator
- allowing authorised officers to permit the use of a heavy vehicle subject to a self-clearing defect notice after the period to take corrective action has expired
- recognising certain modifications to heavy vehicles approved in non-participating jurisdictions
- providing an express head of power for authorised officers to give advice, information and education
- clarifying that the giving of advice, information and education is a function of the NVHR
- removing the requirement for a road manager to identify, in a statement of reasons, all the documents relevant to a decision to grant or refuse a mass or dimension permit
- replacing the requirement that the NHVR provide a person with a statement of reasons for a decision to grant the person a vehicle standards exemption (permit), mass or dimension exemption (permit) or class 2 authorisation (permit) with a requirement to provide the person with a notice advising the person of their review and appeal rights, which includes the right to request a statement of reasons within 28 days of being given the decision
- introducing a 28-day timeframe for a person, who is not given a statement of reasons for a decision, to request a statement.²⁵

²³ Explanatory notes, p 1.

²⁴ Public briefing transcript, Brisbane, 29 April 2019, p 5.

²⁵ Explanatory notes, p 2.

2.4.1.1 *Defect notices*

The Bill includes a proposed amendment to ensure the same requirements must be addressed in HVNL jurisdictions when issuing a vehicle defect notice or a self-clearing defect notice. The Minister advised:

*Each jurisdiction uses their own regulator approved defect notice forms, but in most cases jurisdictions have combined requirements for vehicle defect notices and self-clearing notices into the one form. However, inconsistencies exist between the requirements for issuing these notices, which makes using a single form confusing.*²⁶

Clause 23 amends the definition of ‘defective vehicle label’ in section 525 by replacing ‘vehicle defect notice’ with ‘major defect notice or minor defect notice’. This is a consequential amendment arising from the amendment to the definition of ‘vehicle defect notice’ in section 5 under clause 7. Clauses 24, 25, 26, 28, 29, 30 and 31 implement consequential amendments including relocations of provisions within the Act.²⁷

Clause 24, under subclause 24(2), also amends section 526(4) by providing that the driver of a heavy vehicle for which a vehicle defect notice is issued must give the notice to the operator as soon as practicable, but not more than 14 days, after the notice is issued. The explanatory notes state that this amendment aligns the timeframe for the giving of the notice to the operator with that currently provided for a self-clearing defect notice in existing section 531A(5).²⁸

Clause 27 inserts new section 529AA, which provides that an authorised officer may give written permission for a vehicle that is the subject of a self-clearing defect notice to be used on a road during the period stated in the permission. The permission is subject to the condition in new subsection 529AA(2) that the vehicle will be used only for the purpose of driving the vehicle to and from a place where repairs are to be carried out. New subsection 529AA(3) provides that the use of the vehicle under the permission is not a contravention of the self-clearing defect notice.²⁹

The committee sought additional information regarding the definitions of a major defect notice, a minor defect notice and a self-clearing defect notice. The department explained that the difference depends on the severity of the defect on the vehicle. The department advised:

*A major defect could be a structural issue with steering components or a chassis issue. For example, it might have a cracked chassis. That is a major defect that will ground the vehicle, but it may mean that the vehicle cannot continue, it may not be able to be repaired and/or it needs major repair. Minor defects, as mentioned before, could be something as simple as a light bulb being out on a trailer or something like that.*³⁰

The department explained that a self-cleared defect is generally a minor defect that can be self-cleared and self-checked because it is easily replaced.³¹ However, the department advised that there are still minor defects that need to be checked by an authorised officer. Minor and self-clearing defects must be rectified within 28 days.³²

²⁶ Queensland Parliament, Record of Proceedings, p 929.

²⁷ Explanatory notes, p 9.

²⁸ Explanatory notes, p 10.

²⁹ Explanatory notes, p 10.

³⁰ Public briefing transcript, Brisbane, 29 April 2019, p 6.

³¹ Public briefing transcript, Brisbane, 29 April 2019, p 2.

³² Public briefing transcript, Brisbane, 29 April 2019, p 6.

2.4.1.2 *Modifications*

The Bill includes proposed amendments that address vehicle modifications approved in non-participating jurisdictions. Currently these modifications are not recognised under the HVNL. The Minister advised:

*Under a proposed amendment, modifications approved by a non-participating jurisdiction that complies with the regulator's Code of Practice for the Approval of Heavy Vehicle Modifications will be deemed to have been approved under the national law. This will remove the need for an operator for Western Australia or the Northern Territory to have the modification reassessed and approved under the national law.*³³

The department confirmed:

*Vehicle modifications approved in non-participating jurisdictions are currently not recognised by the national law.*³⁴

Clause 9 inserts new section 85(4). This new section provides that a modification to a vehicle is taken to have been approved by an approved vehicle examiner, under section 86, if:

- the modification has been authorised under an Australian road law of a non-participating jurisdiction; and
- a modification plate or label that indicates that the modification complies with a code of practice prescribed by the national regulations, for the purpose of section 86, has been fitted or affixed to a conspicuous part of the vehicle.³⁵

Clause 9 also inserts new subsection 85(5) which contains new definitions of 'authorised', 'modification plate or label' and 'non-participating jurisdiction'.³⁶ Clause 9 is as follows:

Amendment of s 85 (Modifying heavy vehicle requires approval)

Section 85, after subsection (3)—

insert—

(4) A modification is taken to have been approved by an approved vehicle examiner under section 86 if—

- (a) the modification has been authorised under an Australian road law of a non-participating jurisdiction; and
- (b) a modification plate or label is fitted or affixed to a conspicuous part of the vehicle; and
- (c) the modification plate or label indicates that the modification complies with a code of practice prescribed by the national regulations for the purposes of section 86.

(5) In this section—

authorised includes approved and permitted.

modification plate or label means a plate or label that is stamped, engraved or marked so as to display information that relates to a modification.

non-participating jurisdiction has the meaning given by section 221.

2.4.1.3 *Authorised officer powers*

Clause 19 inserts a new division, Division 1A, into Part 9.2. This clause also inserts new section 494A, which provides that Division 1A of Part 9.2 does not apply to an authorised officer who is a police officer.³⁷

³³ Queensland Parliament, Record of Proceedings, p. 929.

³⁴ Public briefing transcript, Brisbane, 29 April 2019, p 2.

³⁵ Explanatory notes, p 7.

³⁶ Explanatory notes, p 7.

³⁷ Explanatory notes, p 9.

This clause also inserts new section 494B, which creates an express power for an authorised officer to enter a relevant place, for advice purposes, if:

- an occupier of the place consents to the entry under Division 4 and section 503 has been complied with for the occupier; or
- the place is not a residence and it is open for carrying on a business or is otherwise open for entry; or
- the place is required to be open for inspection under the HVNL.³⁸

Clause 19 inserts new section 494C, which provides that if an authorised officer enters a relevant place under Division 1A, the authorised officer may, for advice purposes, provide advice, information and education.³⁹

Clause 20 inserts a new section 496(6A) and clause 21 inserts a new section 500(11). Both clauses provide that if an authorised officer, who is not a police officer, enters a relevant place for monitoring purposes, the authorised officer may provide advice, information and education for advice purposes.⁴⁰

In regard to this proposed amendment, the Minister stated:

*This bill proposes to amend the regulator's functions under the national law to specify that the regulator and its authorised officers can give advice, information and education to a person about complying with their duty or an obligation under the national law. This amendment is modelled on existing workplace health and safety laws and will align the national law more closely with those laws.*⁴¹

Clause 22 amends section 501 to insert a reference to the new express power to enter for advice purposes under section 494B.⁴²

2.4.1.4 Exemptions

Clause 12 amends section 127(1)(b) to replace the requirement that the NHVR provide a person an information notice stating the reasons for a decision to grant the person a mass or dimension exemption (permit) for a period less than that sought or with conditions imposed under section 125(1)(a), (c) or (d), with a requirement to provide the person with a notice stating the person's review and appeal rights for the decision.⁴³

Clause 13 amends section 148(1)(b) by replacing the requirement that the NHVR provide a person with an information notice stating the reasons for a decision to grant the person a class 2 heavy vehicle authorisation (permit) for a period less than that sought or with conditions imposed under section 146, with a requirement to provide the person with a notice stating the person's review and appeal rights for the decision.⁴⁴

³⁸ Explanatory notes, p 9.

³⁹ Explanatory notes, p 9.

⁴⁰ Explanatory notes, p 9.

⁴¹ Queensland Parliament, Record of Proceedings, 2 April 2019, p 929.

⁴² Explanatory notes, p 9.

⁴³ Explanatory notes, p 7.

⁴⁴ Explanatory notes, pp 7-8.

With regard to both clauses 12 and 13, the explanatory notes detail that reviewable decisions of the NHVR are provided for in Schedule 3, Part 1. The explanatory notes state:

These include a decision by the NHVR to grant a mass or dimension exemption (permit):

- *for a period less than the period of not more than 3 years sought by the applicant (under section 122)*
- *a decision to impose a condition not sought by the applicant and not a road condition or travel condition required by a relevant road manager for the exemption (under section 125).⁴⁵*

The explanatory notes also detail that the following note has been added in both clauses to aid interpretation⁴⁶:

Note—

Under section 641(6)(a), this notice must also state particular information about obtaining a statement of reasons for the decision.

2.4.1.5 Notice provisions

The HVNL currently requires a statement of reasons for a decision be issued automatically by the NHVR for access and vehicle standards exemption permits that are refused, issued subject to conditions, or for a period less than that sought by the applicant.⁴⁷

The Bill includes proposed amendments which will instead require the NHVR to notify the applicant of their right to request a statement of reasons within 28 days if a permit is issued subject to conditions or for a period less than that sought by the applicant. The NHVR will still be required to issue a statement of reasons when a permit is refused. If the applicant seeks a statement of reasons, the NHVR will be required to provide that statement within 28 days.⁴⁸

The Minister advised that the proposed amendment will reduce an unnecessary administrative burden on the NHVR and industry as ‘all permits are issued with at least one condition and in general, the rationale for the permit condition is well understood.’⁴⁹

Clause 32 amends subsection 641(2)(b) by providing that where a provision of the HVNL requires a person be given a statement of reasons for a decision, the person may make a review application within 28 days after the day the statement is given to the person. This is a consequential amendment arising from the amendments to sections 73(1)(b), 127(1)(b) and 148(1)(b) under clauses 8, 12 and 13 respectively.⁵⁰

Clause 32 also amends subsection 641(5) to correct an existing error by replacing ‘original decision’ with ‘reviewable decision’. This clause also amends subsection 641(6) providing that if a person is given a decision notice but not an information notice for a reviewable decision:

- the decision notice must state that the person may ask the Regulator for a statement of reasons within 28 days after the decision notice is given to the person
- the person may within 28 days after a decision notice is given to the person, ask the NHVR for a statement of reasons for the decision.⁵¹

⁴⁵ Explanatory notes, p 7.

⁴⁶ Explanatory notes, p 7.

⁴⁷ Queensland Parliament, Record of Proceedings, p 929.

⁴⁸ Queensland Parliament, Record of Proceedings, p 929.

⁴⁹ Queensland Parliament, Record of Proceedings, p 929.

⁵⁰ Explanatory notes, pp 11-12.

⁵¹ Explanatory notes, p 12.

Subclause 32(3) also inserts new subsection 641(6A) which provides that within 28 days after receiving a request under subsection 641(6)(b), the NHVR must give the person a statement of reasons.⁵²

Clause 33 inserts new subsection 659(2)(ka) which clarifies that the NHVR has the function to provide advice, information and education to persons with duties or obligations under the HVNL about the duties or obligations.⁵³

Clause 34 inserts a new section 698A that provides that anything done by the NHVR or a protected person carrying out the function of providing advice, information or education does not give rise to:

- a civil liability of the Regulator or the protected person
- a right, expectation, duty or obligation on the person to whom the thing was done that would not otherwise be conferred or imposed on the person
- a defence to a civil action that would not otherwise be available to the person in relation to whom the thing was done.⁵⁴

This clause also inserts subsection 698A(3) which provides that the protection in subsection (2)(a) only applies where the thing is done in good faith. This clause also inserts subsection 698A(4) which provides that reference to the doing of a thing includes reference to omitting to do a thing. This clause also inserts subsection 698A(5) which refers to section 698(3) for the definition of a 'protected person'.⁵⁵

This issue is also considered further in section 3.1.3 of this report.

2.4.2 Heavy vehicle in-service standards

The department advised that the RVSA replaces the MVSA. The department confirmed:

*The RVSA related amendments made changes to definitions in references to vehicle standards in the national law to ensure they correctly referenced the RVSA and continue to recognise older standards made under the Motor Vehicle Standards Act.*⁵⁶

The explanatory notes state that the policy objective of maintaining currency and continued application of heavy vehicle in-service standards under the RVSA is achieved by amendments to:

- definitions for 'ADR'⁵⁷, 'second edition ADR' and 'third edition ADR' to preserve national vehicle standards made prior to the MVSA, under the MVSA, and those made under the RVSA;
- the definition for 'VIN'⁵⁸, to include vehicle identification numbers assigned to vehicles built before the MVSA, approved under the MVSA, as well as the future vehicles approved under the RVSA; and
- the definition of 'modification' under section 84 to include modifications to vehicles approved under the RVSA.⁵⁹

⁵² Explanatory notes, p 12.

⁵³ Explanatory notes, p 12.

⁵⁴ Explanatory notes, p 12.

⁵⁵ Explanatory notes, p 12.

⁵⁶ Public hearing transcript, Brisbane, 29 April 2019, p 2.

⁵⁷ The definition of ADR, as cited in the HVNL Act, is: *ADR means a national standard under section 7 of the Motor Vehicle Standards Act 1989 of the Commonwealth.* Section 7 of the MVSA allows that the Minister may determine vehicle standards. The explanatory notes state that: *'ADR' means Australian Design Rules.* This is included in Clause 5 of the Bill.

⁵⁸ VIN is defined in HVNL as vehicle identification number

⁵⁹ Explanatory notes, p 3.

Clause 5 inserts a new section 14 to clarify the meaning of references in the HVNL to particular ADR versions. This provision is a consequence of the change being made to the definition of ADR. The reference to 'relevant standard' is either the national standard, under section 7 of the MVSA, or the national road vehicle standard under section 12 of the RVSA. This provision sets up a general operation to provide that when 'ADR' followed by a number appears, this means an ADR of that number in a particular standard.⁶⁰

2.4.3 Volume constraints

The Minister noted when introducing the Bill, that jurisdictions had agreed to a range of policy measures to provide improved access for certain specified semitrailer combinations where mass is not a constraint. The proposed amendment will extend the current height limit from 4.3 metres to 4.6 metres. The Minister noted that the proposed amendment will reduce the administrative burden from industry and road managers as specified semitrailers will be able to operate on the road network without additional authorisation.⁶¹

The explanatory notes state:

The policy objective of increasing allowed volume on certain heavy vehicles where mass is not the constraint is achieved by amendments providing for the specified semi-trailers to operate at 4.6m high under the legislation without the need for a notice or individual permit. A related amendment provides for protecting public safety and managing risks to infrastructure caused by high-productivity vehicles is achieved by the amendments that ensure that a PBS vehicle travelling "off-route" (i.e. on a road without authorisation under the HVNL) is, for enforcement purposes, treated consistently with other over mass or over dimension vehicles on that road.⁶²

The committee sought additional information regarding the proposed increase in height noting that infrastructure, such as bridges, needs to be considered when routes to be travelled are planned. The department advised:

That was pretty widely discussed. One of the issues that came up in the national discussion was tunnels in particular. All jurisdictions felt they could survive okay with 4.6 without really putting their infrastructure at significantly greater risk. I can tell you that tunnels were a very high point of discussion, as are bridges, but that is the point where we considered it would be safe to go without causing significant issues if someone was to operate with our current restrictions.⁶³

Clause 10 amends section 96 and clause 11 amends section 102, so that a PBS vehicle⁶⁴ travelling "off-route" (i.e. on a road without authorisation under the HVNL and where not otherwise permitted by the vehicle's class 2 heavy vehicle authorisation) is subject to the same mass limits that apply to non-PBS vehicles. The explanatory notes state that this will ensure the vehicle is treated consistently with any other over mass vehicle on that road.⁶⁵

The Minister advised that the proposed amendments will harmonise penalty provisions to ensure that a PBS vehicle travelling on a road without authorisation under the national law is treated the same for enforcement purposes as other over mass or over dimension vehicles on that road. The Minister noted that the basis for this is that these vehicles pose the same risks to infrastructure and safety.⁶⁶

⁶⁰ Explanatory notes, pp 6-7.

⁶¹ Queensland Parliament, Record of Proceedings, 2 April 2019, p 929.

⁶² Explanatory notes, p 3.

⁶³ Public briefing transcript, Brisbane, 29 April 2019, p 5.

⁶⁴ The term 'PBS vehicle' means Performance Based Standards scheme vehicle.

⁶⁵ Explanatory notes, p 7.

⁶⁶ Queensland Parliament, Record of Proceedings, 2 April 2019, p 929.

The department confirmed:

Performance based standard vehicles, or PBS vehicles, are given greater access to the road network; but for enforcement purposes they are not treated consistently with other vehicles detected over mass or over dimension limits. Under the proposed amendments, penalty provisions will be harmonised to ensure that a PBS vehicle that is not complying with their authorisation, for example travelling its approved route, is treated the same as any other noncompliant vehicle.⁶⁷

The department also advised that PBS vehicles generally have greater access because they are more technically advanced vehicles. However, the department confirmed:

...they can still travel off route and they can still do damage to infrastructure. These provisions are around aligning that so they are receiving the same penalties for being off route that a normal vehicle would receive for being off route. If you had a road train on a general access route when it did not have a permit, it is an offence for the driver to be where he should not be. PBS is no different, but the penalties in the current act are different depending on the types of vehicles.⁶⁸

The committee sought additional information regarding the impact of the amendments on Queensland's volume-loading weight permits. The department confirmed that the Bill does not change the Queensland Livestock Loading Scheme. DTMR advised:

Different states have different allowances within those schemes. The Queensland scheme is probably the most generous scheme and it is very well supported by the industry. We have recently been through minor reforms to that scheme where we have tightened a few conditions, particularly around vehicles such as B-triple combinations, but this bill will not impact on those schemes. They will continue to operate. If you are compliant with the scheme in your jurisdiction then there are no concerns with other jurisdictions.⁶⁹

The NVHR advised that whilst there are currently no plans to alter the volume-loading weight permit scheme, they are considering examining the differences between the volumetric schemes and the concessional schemes that are based around particular axle loadings.⁷⁰ The NHVR confirmed:

The Bill does not include any provision that varies the requirements of any mass or dimension exemption relating to livestock loading.

Since 2016, the NHVR has administered the National Harmonisation Program to improve heavy vehicle regulatory consistency. The key objectives of this program are the minimisation of the compliance burden on the heavy vehicle industry, and reducing duplication and inconsistencies across state and territory borders.

The next phase of this program of work will focus on the livestock supply chain. It will involve seeking to harmonise variations in mass limits across borders associated with the current livestock loading schemes and undertaking a supply chain review with a view to ensuring there is certainty around regulatory compliance obligations.

The program of work will include significant consultation with all stakeholders involved in the livestock supply chain.

It is anticipated that the work program will be completed in late 2019.⁷¹

⁶⁷ Public briefing transcript, Brisbane, 29 April 2019, p 2.

⁶⁸ Public briefing transcript, Brisbane, 29 April 2019, p 5.

⁶⁹ Public briefing transcript, Brisbane, 29 April 2019, p 3.

⁷⁰ Public briefing transcript, Brisbane, 29 April 2019, p 3.

⁷¹ National Heavy Vehicle Regulator, correspondence dated 7 May 2019, p 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) 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 has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

The committee identified that clauses 8, 12, 13, 19 and 34 raise issues of fundamental legislative principles.

The committee also noted, in relation to penalties, that clause 24 does not change the existing penalty in section 526 of the HVNL and clause 26 varies section 529 only by providing for a lower maximum penalty for a self-clearing defect notice.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Clause 8, 12 and 13

Section 4(3)(a) of LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 8 amends section 73(1)(b) by replacing the current requirement that the regulator provide a person with an information notice, containing a statement of reasons, for a decision to grant the person a vehicle standards permit with conditions or for a period less than that sought, with a requirement to provide the person with a notice setting out the person’s review and appeal rights.

Clause 12 makes the same amendment to section 127(1)(b), relating to a mass or dimension exemption permit.

Clause 13 makes the same amendment to section 148(1)(b), relating to a class 2 heavy vehicle authorisation permit.

Internal review is currently provided for under section 641. A dissatisfied person can seek internal review of a decision, within 28 days after the day they are notified of the decision or the day they are given any requested statement of reasons.

Clause 32(3) of the Bill complements the amendments effected by clauses 8, 12 and 13. It amends section 641(6) to provide that if a person is given a decision notice for a decision but not an information notice, the person has a right to request a statement of reasons for the decision within 28 days after being given the decision notice.

In summary, currently, the relevant provisions require the regulator to issue an applicant for a permit with an information notice, containing a statement of reasons for the relevant decision (where the decision is to grant a permit with conditions, or for a period less than that sought. This triggers a right to an internal review process.

The effect of the amendments is that, instead, the regulator must notify the applicant of their right to request a statement of reasons within 28 days. If such a request is made, the regulator must provide a statement of reasons within 28 days.

Note that the amendments do not apply where a permit application is completely refused. In such a case, an information notice containing a statement of reasons for the refusal decision will still be required to be given automatically (by virtue of sections 74, 128, and 149).

The explanatory notes set out the reasoning behind the amendments:

All vehicle standards (permits), mass or dimension exemption (permits) and class 2 heavy vehicle authorisation (permits) are issued with at least one condition, which means that an information notice for the decision is currently required for all these permits. This is a significant administrative burden for the Regulator and provides little benefit to operators as the reason for the imposition of the condition on the permit is generally apparent and easily understandable by the operator.⁷²

In relation to the amendment to section 641, the explanatory notes state:

There is currently no timeframe prescribed in the HVNL for a person to make a request for a statement of reasons. The introduction of a 28-day timeframe for a person to request a statement of reasons is considered reasonable. Where such a request is made, the Regulator must provide the statement of reasons to the person within 28 days of receiving the request and the person may apply for an internal review of the decision within 28 days after receiving the statement of reasons.

This Bill does not affect the Regulator's ability, under section 641(3), to extend the time for a person to make a review application in appropriate circumstances.⁷³

Committee comment

The question considered by the committee was: if these amendments become law, will the decisions be subject to appropriate review?

The committee considers that the right to seek internal review remains, with the amendments effecting a change to how the review process is triggered for decisions that do not amount to an outright refusal of an application. The changed process does not place any significant burden on, or reduce the substantive rights of, applicants.

Given this, the committee is satisfied that the effect of the amendments on review rights is relatively minor, and sufficiently warranted, such that any potential breach of fundamental legislative principle is justified.

3.1.2 Powers to enter premises

Section 4(3)(e) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals and depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

3.1.2.1 Clause 19

Section 4(3)(e) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

There are existing powers of entry in the HVNL for monitoring purposes and for investigation purposes. Clause 19 adds a power of entry for advice purposes.

⁷² Explanatory notes, p 5.

⁷³ Explanatory notes, p 5.

Clause 19 inserts new section 494B, which gives an authorised officer (not being a police officer) power to enter a place, for advice purposes, if:

- an occupier of the place consents to the entry under Division 4 and section 503 has been complied with for the occupier, or
- the place is not a residence and it is open for carrying on a business, is otherwise open for entry, or is required to be open for inspection under the HVNL.

Note that section 503 provides that, before seeking consent, an authorised officer must give an occupier a reasonable explanation about:

- the purpose of the entry
- that the occupier is not required to consent
- that any consent may be given subject to conditions and may be withdrawn at any time
- any other powers intended to be exercised to achieve the purpose of the entry.

The explanatory notes are silent on this issue of fundamental legislative principle.

It can be noted that the power is limited to either entry by consent (in which case, no substantial issue of fundamental legislative principle arises, particularly noting the protections in section 503 will apply) or, without consent, in the case of non-residential premises open for business, open as required under the HVNL, or otherwise open for entry.

It is noted that under section 500, there are numerous other powers which can be exercised if an authorised person exercises a power of entry under certain provisions of the HVNL. These include powers of inspection, search and seizure. However, the combined effect of the relevant provisions is that those additional powers will not be available in the case of entry for advice purposes under the new section 494B.

Committee comment

The committee is satisfied that the power of entry for ‘advice purposes’ is justified.

3.1.3 Immunity from proceedings

Section 4(3)(h) of the LSA requires that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.

3.1.3.1 Clause 34

Section 4(3)(h) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation does not confer immunity from proceeding or prosecution without adequate justification. The Office of the Parliamentary Counsel (OQPC) Notebook states:

The basis for this fundamental legislative principle is that persons who commit a wrong when acting without authority should not be granted immunity.

Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees.

*If protection is needed ... the preferred provision provides immunity for actions done honestly and without negligence. In this case, if liability is removed from a person it is usually ... shifted to the State.*⁷⁴

The explanatory notes refer to the primary duty obligations for parties in the chain of responsibility introduced in the HVNL in October 2018 (by the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*) and state:

*These new obligations create a reasonable expectation from industry that the Regulator and its officers will provide advice regarding those duties and will provide guidance on potential and practical measures that may be taken by duty holders to comply with those duties.*⁷⁵

It should be noted though that these functions on the part of the regulator are to be based on more than a 'reasonable expectation from industry'⁷⁶. The function of giving advice and education will be given statutory force by the Bill. Section 479 of the HVNL sets out functions of authorised officers. Clause 18 adds this:

*[An] authorised officer who is not a police officer has the function under this Law to provide advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations.*⁷⁷

Similarly, clause 33 adds to the list of functions of the regulator set out in section 659(2). The function is:

*...to provide advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations.*⁷⁸

The explanatory notes set out this justification for the grant of immunity:

Without some form of immunity from civil liability for the Regulator and its officers, there is likely to be a reluctance to offer that advice. The purpose of this amendment is to encourage, in the public interest, the provision of assistance to industry in the form of advice and guidance about the primary duties under the HVNL by providing the Regulator and its officers with protection from liability when providing advice in good faith.

*The Regulator is a single national entity which is potentially subject to a range of differing laws in each participating jurisdiction. As such, it is important that matters such as protection from liability for the Regulator and its officers is specifically provided for in the HVNL, rather than being left to the potential application of differing state and territory legislation. This provides greater certainty and consistency in each participating jurisdiction. A similar level of immunity is provided under the Petroleum (Submerged Lands) Act 1982 to provide for a nationally consistent approach.*⁷⁹

The protection applies only to acts (or omissions) done in good faith.

There is already an immunity provision in section 698 which protects 'protected persons' from immunity in certain circumstances, provided there is good faith. In those cases, any liability is shifted to the regulator (by virtue of section 698(2)).

⁷⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

⁷⁵ Explanatory notes, p 5.

⁷⁶ Explanatory notes, p 5.

⁷⁷ Heavy Vehicle National Law Amendment Bill 2019, clause 18.

⁷⁸ Heavy Vehicle National Law Amendment Bill 2019, clause 33.

⁷⁹ Explanatory notes, p 5.

It can be noted the new provision is different in two respects:

- It extends liability to both ‘protected persons’ and to the regulator.
- It does not provide for any liability to attach to another person or entity instead.

Committee comment

The questions considered by the committee were: are the changed scope of the immunity provisions appropriate and is the breach of the fundamental principle involved warranted?

The committee considers the legislation gives a statutory function to the regulator and authorised persons, yet proposes to completely remove (rather than shift) liability of authorised persons and of the regulator. It was not readily apparent why the provision differs from the current section 698.

The committee sought additional advice from the department on this issue. DTMR advised:

The proposed new section 698A was developed by the National Heavy Vehicle Regulator (the Regulator), in consultation with jurisdictions and industry, and was agreed by responsible ministers of participating jurisdictions on 9 November 2018.

To ensure the HVNL operates consistently across all participating jurisdictions, much of the legislation that usually applies in Queensland is excluded from the operation of the HVNL. This includes the Public Service Act 2008, which is excluded from applying to the HVNL in relation to the employment of officers of the Regulator.

The Regulator has advised that it is a national entity which operates in each of the six participating jurisdictions. The provision being inserted into the HVNL under section 698A is necessary to support the new function that allows for the Regulator to provide advice to industry about the ‘chain of responsibility’ duties. Non-compliance by the parties in the chain with these duties may give rise to criminal penalties and financial expenses. Actual or threatened litigation against the Regulator, or its authorised officers in particular, arising from advice that is provided in ‘good faith’ may adversely influence and deter the exercise of that function. The immunity in section 698A in the HVNL is appropriate to facilitate the discharge of this function and is necessary for consistency of operation across the participating jurisdictions. The immunity need not extend to anyone else other than the Regulator or its officers as no other entities are charged with performing the function.

TMR is of the view that the introduction of the proposed section 698A provides immunity for the Regulator and authorised officers, and will not give rise to any civil liability for an entity—other than the Regulator or a protected person—from the giving of advice in good faith, and as such no additional liability is assumed by the State.

The term ‘in good faith’ is commonly used in Queensland legislation and other policy documents in relation to requirements for the manner in which an act or omission is to be undertaken.⁸⁰

The committee remained concerned regarding the extension of the immunity protection to the regulator and sought additional explanations from the department on this issue. DTMR advised:

The Regulator advises that the commencement of the new, broad primary duty obligations under the Heavy Vehicle National Law (HVNL) in October 2018, has generated an increased expectation and demand on the Regulator to provide information and advice to duty holders about the nature of their duties and practical measures parties may take to comply with those obligations. While it is a reasonable expectation that the introduction of these changes will require some level of engagement with duty-holders as to compliance, a chief difficulty in carrying out this function is that a third party’s transport operations may be quite complex and involve interactions with other duty holders. The Regulator can provide expert guidance to duty holders about their

⁸⁰ Department of Transport and Main Roads, correspondence dated 7 May 2019, p 4.

responsibilities, but the Regulator will not necessarily know the full extent of those operations and any advice given by the Regulator will be largely dependent on the information provided to the Regulator by the duty holder/s.

The Regulator considers the proposed amendments under 689A(2) are necessary as there is considerable risk in the activities undertaken in the heavy vehicle industry. Further, the extent to which the Regulator would need to satisfy itself of the facts prior to providing advice to a particular duty holder is problematic if immunity from liability is not provided. The proposed provision is considered reasonable as the protection is similar to the protection under section 36 of the Civil Liability Act 2003, which provides immunity to public authorities and the State of Queensland, when carrying out their statutory functions in a reasonable way. Should the Regulator not have immunity in carrying out this function, achieving the objectives of the HVNL would be impaired and in essence shift responsibility for compliance from duty holders to the Regulator.⁸¹

The committee is satisfied with the reasons advised by the department for the removal of liability and the subsequent breach of fundamental legislative principle.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a generally sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

⁸¹ Department of Transport and Main Roads, correspondence dated 14 May 2019, p 1.

Appendix A – Submitters

Sub #	Submitter
001	Queensland Trucking Association Ltd

Appendix B – Officials at public departmental briefing

Department of Transport and Main Roads

- Mr Michael Stapleton, Deputy Director-General, Customer Service, Safety and Regulation
- Mr Andrew Mahon, General Manager (Land Transport Safety and Regulation), Customer Services, Safety and Regulation
- Mr Karl Frank, A/Executive Director (Heavy Vehicles and Prosecutions), Land Transport Safety and Regulation, Customer Services, Safety and Regulation

National Heavy Vehicle Regulator

- Mr Ray Hassall, Executive Director, Statutory Compliance
- Ms Katrina Hart, Principal Legal Officer