



# **Heavy Vehicle National Law and Other Legislation Amendment Bill 2018**

**Report No. 4, 56<sup>th</sup> Parliament**  
**Transport and Public Works**  
**Committee**  
**April 2018**

## **Transport and Public Works Committee**

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### **Acknowledgements**

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## Abbreviations

ATA	Australian Trucking Association
the Bill	Heavy Vehicle National Law and Other Legislation Amendment Bill 2018
COAG	Council of Australian Governments
the committee	Transport and Public Works Committee
CoR	chain of responsibility
the department	Department of Transport and Main Roads
FIRS	Federal Interstate Registration Scheme
GBH	grievous bodily harm
GVM	Gross Vehicle Mass
HVNL	Heavy Vehicle National Law
HVNL Act	<i>Heavy Vehicle National Law Act 2012</i>
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
the Minister	Minister for Transport and Main Roads
NatRoad	National Road Transport Association
NEVDIS	National Exchange of Vehicle and Driver Information System
NFF	National Farmers Federation
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
OPQC	Office of the Queensland Parliamentary Counsel
PCBU	person conducting a business or undertaking
PrepL	Learner licence online training and assessment program
QCCL	Queensland Council for Civil Liberties

QLS	Queensland Law Society
QTA	Queensland Trucking Association
RACQ	Royal Automobile Club of Queensland
THLGC	Former Transport, Housing and Local Government Committee (54 <sup>th</sup> Parliament)
TORUM	<i>Transport Operations (Road Use Management) Act 1995</i>
TPC Act	<i>Transport Planning and Coordination Act 1994</i>
WHS	Work Health and Safety model laws

## Chair's foreword

This report presents a summary of the Transport and Public Works Committee's examination of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018.

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.

The committee has made three recommendations, including that the Bill be passed. Stakeholders support a timely review of the Heavy Vehicle National Law. The committee recommended that this issue be considered further by the Minister in consultation with the Transport and Infrastructure Council.

The committee heard support from stakeholders for a mid-range offence between driving without due care and attention and dangerous driving. The committee has recommended that, while agreeing that the proposed amendments would achieve this outcome, the government consider including the term 'negligent' to better reflect the intention of tiered offence provisions to close the gap between these offences.

On behalf of the committee, I wish to acknowledge the contribution made by the families who provided submissions and appeared before the committee at its public hearing on the road safety aspects of the Bill. I also wish to thank individuals and organisations who made written submissions and appeared before the committee on the other aspects of the Bill.

I also thank our Parliamentary Service staff and the Department of Transport and Main Roads and the National Heavy Vehicle Regulator for their assistance.

I commend this report to the Parliament.



Shane King MP

Chair

## Recommendations

### **Recommendation 1**

**3**

The committee recommends the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 be passed.

### **Recommendation 2**

**12**

The committee recommends the Minister consider the issue of stakeholders' support for a timely review of the Heavy Vehicle National Law, in consultation with the Transport and Infrastructure Council.

### **Recommendation 3**

**22**

The committee recommends that the Government consider an amendment to include the term 'negligent' to better reflect the intention of tiered offence provisions to close the gap between the existing offence of dangerous driving and driving without due care and attention.



## 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* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

Section 93(1) of the *Parliament of Queensland Act 2001* provided 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 and Other Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 15 February 2018. The committee is to report to the Legislative Assembly by 20 April 2018.

### 1.2 Inquiry process

On 22 February 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. Fifteen submissions were received.

The committee received a public briefing about the Bill from the Department of Transport and Main Roads (the department) on 5 March 2018. A transcript is published on the committee's web page (see Appendix B for a list of officials).

The committee received written advice from the department in response to matters raised in submissions.

The committee also held a public hearing on 4 April 2018 (see Appendix C for a list of witnesses) and a further public briefing with the department (see Appendix D for a list of officials).

The submissions, correspondence from the department and transcripts of the briefings and hearing are available on the committee's webpage.

### 1.3 Policy objectives of the Bill

The Bill amends:

- the *Heavy Vehicle National Law Act 2012*
- the *Transport Operations (Road Use Management) Act 1995*
- the *Transport Planning and Coordination Act 1994*, and
- the *Queensland Duties Act 2001*.

The Bill also makes consequential amendments to a number of regulations, including:

- the *State Penalties Enforcement Regulation 2014*
- the *Transport Operations (Road Use Management – Road Rules) Regulation 2009*, and
- the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010*.

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

The Bill has the purpose of:

- creating a positive due diligence obligation on executive officers that will apply to safety related offences and to require the National Heavy Vehicle Regulator (NHVR) to maintain a database of heavy vehicles
- developing a national operator fleet data set 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
- minor/technical changes resulting from the maintenance process for the Heavy Vehicle National Law (HVNL) that remove unnecessary administrative or regulatory burdens, and
- amending the *Transport Operations (Road Use Management) Act 1995* (TORUM) 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
  - allowing a police officer who conducts a roadside test for drug driving to also conduct any subsequent saliva analysis
  - making amendments relating to the duties of drivers involved in crashes, and
  - improving customer identification processes for the learner licence online training and assessment program (PrepL).

The Minister for Transport and Main Roads (the Minister) advised the Parliament when introducing the Bill that:

*HVNL amendments are jointly developed by the National Transport Commission, the NTC, and the National Heavy Vehicle Regulator in consultation with state and territory transport authorities, enforcement agencies and heavy vehicle industry associations. While Western Australia and the Northern Territory are not participating jurisdictions at this time, they were consulted during development of the policy amendments. The HVNL changes proposed in this bill were supported by all jurisdictions at the May 2017 Transport and Infrastructure Council meeting.*

*As host jurisdiction for the HVNL, the Queensland parliament must first consider and pass amendments to the national law before it can be applied by participating jurisdictions. While recent amendments to the HVNL, including those within this bill, will lead to improvements in productivity and less conflicts in the regulatory environment across the country, there has also been a particular focus on improving safety. The amendments before the House today will contribute to improvements in safety outcomes in the heavy vehicle industry by aligning the responsibilities of executive officers in the HVNL more closely with national safety legislation, such as the Work Health and Safety Act 2011, and reduce the requirements and costs associated with enforcing and prosecuting breaches of the HVNL.<sup>2</sup>*

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<sup>2</sup> Queensland Parliament, Record of Proceedings, 15 February 2018, p 109.

## **1.4 Government consultation on the Bill**

### **1.4.1 Heavy vehicle matters**

The explanatory notes detail that the proposed amendments were developed by the National Transport Commission (NTC) in consultation with the NHVR and state and territory government transport and enforcement agencies. The explanatory notes state that consultation was also undertaken with peak transport industry organisations and other key stakeholder representatives, including the Local Government Association of Queensland (LGAQ), who all indicated support for the proposed amendments.<sup>3</sup>

### **1.4.2 Road safety and other matters**

The explanatory notes detail that consultation was undertaken with relevant non-government stakeholders including, the Royal Automobile Club of Queensland (RACQ), the Queensland Law Society (QLS), the Queensland Council for Civil Liberties (QCCL) and the Queensland Trucking Association (QTA). The stakeholders' responses are included in the applicable sections of this report.

## **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.

The committee agreed to recommend that the Bill be passed.

### **Recommendation 1**

The committee recommends the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 be passed.

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<sup>3</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 10.

## 2 Examination of the Bill

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

### 2.1 Heavy vehicle matters

The department advised the committee that the proposed amendments were endorsed by the Transport and Infrastructure Council<sup>4</sup> at its May meeting and includes changes to executive officer liability, heavy vehicle registration and minor maintenance amendments.<sup>5</sup>

#### 2.1.1 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).

In February 2010, Queensland was named as the host jurisdiction to lead implementation of the national law and the NHVR. The *Heavy Vehicle National Law Act 2012* (HVNL Act) was introduced into the Queensland Parliament in July 2012 and passed in July 2012. The HVNL Act established NHVR to administer the HVNL, which is contained as the Schedule of the Act.

The reform agenda is a multi-staged process with further amendments being made in February 2013, May 2013, September 2015 and November 2016. The NHVR and the majority of the HVNL Act provisions commenced in February 2014.

All Australian states and territories, except Western Australia and the Northern Territory, are participating jurisdictions and have applied the HVNL as law in their jurisdiction.

The 2016 amendments introduced 'chain of responsibility' (CoR) provisions which require parties to focus on overall safety outcomes, enable a more flexible approach to compliance, reduce the regulatory burden and more closely aligning the HVNL with other national safety laws.

The aim of CoR is to make sure everyone in the supply chain shares equal responsibility for ensuring breaches of the HVNL do not occur. The law recognises that multiple parties may be responsible for offences committed by drivers and operators of heavy vehicles. It also identifies that a person may be a party in the supply chain in more than one way and legal liability applies to all parties for their actions or inactions.<sup>6</sup>

#### 2.1.2 Executive officer liability

The Bill amends the HVNL to extend positive due diligence obligations on executive officers to apply to all safety related offences in respect to the operation of heavy vehicles. This is expected to encourage a more proactive approach to addressing heavy vehicle safety risks.

The department advised that the proposed executive officer liability amendments are:

*...the second phase of a three-phase approach to reform chain of responsibility in executive officer liability provisions within the HVNL approved by the Transport and Infrastructure Council in November 2015. All three phases are expected to commence late in 2018, subject to parliamentary processes.*

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<sup>4</sup> The Transport and Infrastructure Council brings together Commonwealth, State, Territory and New Zealand Ministers with responsibility for transport and infrastructure issues, as well as the Australian Local Government Association.

<sup>5</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>6</sup> National Heavy Vehicle Regulator, Chain of Responsibility, <https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/about-the-chain-of-responsibility> .

*Reforming executive officer liability to be more consistent with the new chain-of-responsibility provisions in the HVNL contained in the first phase of these reforms will reduce regulatory complexity. This will lower compliance costs for the industry that would have been associated with managing two different approaches to executive obligations for the Heavy Vehicle National Law safety related matters.<sup>7</sup>*

A positive reasonable diligence obligation on executive officers was imposed during the 2016 amendments to the Act (section 636). Under those provisions, an executive officer commits an offence if they did not exercise reasonable diligence to ensure the corporation did not engage in conduct constituting an offence.<sup>8</sup> These provisions (chapter 1A – Safety duties) have not yet been proclaimed into force with the automatic commencement deferred to 10 December 2018. Chapter 1A includes sections 26A to 26H.

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 explanatory notes state:

*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.<sup>9</sup>*

The explanatory notes identify that the extension of that liability to due diligence requirements is 'Phase 2' of those reforms.<sup>10</sup> The department advised that the third phase is likely to be introduced into the Queensland Parliament around May 2018.<sup>11</sup>

The National Road Transport Association (NatRoad) explained that the amendments continue the process to restructure the law to ensure it encourages a positive safety culture. They advised:

*Chain of responsibility provisions in transport law are designed to ensure that any party in a position to control and influence on-road behaviour, including our friends from the primary production sector, are held accountable. CoR provisions recognise that on-road behaviour and safety outcomes are often influenced by the actions of parties within the transport industry other than the driver. It spreads responsibility along the chain, quite simply.*

*With the changes in this bill and the prior changes made by the Heavy Vehicle National Law and Other Legislation Amendment Act which awaits proclamation there is a general shift away from the current prescriptive laws. That is so that the CoR focus is on managing risk exactly in the same way that work health and safety laws require a PCBU to manage risk. That means parties in the chain must actively identify hazards, assess and control the risks related to their transport activities. The bill continues the move from responsibility for breach of prescriptive requirements to the meeting of principles based duties.<sup>12</sup>*

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<sup>7</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>8</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, explanatory notes, p 24.

<sup>9</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 14.

<sup>10</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 7.

<sup>11</sup> Department of Transport and Main Roads, public hearing transcript, Brisbane, 4 April 2018, p 30.

<sup>12</sup> National Road Transport Association, public hearing transcript, Brisbane, 4 April 2018, p 19.

The QTA noted:

*...many people see CoR as an imposition by the law, but it is also a defence. The other part of that test is what might or ought reasonably to be known. In some ways, it can be your protection as much as it might be something that draws out something that you may or may not have taken on as a responsibility that you ought to have. There are two parts to that equation.*<sup>13</sup>

The Australian Trucking Association (ATA) advised that they and the Australian Logistics Council (ALC), with support from the Australian Government, the NHVR and extensive consultation with those involved in the supply chain, are developing a master registered industry code of practice, which is nearing completion, to help businesses comply with the law.<sup>14</sup>

Clause 16(3) also inserts a new subsection in section 26D allowing that the safety duty 'does not apply to an executive of the legal entity acting on a voluntary basis, whether or not the executive is reimbursed for the expenses incurred by the executive for carrying out activities for the legal entity.'<sup>15</sup>

#### 2.1.2.1 Stakeholder issues

Stakeholders largely supported the proposed provisions. However, AgForce Queensland and NatRoad raised issues in relation to the commencement date and clause 16(3) respectively.

AgForce Queensland advised:

*The agriculture sector, through AgForce and the National Farmers Federation (NFF), has raised concerns regarding the communication of these changes and the sector's ability to adequately prepare for them. Within the agricultural industry there are overwhelming misconceptions as to the impact these changes will have upon on-farm operations. For example, there is the belief among producers that they are required to monitor and evaluate if a driver and their vehicle is fit for purpose, entailing the need to check logbooks and maintenance logs. These misconceptions are widespread across the industry and without adequate time to address them, the effectiveness of these well intended changes will fall short.*<sup>16</sup>

AgForce Queensland advised the committee that:

*...primary producers have a role to play in improving safety outcomes and we must do our bit to ensure that everyone gets home safely at the end of the day, irrespective of whether you are a farmer, a transporter or a general road user.*<sup>17</sup>

AgForce Queensland is seeking to have the implementation date of the Bill be 1 December 2018 to allow industry bodies to assist the NHVR to work collaboratively to ensure primary producers are well prepared and aware of the changes.<sup>18</sup>

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<sup>13</sup> Queensland Trucking Association, public hearing transcript, Brisbane, 4 April 2018, p 22.

<sup>14</sup> Australian Trucking Association, submission 12, p 3.

<sup>15</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, Clause 16.

<sup>16</sup> AgForce Queensland, submission 14, p 1.

<sup>17</sup> AgForce Queensland, public hearing transcript, Brisbane, 4 April 2018, p 18.

<sup>18</sup> AgForce Queensland, public hearing transcript, Brisbane, 4 April 2018, p 18.

At the public hearing AgForce Queensland acknowledged that consultation on the CoR legislation has been ongoing and that AgForce Queensland representatives have been involved in that process. However, the committee was advised:

*Unfortunately, and as is often the way, some negative media started to talk about the idea of all responsibilities being pushed onto a farmer. A classic example is thinking if a farmer pays for a contractor to undertake a transport task and they are now responsible for ensuring the road worthiness of that vehicle is up to scratch, that the logbooks are in order and that the driver is not impaired by drugs, alcohol or fatigue. Naturally, producers were absolutely aghast at how that is legal or fair and reasonable.*

...

*I assume everybody in this room understands that that was not the intent and is simply not true. To the NHVR's credit, they have produced some primary producer specific information that starts to distil the difference between how a primary producer is expected to behave when they contract a transport service versus how they are expected to behave when their staff and their vehicles are being used to undertake a transport task on the road network. That is an education journey.<sup>19</sup>*

However, other stakeholders sought to have the amendments take effect as early as practicable.<sup>20</sup>

In its response to this issue, the department advised:

*The commencement date for all three phases is to yet to be confirmed but is expected to commence later in 2018 following the passage of a further HVNL amendment bill in the second half of 2018, subject to parliamentary processes.*

*The NHVR continues to work with industry and participating jurisdictions to ensure a smooth transition to the new approach to Chain of Responsibility in the lead up to a commencement date being announced.<sup>21</sup>*

With regard to the application of the proposed amendments to volunteers, NatRoad advised:

*This proposed subsection would have the effect of excluding the duties applying to executive officers acting on a voluntary basis. No mention of this is made in the Explanatory Notes and was not presaged by any other document that we are aware of. This provision is inconsistent with the model Work Health and Safety laws. Under the WHS laws, volunteer officers have a duty to exercise due diligence under the WHS Act. A volunteer officer is expected to comply with that duty. A volunteer officer cannot however, be prosecuted for failing to comply with that duty (see section 34(1) WHS Act). This immunity from prosecution is designed to ensure voluntary participation at an officer level is not discouraged. We would suggest that the proposed change in Subclause 16(3) of the Bill not proceed and its terms be better aligned with the work health and safety laws.<sup>22</sup>*

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<sup>19</sup> AgForce Queensland, public hearing transcript, Brisbane, 4 April 2018, p 20.

<sup>20</sup> National Road Transport Association; Queensland Trucking Association; public hearing transcript, Brisbane, 4 April 2018, p 20.

<sup>21</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 19.

<sup>22</sup> National Road Transport Association, submission 5, p 2.

At the public hearing NatRoad explained that what is being sought is that the treatment of voluntary directors should be the same as in the Work Health and Safety model laws (WHS) which is that they have the duty imposed on them but they are not prosecuted for it.<sup>23</sup> They seek to emulate section 34(1) of the *Work Health and Safety Act 2001*, which imposed a duty on volunteers but then alleviates them from prosecution.<sup>24</sup>

In its response to this issue, the department advised:

*The amendments contained in clause 16(3) have been drafted to preserve the existing approach to voluntary executive service contained under HVNL section 636(7).*<sup>25</sup>

The department acknowledged that the approach differs from the approach taken under the WHS but noted that the outcome achieved by both approaches is identical.<sup>26</sup>

The department proposes that the provisions of clause 16(3) remain as drafted.<sup>27</sup>

#### 2.1.2.2 Committee comment

With regard to the issue of the timing of the commencement of the proposed amendments, the committee is satisfied that sufficient effort is being expended by the NHVR and other industry bodies to ensure that affected stakeholders will be aware of their obligations prior to commencement.

With regard to the issue of voluntary directors' responsibilities, the committee is satisfied that the proposed amendment is consistent with other provisions within the Act. The committee also considers that existing provisions the WHS legislation and the proposed provisions in the HVNL result in the same outcomes for voluntary directors. However, the committee considers that this issue should be the subject of discussion in any future review of the Act.

#### **2.1.3 Registration of heavy vehicles**

Chapter 2 of the HVNL Act has the main purpose of establishing a scheme for the national registration of heavy vehicles. It was included in the 2012 Act, however, the provisions also have not yet been proclaimed into force. Clause 17 omits chapter 2.

The explanatory notes identify that, in conjunction with the proposed amendments to the HVNL registration, the Federal Interstate Registration Scheme (FIRS) will be closed and all registration functions will be maintained and administered directly by each state and territory, based on a vehicles garage address. The explanatory notes also identify that legislation to repeal FIRS is expected to be passed by the Australian Parliament before 1 July 2018. The closure of FIRS will require all heavy vehicles registered under FIRS to transition to state/territory based registration systems during a transition period from 1 July 2018 to 30 June 2019.<sup>28</sup>

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<sup>23</sup> National Road Transport Association, public hearing transcript, Brisbane, 4 April 2018, p 20.

<sup>24</sup> National Road Transport Association, public hearing transcript, Brisbane, 4 April 2018, p 25.

<sup>25</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 4.

<sup>26</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 5.

<sup>27</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 4.

<sup>28</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes pp 5-6.

The department advised:

*In November 2016 the Transport and Infrastructure Council agreed that responsibility for registering heavy vehicles would remain with jurisdictions and that the NHVL would have access to a national registration dataset. The amendments in this bill give effect to this decision by removing the registration provisions in chapter 2 of the HVNL, establishing the national dataset and providing for a one-off duty exemption for vehicles transitioning from a federal interstate registration scheme—known as FIRS—to the Queensland registration system.<sup>29</sup>*

The Bill also amends the *Duties Act 2011* to give effect to a one-off exemption from vehicle registration for heavy vehicles transitioning from FIRS to the Queensland registration scheme.<sup>30</sup>

#### 2.1.3.1 Stakeholder issues

A number of stakeholders expressed concerns about the proposed amendment requiring multi-jurisdictional heavy vehicle registration.

NatRoad advised:

*...we express concerns about the direction of the reforms related to registration that are in the bill. The bill takes away from the National Heavy Vehicle Regulator control of a proposed national registration scheme. That is replaced with the maintenance of a national database.*

*There is currently a bill before the federal parliament that would see the end of the current interstate national registration scheme, known as FIRS, and we sit on all fours with my colleague about that being a bad move. In this bill there is a one-off stamp duty levy exemption, but transferring our members out of FIRS into state-based systems means that there would be ongoing costs, including stamp duty. We want a national registration system. We do not like stamp duty. We agree entirely with recommendation 51 of the Henry tax review, which says there would be no role for any stamp duties in a modern Australian tax system. In that regard, that is retrograde. In the absence of a detailed plan to move to a fair and cost-effective registration system, NatRoad provides this position to the committee in its consideration of the bill.<sup>31</sup>*

In the response to submissions, the department recommended the registration-related provisions of the Bill remain as drafted and advised:

*Following extensive consideration of the costs and benefits of developing a single national registration system for heavy vehicles, Ministers agreed to the approach being implemented by the amendments contained in this Bill to harmonise national registration requirements and establish a national heavy vehicle dataset.<sup>32</sup>*

The QTA advised the committee that it and other industry associations opposed the Federal Government's decision to 'increase the stamp duty burden on operators by closing the Federal Interstate Registration Scheme.' QTA also advised that the one off stamp duty exemption for existing FIRS vehicles, 'will not address the ongoing annual costs for operators who would normally register new vehicles in FIRS'.<sup>33</sup>

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<sup>29</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>30</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 6.

<sup>31</sup> National Road Transport Association, public hearing transcript, Brisbane, 4 April 2018, p 19.

<sup>32</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 5.

<sup>33</sup> Queensland Trucking Association, submission 3, p 3.

With regard to registration costs across jurisdictions, the department advised that there is a single national charging regime and all states level their charges based on that regime. They confirmed that there will be no change to what is currently happening in that regard.<sup>34</sup>

The committee sought additional information from the department regarding the advantages and disadvantages of the registration being state and territory based, with only the database maintained by the NHVR. The department noted that this was a decision made by the Transport and Infrastructure Council in reviewing the legislation and policies, and advised

*The advantages of course are simplicity around providing the information quickly and being able to provide it to the National Heavy Vehicle Regulator simply out of a central repository. There is already a central repository that exists for all vehicles, which is NEVDIS run by Austroads, and they are effectively pulling the information out of that system so that the National Heavy Vehicle Regulator can manage the heavy vehicle fleet. The difficulty of course with full transition to the National Heavy Vehicle Regulator would be customers being able to pay for their registration, go to customer service centres et cetera. They can still do that with the state based systems. Obviously this is a point in time. These things may be reviewed in the future.*<sup>35</sup>

#### **2.1.3.2 Committee comment**

The committee notes that the decision to close FIRS is within the Australian Government's jurisdiction. The committee also notes that the proposed amendments provide registration relief for those heavy vehicles transitioning to the Queensland registration system from FIRS.

#### **2.1.4 Database of heavy vehicles**

Existing section 48 of the HVNL Act, which is included in Chapter 2 and therefore has not commenced, requires the regulator to keep a register of heavy vehicles that enables the identification of a heavy vehicle used on a road and of the person who is responsible for it. As noted above, clause 17 omits Chapter 2.

Clause 13 amends section 4 to include the keeping of a database of heavy vehicles by the NHVR as an object of the HVNL Act. This is a consequential amendment resulting from the omission of Chapter 2. Clause 39 inserts new sections requiring the NHVR to maintain a database of heavy vehicles. This amendment is intended to enable the identification of a heavy vehicle registered under a law of a participating jurisdiction and to allow greater information sharing of registered owners of heavy vehicles.

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.<sup>36</sup>

The NHVR advised the committee that while Western Australia and the Northern Territory are not subject to the HVNL, 'as they have not formally signed up', the regulator works closely with those states 'on initiatives on the ground' and work very collaboratively and share information.<sup>37</sup> The NHVR also advised that these states also provide information voluntarily and have agreed to share information for the initiatives proposed in the Bill. The NHVR advised that this will be the first national dataset in Australia.<sup>38</sup>

Stakeholders support the proposed database.

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<sup>34</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 5.

<sup>35</sup> Department of Transport and Main Roads, public hearing transcript, Brisbane, 4 April 2018, p 29.

<sup>36</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 5.

<sup>37</sup> National Heavy Vehicle Regulator, public briefing transcript, Brisbane, 5 March 2018, p 6.

<sup>38</sup> National Heavy Vehicle Regulator, public briefing transcript, Brisbane, 5 March 2018, p 7.

### 2.1.5 Other amendments

The Bill also proposes a number of minor and consequential amendments in respect to the HVNL. In particular, the consequential amendments relate to the omission of chapter 2. Amendments include updating the definitions contained in section 5 of the Act.

### 2.1.6 Other issues raised

At the committee's public hearing a number of witnesses and the representatives from the NHVR raised the issue of a review of the HVNL.

The QTA advised:

*We need a comprehensive and fundamental review of the HVNL so that its administrators can be agile and responsive in the national interest to productivity, safety and efficiency. In this way we can ensure we have a comparative advantage in this country in a sector that contributes 8.6 per cent to GDP. That is a fair chunk of change in anyone's language. We are a highly decentralised country with a relatively small population. We are an industry, along with the general business sector, all levels of government and academia, that ought be charged with the broadest terms of reference in a review to challenge this orthodoxy and bring forward to our lawmakers new thinking, lateral thinking, for efficient regulatory industry oversight. We commend and ask this committee to consider giving priority to recommending a review of that order.<sup>39</sup>*

NatRoads advised:

*...we understand there is a review of the HVNL planned in 2019. We would like to see the review date brought forward. We would commend the committee recommending that that review date be brought forward. That should be a root-and-branch policy review of the law, because this legislation has passed its use-by date, despite the good reforms coming through this bill. This bill should be passed, but then we submit that each and every provision of the HVNL should be scrutinised.<sup>40</sup>*

AgForce Queensland also supported a review advising:

*AgForce would also fully support a root and branch policy review of the HVNL to enable it to be as effective as it possibly can be and help drive those productivity savings and outcomes that industry collectively want to see.<sup>41</sup>*

The NHVR advised the committee that:

*You would have heard industry say that the NHVR is hamstrung by the way that the law was written when we were established. There are simple small changes that can be made as bandaid solutions to the problems that arise in areas like government decision-making, but the law needs to be reviewed in its entirety and reviewed now. It is more than five years since the law came into effect, and it is time that it was assessed for its effectiveness in delivering safety and productivity through harmonisation.*

*What we are calling for at the NHVR is a root-and-branch policy based review of the legislation that draws on the views of the industry, the business community, all levels of government—state, local and federal—and all road users. Industry will not see the benefits they want to see from the NHVR—the very reason why we were set up—in productivity and safety until the regulator is given the proper level of legislative authority to act for the benefit of the national interest and for industry.*

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<sup>39</sup> Queensland Trucking Association, public hearing transcript, Brisbane, 4 April 2018, p 20.

<sup>40</sup> National Road Transport Association, public hearing transcript, Brisbane, 4 April 2018, p 20.

<sup>41</sup> AgForce Queensland, public hearing transcript, Brisbane, 4 April 2018, p 25.

*We strongly urge that the review of the HVNL be given critical priority in the committee's report as the legislation is currently not fit for purpose and is not allowing the NHVR to deliver the real reforms we were set up to do. We strongly urge the committee to consider recommending a review of the law with broad terms of reference to commence in 2018. The ministerial council will face a decision in May about this, and what we want to do is ensure that the decision they make meets the need of industry and community in its comprehensiveness.*

#### 2.1.6.1 Committee comment

The committee notes that a comprehensive review of the HVNL was supported by stakeholders and the HVNR. The committee also notes that any review of the national legislation would need to be considered and agreed to by the Transport and Infrastructure Council.

While the committee notes that this is a matter for the Minister, it considers that it would be prudent that the Minister consult with his interstate colleagues on whether there is a need for a comprehensive review of the HVNL as suggested by stakeholders.

#### **Recommendation 2**

The committee recommends the Minister consider the issue of stakeholders' support for a timely review of the Heavy Vehicle National Law, in consultation with the Transport and Infrastructure Council.

## **2.2 Road safety matters**

The explanatory notes state that 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
- 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 the management of drug driving offenders.<sup>42</sup>

The Bill also makes amendments to clarify the duties of drivers involved in crashes.<sup>43</sup>

### **2.2.1 Increase in penalties for careless or dangerous driving**

The Bill intends to allow the courts more scope to apply penalties appropriate to the circumstances of certain serious driving offences by amending section 83 of the TORUM.

Existing section 83 is as follows:

#### **83 Careless driving of motor vehicles**

Any person who drives a motor vehicle on a road or elsewhere without due care and attention or without reasonable consideration for other persons using the road or place is guilty of an offence.

Maximum penalty—40 penalty units or 6 months imprisonment.

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<sup>42</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 6.

<sup>43</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 6.

The explanatory notes identify that clause 49 replaces the existing penalty provisions for careless driving of a motor vehicle. Increased penalties will apply where careless driving results in death or grievous bodily harm. The previous penalties will apply to other instances of careless driving. Increases include:

- 160 penalty units or 2 years imprisonment if the person causes the death of or grievous bodily harm to another person and was an unlicensed driver
- 80 penalty units or 1 year imprisonment if the person causes the death of or grievous bodily harm to another person.

The department advised the committee:

*The bill proposes significant increases to the maximum penalty for careless driving offences that result in death or grievous bodily harm from \$5,046 or six months imprisonment to \$10,092 or one year imprisonment. Those changes reflect the potential serious consequence of careless driving by providing the courts with increased discretion to apply higher penalties when sentencing offenders. However, the approach in this bill also recognises that such incidents can result from a range of circumstances and that the courts are best placed to balance those circumstances before them to determine the appropriate penalty.<sup>44</sup>*

The department also advised:

*The changes will not make up for the tragic loss of life or serious injuries that result from these crashes; however, they will ensure that the courts have penalties available to adequately deal with offenders, having regard to the circumstances of the offence.<sup>45</sup>*

The explanatory notes provide a summary of the stakeholder responses received during the consultation process on this issue as follows:

- RACQ – supports proposed amendments. Explanatory notes state:

*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.<sup>46</sup>*

- QLS – questioned the necessity of the proposed amendments to increase the penalties for careless driving offences involving death or grievous bodily harm and expressed concern that the proposed amendments allowing notification of a registered operator of traffic offences in their vehicle is an ‘unwarranted intrusion into the individual privacy of a person’.

The QLS believes that:

*...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.<sup>47</sup>*

- QCCL – while recognising the community disquiet about offences involving death or grievous bodily harm noted that the ‘vast majority of careless driving offences involve momentary inattention, and not intent, where deterrence and rehabilitation are not factors’.

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<sup>44</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>45</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>46</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 10.

<sup>47</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 10.

### 2.2.1.1 *Background*

The explanatory notes detail that the former Transport, Housing and Local Government Committee (THLGC) recommended that the department ‘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.’<sup>48</sup>

The explanatory notes state that subsequent to the THLGC report, an interdepartmental committee was established which made recommendations that 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.<sup>49</sup>

In March 2015, the Central Queensland Coroner delivered his findings of inquest into the death of Audrey Anne Dow. The Coroner’s view was that a legislative gap exists between the Queensland Criminal Code offence of ‘Dangerous operation of a vehicle causing death’ and the TORUM charge of ‘Careless driving’ and that Queensland has no charge of negligent driving causing death. The Coroner made the following recommendation<sup>50</sup>:

#### **Recommendation 1**

The issue of a new mid-range driving offence be referred to the Attorney General to consider changing the law to introduce a new mid-range driving offence between the existing Criminal Code s.328A Dangerous Driving offence, and the Transport Operations (Road Use Management) Act (TORUM) s.83 driving without due care and attention offence, and in that review to consider whether it is appropriate:

1. to include a circumstance of aggravation for offending drivers:
  - a. who cause death or grievous bodily harm in the commission of the offence under s.83 TORUM, and
  - b. where they were driving whilst unlicensed or their license was suspended, or
  - c. where they were driving whilst their license was disqualified.
2. Whether any recommended new mid-range offence, if any, should be legislated in the Criminal Code or the TORUM legislation.

The Queensland Government response to the Coroner’s report noted:

*Criminal negligence when driving, where death results, is already covered by the current criminal law. The crime of manslaughter carries life imprisonment. Criminal responsibility for manslaughter in cases of dangerous driving is under section 289 of the Criminal Code which imposes a duty of care on persons in charge of dangerous things.*

*Section 328A (Dangerous operation of a vehicle) of the Criminal Code carries a maximum penalty of three years imprisonment and applies to a person who operates a vehicle dangerously in any place. The offence carries a number of circumstances of aggravation attracting higher maximum penalties. Dangerous operation of a vehicle causing death or grievous bodily harm carries 10 years imprisonment, increasing to 14 years if the offender was intoxicated or excessively speeding.*

*Section 328A provides that a person operates a vehicle dangerously if they operate the vehicle at a speed or in a way that is dangerous to the public, having regard to all of the circumstances. The test to apply is an objective test and does not require proof of criminal negligence. Therefore, it is an easier offence to successfully prosecute than vehicular manslaughter.*

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<sup>48</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 3.

<sup>49</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 3.

<sup>50</sup> Queensland Courts, Findings – Coroners Court, Government response to findings in case of Audrey Anne Dow, <http://www.courts.qld.gov.au/courts/coroners-court/findings>

*If a driver adopts a manner of driving which is dangerous to other road users having regard to all the circumstances, it does not matter whether they are deliberately reckless, careless, momentarily inattentive or even doing their incompetent best; they will fall within the ambit of section 328A. However, under section 328A for the driving to be dangerous, there must be some feature which is identified not as a mere want of care, but which subjects the public to some risk over and above that ordinarily associated with the driving of a motor vehicle, including driving by a person who may, on occasions, drive with less than due care and attention.*

*The TORUM offence in section 83 of Careless driving of motor vehicles, is less serious than the offence under section 328A of the Criminal Code. In order to make out the offence, the prosecution must prove that a person drove without due care and attention or without reasonable consideration for other road users.*

*The government notes that effect could be given to the coroner's recommendation by amending section 83 of the TORUM to create a circumstance of aggravation (punishable by a higher maximum penalty) that the careless driving caused the death of or the grievous bodily harm to another person.*

*A further aggravated penalty could apply where the driving caused the death of or the grievous bodily harm to another person and at the time of the driving, the offender had been disqualified from driving or was unlicensed to hold a driver license.<sup>51</sup>*

The response also noted that in May 2017 the government proposed changes to:

*...include an amendment to section 83 of TORUM to apply an aggravated penalty where the driver causes death or grievous bodily harm to another person. It is also intended to apply a further aggravated penalty if the person was unlicensed at the time of committing the offence.*

*The proposed changes to TORUM, as outlined above, alleviate the need to introduce a new midrange offence.<sup>52</sup>*

#### 2.2.1.2 Stakeholder issues

The committee received six submissions from the families of people who were involved in fatal accidents with the drivers responsible were charged under section 83 of the TORUM. These families, in the main, were seeking to have an additional offence as recommended by the Coroner as noted above.

The McCrossin Family advised the committee that due to a family member's death in a fatal traffic accident, as a pedestrian, they became aware that:

*Queensland law has a large gap between the TORUM offence of Careless Driving and the more serious criminal charge of Dangerous Driving.*

...

*Because there were not specific findings of alcohol, drugs or speeding, the driver (despite killing someone who was correctly crossing on a green pedestrian signal) could only be charged with the relatively minor charge of Careless Driving.*

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<sup>51</sup> Queensland Courts, Findings – Coroners Court, Government response to findings in case of Audrey Anne Dow, <http://www.courts.qld.gov.au/courts/coroners-court/findings>

<sup>52</sup> Queensland Courts, Findings – Coroners Court, Government response to findings in case of Audrey Anne Dow, <http://www.courts.qld.gov.au/courts/coroners-court/findings>

*Under current legislation, the fact that a death had resulted from the incident could not be taken into account in sentencing. In other words, the penalty imposed on the driver by the court would be no different to a case where no death or injury had resulted.*

*Under current legislation, the driver's previous record could not be taken into account in charging and sentencing.<sup>53</sup>*

They consider that magistrates are limited under the current legislation in what sentence they can impose.<sup>54</sup>

Kate Hardwick advised the committee:

*Whether we agree or not, the magistrate was right. Unlike other parts of Australia there is a 'gap' in Queensland legislation where negligent driving laws do not differentiate between outcomes including grievous bodily harm or death. The maximum penalty under the TORUM S.83 driving without due care and attention offence is 40 penalty units or 6 months imprisonment. There is no mandatory licence disqualification in relation to this sentence. The Criminal Code S.328a sets out maximum penalties from 200 penalty units or 3 years imprisonment, up to 10 years imprisonment, depending on individual circumstances. To say this gaping hole compounds our loss and grief, is a gross understatement.*

...

*I feel that I am too close [to] the situation, to suggest what the 'increased penalties' could be for negligent driving offences, but I know that circumstances of aggravation are required. There is a vast difference between outcomes involving property damage and those of serious injury or death. The community places a higher value on a human life and our legislation should do the same.<sup>55</sup>*

Audrey Dow's family submitted:

*We strongly plead that legislation in Queensland is changed to close the gap that exists between the existing offences of Dangerous Driving under S.328A of the Criminal Code Act 1899 and Driving Without Due Care under S.83 of the Transport Operations (Road Use Management) Act 1999; to align with existing legislation in other states around Australia.*

*We seek the introduction of a third charge of 'Reckless Driving' as recommended in a number of findings by Central Queensland Coroner, Mr David O'Connell.*

*Driving whilst disqualified is not currently an 'aggravation' attached to the higher charge of Dangerous Driving. The 'Reckless Driving' charge would come between Dangerous Driving and Driving Without Due Care<sup>56</sup>*

The Dow family also advised:

*Since our Mothers accident we have become acutely aware of the gaps in legislation in Queensland with a number of other families who have also had family members killed or injured in similar in road accidents involving suspended and/or reckless drivers. These families no doubt felt similar sickening anguish when realising that the person responsible would simply receive a nominal fine rather than a custodial sentence.*

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<sup>53</sup> Noela, Neil, and Ian McCrossin, submission 1, p 1.

<sup>54</sup> Noela, Neil, and Ian McCrossin, submission 1, p 1.

<sup>55</sup> Kate Hardwick, submission 4, p 2.

<sup>56</sup> Angela Meiklejohn, Tony Dow and Jacquie Garnett, submission 8, p 1.

*We think there should also be an avenue to expand the options available to the Courts to include imposing suspended mandatory sentences on disqualified drivers so that if they are subsequently caught driving while suspended they go to jail.<sup>57</sup>*

Noela McCrossin advised the committee:

*When you lose one of your children, no matter what their age, the grief is overwhelming, ongoing and never ending. While Queensland laws stay the same they place little value on the victim's life and there is no justice in Queensland.<sup>58</sup>*

Some submitters considered that the proposed amendments do not go far enough and sought additional penalties. Glynn Harnell advised the committee that the

*...I wish to submit that the new law of Negligent Driving Causing Injury or Death be introduced as soon as possible with penalties in line with community expectations, such as:*

*Gaal sentences of up to 10 years depending on the circumstances but with a minimum of 2 years without parole.*

*A monetary penalty of up to \$10,000 with a minimum fine of \$3,000*

*A loss of driving licence for a period of up to 10 years with a minimum of 2 years if someone is injured, and 5 years if someone is killed.<sup>59</sup>*

Mr Harnell advised the committee:

*The spread of penalties stated in my submission may seem harsh, but they are no match for the harshness of losing a loving, vibrant daughter of 27 years of age. There are many people here today and others whom I have met in the last year who have lost beloved family members in similar circumstances and with similar penalties for the killers. Harsh penalties are, in my opinion, needed to send a message that it is not okay to kill people on our roads with malice or without.<sup>60</sup>*

Trisha Mabley advised:

*I wish to submit that the new law of Negligent Driving Causing Injury or Death be introduced as soon as possible with penalties in line with community expectations, such as:*

*-Jail sentences of up to 10 years depending on the circumstances but with a minimum of 2 years without parole.*

*-A monetary penalty of up to \$10,000 with a minimum fine of \$3,000*

*-A loss of driving license for a period of up to 5 years with a minimum of 2 years.*

*There are many expenses involved when someone dies, so maybe a portion of the monetary penalty could be diverted to cover part of the funeral expenses. A compassionate government would legislate for this.*

*Besides jail, the license disqualification should be of a sufficient length to punish, as well as keep other citizens safe for the period of disqualification.*

*If Jail is not applicable to their sentencing, I submit these punishments to have immediate effect once granted their license again:*

*-They go back on learners for 2 years not 1*

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<sup>57</sup> Angela Meiklejohn, Tony Dow and Jacquie Garnett, submission 8, p 2.

<sup>58</sup> Noela McCrossin, public hearing transcript, Brisbane, 4 April 2018, p 2.

<sup>59</sup> Glynn Harnell, submission 7, p 2.

<sup>60</sup> Glynn Harnell, public hearing transcript, Brisbane, 4 April 2018, p 2.

- Accumulate 200 hours of driving experience instead of 100
- Defensive driving course.
- Restrict their driving times between 6am and 11pm (just like anyone undergoing license suspension).
- Have a blood alcohol level of zero for as long as they are behind the wheel.

While supporting the aims of the Bill, Bicycle Queensland also proposed increased penalties and 'tougher mandatory minimum licence disqualifications and stronger action to ensure careless and dangerous drivers are not relicensed without appropriate written and practical testing.'<sup>61</sup>

Bicycle Queensland advised:

*In the 12 months to 28 February this year there were 242 deaths on Queensland roads. The next death could be any one of us or someone we love. The number injured and seriously hurt is equally unacceptable. For every single fatality over 24 people are hospitalised because of road crashes. According to the Department of Transport and Main Roads, each person taken to hospital as a result of a road crash is estimated to cost Queenslanders about half a million dollars, each serious brain injury is estimated to cost the community up to \$4.8 million and each serious spinal injury costs about \$9.5 million.*<sup>62</sup>

The QLS advised that they do not support the introduction of a tiered sentencing regime for careless driving with circumstances of aggravation. The QLS considers that the current provisions which make a distinction between 'careless' and 'dangerous' driving properly reflects degrees of culpability that happen in real life. The QLS also noted that there are appropriate appeal mechanisms where inadequate sentences are perceived.<sup>63</sup>

The QLS advised the committee that their fundamental concern is that:

*...the rationale behind the proposed changes is reactionary to a couple of particular cases, which are very sad on their own facts. However, it is clear that there was not thought to be criminal code criminality of the defendant in some of these cases. As such, the Society is concerned that the proposed legislative reforms will not be successful in achieving the objective of reducing the numbers of death and injuries sustained by Queensland road accidents.*<sup>64</sup>

The QLS explained:

*If I go through a red light on the way to parliament because I am slightly late and the camera goes off and flashes, I get a red light ticket. If I speed—if I go past one of those yellow trailers on the M1—I get a speeding ticket. If I did exactly the same thing—the same quality of driving—and hit somebody, what seems to happen is the penalties reflect the result. Therefore, we are not dealing in penalties, or the quality of the driving necessarily, but the quality of the result, that is, the incipient harm to society.*<sup>65</sup>

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<sup>61</sup> Bicycle Queensland, submission 9, p 2.

<sup>62</sup> Bicycle Queensland, public hearing transcript, Brisbane 4 April 2018, p 8.

<sup>63</sup> Queensland Law Society, submission 13, p 5.

<sup>64</sup> Queensland Law Society, submission 13, p 3.

<sup>65</sup> Queensland Law Society, public hearing transcript, Brisbane, 4 April 2018, p 14.

The QLS advised, in their experience, the courts already take these circumstances into account and stated<sup>66</sup>:

*Subsection 9(3) of the Penalties and Sentences Act sets out in legislative form all of those matters which the courts must take into account, including the state of the victim and all of the circumstances relating to the matter. These are matters where we are trying to legislate at the intersection of grief and of common sense, and quite often they do not meet.*<sup>67</sup>

The QCCL noted that the explanatory notes reported that the QCCL has no objection to the proposed increased penalties for driving offences resulting in death or grievous bodily harm. QCCL advised the committee that this is true, except in the case of the mandatory licence cancellation measures. The QCCL also noted that providing no objection does not mean that the provisions are endorsed. The QCCL advised:

*As we understand it the vast majority of offences discussed here are ones of momentary inattention and the like. But in any event these are offences of negligence and not intent. The first category of offences of course, involve a low level of culpability. Even those cases of negligence involving something more than inattention involve a lower level of culpability than offences involving deliberate decisions. Under our law and as a matter of morality the focus of punishment should be on moral culpability. In the circumstances, increasing the level of penalty would seem unjustified. Furthermore, in cases involving momentary inattention deterrence is hardly a factor. Nor in these cases, is there usually any question of the need for rehabilitation. As a consequence, it must be the position that harsher penalties are unlikely to have an impact on the road toll. Having said that, we recognise the community disquiet about these types of offences and are not opposing these increases.*<sup>68</sup>

With regard to the other submitters' suggestions that a new offence of negligent driving causing injury or death, the QLS advised:

*In essence, the law that is proposed in the bill before us is, in fact, adding circumstances of aggravation, that is, it includes circumstances where someone is either unlicensed at the time—a disqualified driver, presumably—or is causing death or grievous bodily harm.*<sup>69</sup>

Neil McCrossin advised the committee:

*We note that the Law Society and the Queensland Council for Civil Liberties have expressed opposition to the proposed changes. However, we would note that other parties within the legal community have strongly endorsed the changes, in particular other states with similar legislation to what is proposed as well as the Coroner in Queensland. The Coroner in the Audrey Dow case actually wanted to go further with the creation of a new mid-range driving offence and also stated, 'This case clearly highlights to any reasonably minded individual the deficiency in this law as it presently stands.'*

*We have also been told informally by senior police officers that police have been frustrated for years by the gap in the Queensland law. The RACQ has also expressed support for the proposed changes.*<sup>70</sup>

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<sup>66</sup> Queensland Law Society, public hearing transcript, Brisbane, 4 April 2018, p 14.

<sup>67</sup> Queensland Law Society, public hearing transcript, Brisbane, 4 April 2018, p 13.

<sup>68</sup> Queensland Council for Civil Liberties, submission 15, p 2.

<sup>69</sup> Queensland Law Society, public hearing transcript, Brisbane, 4 April 2018, p 14.

<sup>70</sup> Neil McCrossin, public hearing transcript, Brisbane, 4 April 2018, p 2.

In the response to submissions, the department confirmed:

*While the proposed changes will not create a separate additional mid-range offence, they will achieve the aim of providing higher penalties for careless driving offences that result in death or grievous bodily harm, with higher penalties again where an offender was also unlicensed at the time of the offence. That is, higher penalties will apply in circumstances of aggravation.<sup>71</sup>*

The department advised:

*Careless and dangerous driving rules, as well as negligent driving rules in different jurisdictions, are applied differently in every state. There is no absolute consistency between every jurisdiction. The best example we can provide is New South Wales. New South Wales has dangerous driving in their Criminal Code, similar to Queensland, which of course requires a dangerous driving offence, whether that is excessive speed or other contributing factors to the incident. It also has elements in relation to causing death or grievous bodily harm.*

*In New South Wales, their equivalent to careless driving is negligent driving. New South Wales do not effectively have a careless driving offence per se. In Queensland, we call it careless driving; in New South Wales, it is effectively negligent driving, particularly where it causes death or grievous bodily harm. What is being proposed by Queensland here is that we would provide a tiered offence mechanism to the careless driving charge. As mentioned earlier by the Law Society, where there might be a minor incident, a lapse of judgement, and a small incident occurs where no-one is seriously hurt, that might be careless driving. Right now, all charges for careless driving are captured in that offence, so there are no tiers to the current offence.<sup>72</sup>*

Submitters have also suggested additional training be a requirement for those convicted of these types of offences.

Kerri Walker advised:

*There needs to be an effective deterrent put in place. There are too many dangerous drivers on our roads taking the lives of our family members and leaving others permanently scarred. These laws need to be changed, they need to be made to learn how to drive again. The younger generation have to go through testing to receive a learner's permit, including 100 hours of driving experience. They then must undergo more testing to be put onto provisional plates with driving restrictions. Heavier fines and jail time, suspension of license just doesn't seem to cut it. We all want safer roads, and it comes down to the drivers and their competencies. Drugs and alcohol can be detected but being over tired or jet lagged is just as dangerous. Taking age into factor is important as well, the older generation grew up with lighter road rules than we have now. They think the new rules don't apply to them. Innocent lives are being taken by people who can't drive competently.<sup>73</sup>*

Ms Walker also advised the committee:

*Testing is necessary before you put these people back on the roads. Think about the cost—the cost to government in terms of emergency services, police, ambulance and fire brigade; rescue helicopters; funerals and heartache; doctors and hospitals; courts and solicitors; the shock wave that ripples through the families of the victims.*

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<sup>71</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 4.

<sup>72</sup> Department of Transport and Main Roads, public hearing transcript, Brisbane, 4 April 2018, p 28.

<sup>73</sup> Kerri Walker, submission 11, p 1.

*We need the offenders to go back to their learners. They need to learn to drive again. We have to start with the idiots behind the wheel. These people need to be re-educated. We have to make sure that they can drive and know the road rules before we put them back on the road. People have to be accountable for their actions. We need to start introducing laws that make a difference. Make the punishment fit the crime.<sup>74</sup>*

At the committee's public hearing a number of witnesses supported the view that before a licence is returned for these offenders additional training be required.

Ms Mabley suggested that drivers be required to undertake 100 hours of training and do a defensive driving course. She also suggested restricting their driving between the hours of 11pm and 6am.<sup>75</sup> Ms Walker suggested that drivers be required to re-start the learner process including sitting the written test.<sup>76</sup> Angela Meiklejohn and Mr Harnell also agreed.<sup>77</sup> Mr McCrossin advised that they would support the idea of having to start again in terms of learning to drive.<sup>78</sup> Ms Hardwick advised the committee:

*The driver who killed my father was 78 years old. He did not have a blemish on his driving record and he was not far from his home. He simply did a U-turn and did not look. Further training for somebody particularly in their advanced years or at different points in their licensing history could have made a big difference. In this case the doctor gave him a medical clearance after the crash, so he was able to drive again as soon as his six-month suspension was served. I sincerely believe that further training and testing might have either produced some deficiencies and he may no longer have his licence or at least help him to achieve a safer driving outcome.<sup>79</sup>*

Mr Harnell also suggested that, in terms of prevention, that in addition to 100 hours, learner drivers should be required to visit an intensive care ward or mortuary. He suggested that learner drivers need to learn what the results of their actions can cause 'if they lose attention, if they skylark or anything like that.'<sup>80</sup>

In response to the issue of additional training, the department advised:

*While practical driving tests are a useful step in assessing whether a novice driver has developed the skills needed to driver, practical driving re-tests have been shown to be limited in their ability to assess a person's future driving behaviour. This is because a person will generally conscientiously show both compliance with and knowledge of the road rules during a test, which is held at a point in time.<sup>81</sup>*

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<sup>74</sup> Kerri Walker, public hearing transcript, Brisbane, 4 April 2018, p 2.

<sup>75</sup> Trisha Mabley, public hearing transcript, Brisbane, 4 April 2018, p 4.

<sup>76</sup> Kerri Walker, public hearing transcript, Brisbane, 4 April 2018, p 5.

<sup>77</sup> Angela Meiklejohn and Glynn Harnell, public hearing transcript, Brisbane, 4 April 2018, p 5.

<sup>78</sup> Neil McCrossin, public hearing transcript, Brisbane, 4 April 2018, p 5.

<sup>79</sup> Kate Hardwick, public hearing transcript, Brisbane, 4 April 2018, p 5.

<sup>80</sup> Glynn Harnell, public hearing transcript, Brisbane, 4 April 2018, p 5.

<sup>81</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 10.

The department noted the suggestion to regress drivers back to the learner licence state as a means of further punishment and development and advised:

*The learner driver period is the first stage in the Graduated Licensing Scheme which is specifically designed to ensure novice drivers have sufficient on road experience prior to driving unsupervised. The requirements such as 100 hours of supervised driving are based on evidence which suggests that this experience is vital to road safety outcomes in young novice drivers. The further restrictions in the P1 and P2 licence aim to graduate the driver to an open licence in an incremental manner. There is no evidence to suggest that this framework is directly transferable as a means of punishment.*<sup>82</sup>

#### 2.2.1.3 Committee comment

The committee wishes to acknowledge the contribution made by the families who provided submissions and appeared before the committee at its public hearing. The committee understands how emotive the issues raised are for these families and thanks them for their courage in providing their very personal stories to the committee.

The committee considers that the proposed amendments reflect a change in the legislation to achieve the outcome of a mid-range offence without implementing an additional offence as suggested by stakeholders. However, the committee has heard what stakeholders have said and suggests that the Government consider whether an amendment to include the term 'negligent', to better reflect the intention of tiered offence provisions to close the gap between the existing offence of dangerous driving and driving without due care and attention, is warranted.

With regard to the suggested additional training suggested by stakeholders, the committee considers that further investigation of the advantages and disadvantages would need to be undertaken before implementation could be considered.

#### **Recommendation 3**

The committee recommends that the Government consider an amendment to include the term 'negligent' to better reflect the intention of tiered offence provisions to close the gap between the existing offence of dangerous driving and driving without due care and attention.

#### **2.2.2 Mandatory licence disqualification**

The proposed amendments also include a mandatory driver licence period of at least six months if the court convicts a person of offences where careless driving results in death or grievous bodily harm, whether or not any other sentence is imposed.

The explanatory notes state that clause 50 amends section 86(3) of the TORUM 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.<sup>83</sup>

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<sup>82</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 12.

<sup>83</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 18.

The department confirmed:

*The bill will also implement a new mandatory minimum driver's licence disqualification period of six months for careless driving offences that result in death or grievous bodily harm and seek to extend the minimum licence disqualification period for dangerous driving causing death or grievous bodily harm from six months to 12 months. These changes do not alter the court's existing powers to apply longer disqualification if they believe that is warranted.*<sup>84</sup>

#### 2.2.2.1 Stakeholder issues

The QLS advised that it has maintained a consistently strong stance against any form of mandatory sentencing advising:

*QLS supports the fundamental principles of Australia's legal system, including principles of procedural fairness, judicial precedent, the rule of law, and the separation of powers. We promote these concepts as central to the protection of a citizen's right to justice and equality before the law. In our view, mandatory sentencing laws are arbitrary, unfair and unworkable and run contrary to these fundamental tenets.*<sup>85</sup>

The QLS's view is that sentencing decisions should rest with judicial officers, who are 'in the best position to administer justice through judicial reasoning and comprehensive understanding of the offence and the circumstances surrounding its commission.'<sup>86</sup>

Therefore, the QLS does not support the introduction of mandatory driver licence disqualifications. The QLS provided the example of a defendant receiving a wholly suspended sentence or immediate parole due to the sentencing judge assessing the criminality of a defendant and advised that:

*A licence disqualification of no less than 12 months can fundamentally affect prospects of rehabilitation as it can lead to unemployment and isolation from family and support mechanisms such as counselling.*<sup>87</sup>

The QLS submitted that it is essential that a discretion be maintained as to driver licence disqualification.<sup>88</sup>

As stated above the QCCL noted that the explanatory notes identifies that QCCL had no objection to the proposed increased penalties for driving offences resulting in death or grievous bodily harm. QCCL advised the committee that this is true, except in the case of the mandatory licence cancellation measures for the following reason:

*...we would repeat our long-standing opposition to any form of mandatory punishment including the proposal for mandatory licence cancellation. Imposing mandatory sentences prevents the Court from exercising their judicial discretion and does not allow them to tailor the sentence according to the individual facts and circumstances of each case.*<sup>89</sup>

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<sup>84</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>85</sup> Queensland Law Society, Submission 13, p 3.

<sup>86</sup> Queensland Law Society, Submission 13, p 4.

<sup>87</sup> Queensland Law Society, Submission 13, p 4.

<sup>88</sup> Queensland Law Society, Submission 13, p 4.

<sup>89</sup> Queensland Council for Civil Liberties, Submission 15, p 2.

The QCCL provided references to a number of journal articles and advised the committee that:

*It is well known that mandatory sentencing is ineffective, unjust and has 'been repeatedly and categorically demonstrated not to have the desired deterrent effect.' Relatively recent attempts to use mandatory sentencing in Western Australia and the Northern Territory both produced 'arbitrary' and severely unjust sentences. As Neil Morgan notes this results in a black and white approach to sentencing where there is 'no proper gradation of penalties to reflect the seriousness of the offence.'*<sup>90</sup>

The QCCL advised:

*We are not opposed to people being punished for their behaviour if it is deserving of punishment. We are opposed to preventing the courts from making the punishment that fits the crime so that people are not unduly punished—they do not lose their livelihoods, they do not lose their participation in society in circumstances that do not justify that. That is the essential point.*<sup>91</sup>

The department advised:

*The discretion of the court to impose an appropriate penalty having regard to the relevant circumstances of the offence has been retained. The Department of Transport and Main Roads recognises that the Magistrate or Judge will be best placed to make this determination. The framework that has been proposed sets minimum mandatory licence disqualifications periods that are reflective of the seriousness of crashes that involve death or grievous bodily harm. They are also more consistent with community expectations.*<sup>92</sup>

#### 2.2.2.2 Committee comment

Whilst the committee appreciates the arguments presented by the QLS and the QCCL, it considers that the imposition of a minimum driver's licence suspension is about sending a message to all drivers about driving safely. The committee advocates for prevention and takes note of stakeholders comments that penalties, such as mandatory licence suspension, can act as a deterrent to unsafe driver behaviour.

The committee also notes that whilst many stakeholders have called for mandatory jail sentences, the Bill does not impose this and leaves the discretion to the courts who are best positioned to consider all facts that apply in each particular case.

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

Clause 47 inserts a new section 77AAA into the TORUM 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.<sup>93</sup>

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<sup>90</sup> Queensland Council for Civil Liberties, Submission 15, p 2.

<sup>91</sup> Queensland Council for Civil Liberties, public hearing transcript, Brisbane, 4 April 2018, p 14.

<sup>92</sup> Department of Transport and Main Roads, correspondence dated 28 March 2018, p 17.

<sup>93</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 18.

The department explained:

*The bill also makes amendments to allow the chief executive to notify registered operators of certain traffic offences committed in their vehicles. The notification will occur via electronic communication. The registered operator will be provided with the name of the offender and details of the offence. It will not include the offender's address, phone details or date of birth. Persons who have applied to have these personal details suppressed, such as victims of domestic violence, will not have their details released. This amendment will provide road safety benefits by allowing the registered operator to make informed decisions about who they allow to use their vehicles and prompt conversations about road safety. This will be particularly useful to parents of newly licensed young drivers and employers such as fleet operators, taxi companies and courier companies.<sup>94</sup>*

The explanatory notes identify that:

*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.*

In relation to how the scheme would operate, the department advised:

*...it is about notifying the owner-operator of the vehicle when offences occur. At this stage, it is not a check at any time in relation to those types of things; it is a proposal to allow the department to notify the registered operator when an offence occurs in their vehicle when the registered operator is not driving the vehicle. For example, if I am driving my own vehicle it would not apply, but if Mike were driving my vehicle and an offence occurred I would get a notification once that is finalised that said, 'This offence occurred in your vehicle on this date with this driver.'<sup>95</sup>*

The department confirmed that under the current regime if a camera offence occurs, the owner or operator of the vehicle gets the notification of the offence. However, this does not currently occur when it is a roadside incident as the notification goes only to the driver.<sup>96</sup>

The department provided the following example:

*This amendment has been discussed for quite a number of years. I recall an incident about five or six years ago where a B-double was pulled up by police and the driver of the B-double was found to have been suspended because they had lost all of their points, which was news to the owner of the vehicle, who then had his vehicle literally impounded on the side of the road. It is an onus of responsibility on the owner and operator of vehicles, through chain-of-responsibility laws, that the person is fit to drive and also has a licence. This particular operator was totally blind to the fact that the person had been suspended and it had not been declared. It is really about dealing with those types of issues. The operator has a duty to ensure that the person has a licence but yet has no way of confirming that their licence is currently valid necessarily, if they had not been informed about demerit point offences in particular.<sup>97</sup>*

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<sup>94</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>95</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 5.

<sup>96</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 6.

<sup>97</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 5.

### 2.2.3.1 *Stakeholder issues*

The QLS expressed concern over the provisions as it considers that this is a 'basic invasion of an individual's privacy and could have employment ramifications causing people to otherwise defend matters.'<sup>98</sup>

The QLS advised:

*We do not see a justifiable basis to advise others of a, for instance, criminal conviction. In this regard, we note that the proposed notifiable offences may*

The QCCL advised that during the consultation on the Bill, they advised the department that the QCCL accepted that 'owners' of vehicles have an interest in knowing whether the vehicles are being driven safely'. However, they also submitted that the subject of the disclosure also has rights.<sup>99</sup>

The QCCL's view is that when information is released to the registered operator, the person whose information is released should be notified contemporaneously that the information has been released. The QCCL advised that this would need specific legislative amendment, as it will not happen as a result of the Information Privacy Act.<sup>100</sup>

QCCL also takes the view that in the case of employers, they should be required when opting into the program to notify their employees that they have done so. The QCCL advised that the Parliament would also have to legislate for this.<sup>101</sup>

QCCL submitted that the department 'needs to take steps to ensure that those providing services to the victims of domestic violence are made aware of this change and their rights.'<sup>102</sup> The QCCL clarified that, while they do not have any great knowledge of the current processes, it considered that:

*...probably some extra steps need to be taken to notify people who are dealing with the victims of domestic violence of this potential and that, therefore, they need to use whatever options are available to them to ensure that the information is not released.'*<sup>103</sup>

The QCCL explained that the suggestion is that the operator should be informed when the information is being released and advised:

*Presumably, the department will have a record of the offender. At the same time the information is released to them, the department sends a notice to the address that they have to that person that the information has been released. I might also say that, in the case of employers, when they join the scheme the employee should be told. That might also have the effect of reinforcing this legislation because, if you know that your employer is going to be told that you have breached a law in their vehicle, that might encourage you not to breach the law. It might have a salutary effect.'*<sup>104</sup>

The QLS agreed with the QCCL on this issue.

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<sup>98</sup> Queensland Law Society, Submission 13, p 2.

<sup>99</sup> Queensland Council for Civil Liberties, submission 15, p 2.

<sup>100</sup> Queensland Council for Civil Liberties, submission 15, p 2.

<sup>101</sup> Queensland Council for Civil Liberties, submission 15, p 2.

<sup>102</sup> Queensland Council for Civil Liberties, submission 15, p 2.

<sup>103</sup> Queensland Council for Civil Liberties, public hearing transcript, Brisbane, 4 April 2018, p 16.

<sup>104</sup> Queensland Council for Civil Liberties, public hearing transcript, Brisbane, 4 April 2018, p 15.

The department advised:

*The intention is to communicate to everyone that, if you commit an offence in someone else's vehicle, they will be notified when that offence is finalised. Telling the entire public that that is something we would be doing—notifying them, having our police force have that information on hand, that they can let alleged offenders know when they have been given a penalty infringement notice—those are the types of things we would lean on. The simple notification to the registered operator is to let them know that an offence has occurred in the vehicle that they are registered as the operator for.*<sup>105</sup>

#### **2.2.3.2 Committee comment**

The committee considers that the benefits of these provisions outweigh the privacy issues outlined by stakeholders.

#### **2.2.4 Changes to procedure with regards to roadside drug testing**

Clause 48 omits section 80(8J) of the TORUM 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.<sup>106</sup>

The explanatory notes detail that the current section 80(8J) reflects the sentiment that was held at the time the Queensland roadside drug testing program commenced in Queensland where 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. Since that time, new saliva analysing instruments have been introduced which are extremely accurate and have a memory function that retains records in relation to analysis performed and results obtained.<sup>107</sup>

The explanatory notes also state that:

*...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.*<sup>108</sup>

The department advised:

*The bill will also make changes to drug-driving testing procedures. In 2017 in Queensland more than 62,000 roadside driver drug tests were conducted. Each test requires two police officers: one to conduct the roadside screening and the second to conduct the saliva analysis. Although it was an important safeguard to develop public confidence when the program commenced in 2007, the program is now well established. New devices introduced in 2013 are more accurate and record the results of each analysis performed and results obtained, meaning that there is no risk to transparency in the process. The single-officer proposal for drug driving is like the current approach to drink driving, which can also be undertaken by a single officer.*<sup>109</sup>

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<sup>105</sup> Department of Transport and Main Roads, public hearing transcript, Brisbane, 4 April 2018, p 30.

<sup>106</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 18.

<sup>107</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 9-10.

<sup>108</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 10.

<sup>109</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, pp 2-3.

The explanatory notes identified that:

*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.*<sup>110</sup>

With regard to the testing in remote areas of Queensland, the department advised:

*At the moment, a single-officer police station is not able to undertake a drug test. That will be addressed by this legislative change. A single officer will be able to do that in the future. As you quite correctly identified, it is a gap in the current system. In reality, this bill seeks to put drug testing virtually in the same space as alcohol testing. Initially there were provisions for two officers put in place as a measure to ensure—because the public were not familiar with the test—some confidence that this process worked. The past 10 years has achieved that, and this will now make it possible for a single officer to do what happens with drug driving, that is, to administer the two tests rather than have two officers present.*<sup>111</sup>

The committee sought additional information regarding the security of equipment used for testing and were advised:

*There are two elements to it: there is the machine that captures its data; the second test is a confirmation test that goes to a laboratory.*<sup>112</sup>

#### **2.2.4.1 Stakeholder issues**

The QLS, while not opposing the amendments, recommended that separate reference samples should be lodged at court. They advised that:

*Having a single officer conduct drug driving test procedures is acceptable as long as due process, rules and safeguards are strictly enforced. This would include a police officer electronically recording the whole procedures and sealing samples in the presence of the defendant.*<sup>113</sup>

#### **2.2.5 Clarifying duties of drivers involved in crashes**

Clause 51 amends section 92(1)(c) of the TORUM 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.<sup>114</sup>

Clause 52 inserts section 93 into the TORUM 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.<sup>115</sup>

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<sup>110</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 4.

<sup>111</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>112</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 2.

<sup>113</sup> Queensland Law Society, submission 15, p 2.

<sup>114</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes p 18.

<sup>115</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 18.

The explanatory notes identify that the interdepartmental committee recommended an increase in 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.<sup>116</sup>

The explanatory notes also state:

*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.*<sup>117</sup>

#### 2.2.5.1 Stakeholder issues

The QLS does not support the increase in penalties proposed. The QLS advised that there may be multiple reasons to explain why an individual may flee the scene of an accident including unawareness of involvement or shock. The QLS expressed concern about the 'proposed mandatory consequences that will be imposed for an omission'.<sup>118</sup>

### **2.3 Changes to the learner licence online training and assessment program (PrepL)**

The Bill proposes changes to the PrepL program in respect to the licence holder's photo and signature. PrepL is a program currently being trialled by the department to replace the current written road rules test for learner licence applicants. The program allows learner licence applicants to undertake the program at their own pace and have up to one year to complete the course.

The proposed amendments allow for the department to retain an applicant's digital photo and digitised signature for up to one year to cater for those who may use the maximum time period allowed to complete PrepL.

The department advised:

*...the bill seeks to increase the retention period of digital photos and signatures from six months to 12 months to support people involved in the new PrepL online learning and assessment program and enable them to get their photos taken at any time during the 12-month PrepL enrolment period.*<sup>119</sup>

#### **2.3.1 Stakeholder issues**

The QCCL advised that they were consulted on proposed amendments and provided advice to the department that the objective of the legislation could be achieved by legislation to allow the individual person to consent to the data being retained for a further six months. However, the QCCL advised that did they had no objection as long as the current regime by which data is deleted at the end of the 12 month period remained in place.<sup>120</sup>

However, the QCCL submission notes that the proposed amendments to section 28EI(1)(b) of the TPC allows for regulations which apply the provision to circumstances where the signature and photograph have been provided for other purposes and subsection 2 allows for the period of retention to be extended by regulation.<sup>121</sup>

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<sup>116</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 3.

<sup>117</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 9.

<sup>118</sup> Queensland Law Society, submission 15, p 5.

<sup>119</sup> Department of Transport and Main Roads, public briefing transcript, Brisbane, 5 March 2018, p 3.

<sup>120</sup> Queensland Council for Civil Liberties, Submission 15, pp 1-2.

<sup>121</sup> Queensland Council for Civil Liberties, Submission 15, p 2.

The QCCL opposes giving the executive power to extend this section by regulation and considers that this matter should be dealt with in the Parliament.<sup>122</sup>

### **2.3.2 Committee comment**

The committee considers that the proposed amendment is consistent with existing measures for driver licensing.

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<sup>122</sup> Queensland Council for Civil Liberties, Submission 15, 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.

##### 3.1.1 Rights and liberties of individuals

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

###### 3.1.1.1 *Right to privacy regarding personal information*

Clause 47 (by inserting new section 77AAA) allows the chief executive to notify a registered operator of offences committed in their vehicle by another person. The information covered by the provision is limited to the name of the driver, and the nature, time and place of the offence.

This amendment raises fundamental legislative principle issues relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*), regarding a person’s right to privacy with respect to their personal information.

The explanatory notes refer to the current regime of notifying vehicle owners of camera-detected offences in their vehicles, noting that 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.<sup>123</sup>*

The explanatory notes justified the provision as follows:

*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.<sup>124</sup>*

The explanatory notes address the privacy concerns:

*... The limited type of information that can be provided will minimise any impact on the offender’s privacy.*

<sup>123</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 9.

<sup>124</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 9.

*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.<sup>125</sup>*

The QLS has submitted that the offences covered by the provision might be quite serious and require court appearances. The society regards the intrusion on individual privacy as not warranted and is concerned that the provision might be inconsistent with the *Criminal Law (Rehabilitation of Offenders) Act*.<sup>126</sup>

#### Committee comment

The committee is satisfied that, on balance, the breach of privacy is justified in the circumstances. Refer also to section 2.2.3 of this report for further discussion.

##### 3.1.1.2 Sufficient regard to the rights and liberties of individuals

Clause 48 allows simplifies testing for drug driving, in that a 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. [Currently, under section 80(8J) of the TORUM Act, two police officers are involved. This had the effect of ensuring corroboration of matters such as the questions asked of the driver and the indicia displayed by the driver.]

This raises an issue of fundamental legislative principle relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*).

The explanatory notes address this issue:

*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 ... 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 ... 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 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.<sup>127</sup>*

#### Committee comment

The committee is satisfied that the new approach is in order. Refer also to section 2.2.4 of this report for further discussion.

##### 3.1.1.3 Penalties imposed for offences are proportionate and relevant to the actions to which the consequences are applied

In determining whether legislation has sufficient regard to the rights and liberties of individuals, it is necessary to consider whether the penalties imposed for offences are proportionate and relevant to the actions to which the consequences are applied by the legislation (section 4(2)(a) *Legislative Standards Act 1992*).

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<sup>125</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 9.

<sup>126</sup> Queensland Law Society, submission 13, p 2. The explanatory notes (p 10) advised that the QLS's concerns were also raised in consultation on the Bill.

<sup>127</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 9.

A penalty should be proportionate to the offence. The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

*Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*<sup>128</sup>

Refer to section 3.2 of this report for further detail on the proposed new or amended offence provisions.

Clause 23 provides for two new offences in the HVNL (new section 319A) regarding failure to meet requirements about driver recording and giving information to the record keeper. The maximum penalty for each new offence is \$3,000.

The relevant provisions are set out below:

*319A General requirements about driver recording and giving information to record keeper*

*(1) This section applies if the driver's record keeper on a relevant day is a person other than the driver.*

*(2) The driver must, unless the driver has a reasonable excuse -*

*(a) within 24 hours after the driver stops working on the relevant day, record the information mentioned in section 319(1)(a)(iii) to (vi) for that day; and*

*(b) within 21 days after the relevant day, give the information mentioned in section 319(1) for that day to the driver's record keeper.*

*Maximum penalty - \$3000.*

...

*(5) The record keeper must, so far as is reasonably practicable, ensure the driver complies with subsection (2)(b).*

*Maximum penalty - \$3000.*

The explanatory notes, in relation to clause 23, advise that the proposed maximum penalty of \$3,000 is consistent with the various other penalties under the HVNL which range from \$1,500 to \$20,000 and, more specifically, the \$3,000 is consistent with the maximum penalty for other record-keeping related offences for drivers under the HVNL (for example, see section 341).<sup>129</sup>

Clauses 49 to 51 contain penalty and offence provisions which are more significant. These clauses increase 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 resulting death or grievous bodily harm (GBH).

Clause 49 increases penalties for the offence of careless driving of a motor vehicle, in circumstances where death or GBH results. [Penalties for the offence in other cases are unchanged.] In summary:

- Current maximum penalties are 40 penalty units (\$5,046.00) or 6 months jail.
- Where death or GBH results, these will increase to 80 penalty units and 12 months jail. In addition, a minimum 6 months disqualification applies.
- Where death or GBH results *and* the driver was unlicensed, the maximum penalties increase to 160 penalty units and 2 years jail. In addition, a minimum 6 months disqualification applies.

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<sup>128</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120

<sup>129</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 8.

[A person will not be considered unlicensed merely because their licence expired within the 5 years prior to the offence.]

Clause 50 amends TORUM Act section 86(3) to provide that a person who commits the offence of dangerous operation of a vehicle ('dangerous driving') where death or GBH has occurred [section 328A(4) of the Criminal Code] is to be disqualified from holding or obtaining a driver licence for certain periods. This in effect involves an increase in some circumstances in the minimum mandatory period of disqualification from 6 months to 12 months.

Clause 51 amends TORUM Act 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. In addition, the clause inserts new penalties regarding duties of drivers in incidents that result in death or GBH to a person – a maximum of 120 penalty units or 3 years jail, and a mandatory minimum 6 months disqualification period. [Current penalty of a maximum 20 penalty units and 12 months jail continues to apply in cases not involving death or GBH.]

The explanatory notes state:

*The proposed penalties include increased maximum monetary fines, increased maximum terms of imprisonment and minimum driver disqualification periods.*

...

*...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.<sup>130</sup>*

The QLS has raised concerns regarding the new penalties. In particular, it does not support the mandatory licence disqualifications in clause 50 and does not support increases in monetary penalties and maximum jail terms 'in the absence of cogent and persuasive empirical evidence that the proposed increases ... will have a real impact in improving road safety'.<sup>131</sup>

#### Committee comment

The committee's comments in relation to the various clauses are as follows:

- Clause 23 – the penalty raises no concerns as it is consistent with other penalties under the HVNL.

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<sup>130</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, pp 8–9.

<sup>131</sup> Queensland Law Society, submission 13, p 4. The explanatory notes (p 10) record that the QLS's concerns were also raised in consultation on the Bill.

- Clauses 49 to 50 – given the relevance to the objective of enhanced road safety, the committee considers that the penalties contained in the Bill are proportionate

Refer also to section 2.2.1 and 2.2.2 of this report for further discussion.

### 3.1.2 Onus of proof

Section 4(3)(d) of the *Legislative Standards Act 1992* identifies that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

#### 3.1.2.1 *Clauses 16 and 23*

Clause 16 of the Bill seeks to amend HVNL 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 HVNL 636(2).

The new offence established by clause 23 (inserting proposed section 319A(2) of the HVNL) can be regarded as involving a reversal of the onus of proof, in that it provides that a defendant must provide any reasonable excuse.

Provisions creating executive officer liability, and provisions that a defendant must provide any reasonable excuse, involve a reversal of the onus of proof.

Section 4(3)(d) *Legislative Standards Act 1992* provides that legislation should have sufficient regard to the rights and liberties of individuals and in this regard should not reverse the onus of proof in criminal proceedings without adequate justification.

Legislation should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence.<sup>132</sup>

The proposed provision builds on existing provisions establishing executive liability in the HVNL. These provisions have been considered by previous committees in considering the Bills containing those earlier provisions.<sup>133</sup> According to the current explanatory notes:

*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.<sup>134</sup>*

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<sup>132</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

<sup>133</sup> Transport, Housing and Local Government Committee report 4 *Heavy Vehicle National Law Bill 2012* and Transport, Housing and Local Government Committee report 16 *Heavy Vehicle National Law Amendment Bill 2012*.

<sup>134</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 14.

Regarding clause 16, the explanatory notes state:

*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.*<sup>135</sup>

The issue of executive liability has been considered previously when the original heavy vehicle legislation was introduced in the 54<sup>th</sup> Parliament.<sup>136</sup> In relation to executive liability in that legislation, a former committee reported:

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

*TMR advised the Committee that the drafting of section 636 is the result of extensive consultation and negotiation with industry, the NTC, the NHVR Project Office, State and Territory Governments and the Federal Government. This drafting also reflects amendments recommended in legal advice obtained from the Australian Government Solicitors Office.*<sup>137</sup>

The explanatory notes address the issue in clause 23 regarding a reasonable excuse:

*...this can be justified on the basis that the defendant is best placed to provide such an excuse and [this] is within the defendant's knowledge, and it is consistent with the operation of other offences in the HVNL.*<sup>138</sup>

This type of provision is canvassed in the OQPC Notebook:

*Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.*

*For example, if legislation prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.*<sup>139</sup>

#### Committee comment

The question for the committee was whether the reversal of the onus of proof is justified and, regarding clause 16, whether adequate justification has been provided for extending executive liability in these instances. The committee considered this to be justified, given the consistency with the existing WHS legislation.

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<sup>135</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 7.

<sup>136</sup> Queensland Law Society, submission 13, p 4. The explanatory notes (p 10) record that the QLS's concerns were also raised in consultation on the Bill.

<sup>137</sup> Transport, Housing and Local Government Committee, Report No 4, *Heavy Vehicle National Law Amendment Bill 2012*, August 2012, p 35.

<sup>138</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 8.

<sup>139</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

In relation to clause 16, the committee is satisfied with the extension of executive liability (and the associated extension of the onus of proof). The committee is also satisfied that any reversal of the onus of proof in clause 23 is justified.

Refer also to section 2.1.2 of this report for further discussion.

### 3.1.2.2 Clause 8

Clause 8, in summary, provides that a certificate, purporting to be signed by certain officers, and stating any of certain specified matters, is evidence of that matter.

It amends section 31 of the *Heavy Vehicle National Law Act 2012*, which already provides that a certificate (purporting to be issued by the entity that, under section 1, is the road authority for this jurisdiction) stating certain matters is evidence of the matter.

The amendment would extend this to the following further matters:

(that, at a stated time or during a stated period):

- a stated vehicle was or was not registered under TORUM as a heavy vehicle
- a stated vehicle registered under TORUM was or was not registered as a heavy vehicle of a stated category
- a stated person was or was not the registered operator, under TORUM, of a stated vehicle
- a stated registration under TORUM was or was not amended or cancelled under that Act

[Note that these same evidentiary certificate provisions are currently in section 63 of the Act. Since that section is being omitted by the Bill, the provisions are being transferred into section 31. Section 31 is specific to Queensland's application of the HVNL.]

Clause 8 is a reverse onus provision.

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence.

*For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.<sup>140</sup>*

It has been argued that provisions that state that something is evidence, without requiring it to be proved, assist one party in the making of their case, to the detriment of the other party.

The explanatory notes state:

*...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[s] 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.<sup>141</sup>*

The evidentiary matters able to be included in the certificate are largely formal or administrative in nature and likely to be non-contentious.

The clause provides that the content of the certificate is 'evidence' of the matter, not conclusive evidence. It is therefore able to be challenged by contrary evidence put forward if required.

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<sup>140</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

<sup>141</sup> Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, explanatory notes, p 8.



	<p>(b) the other person is also liable for an offence against subsection (5) as if the other person were the record keeper mentioned in the subsection.</p> <p>(7) In this section— <b>relevant day</b> means a day on which the driver drives a fatigue-regulated heavy vehicle on a road.</p>	
49	<p><b>Amendment of s 83 (Careless driving of motor vehicles)</b></p> <p>(1) Section 83, penalty— <i>omit, insert—</i> Maximum penalty—</p> <p>(a) if the person causes the death of or grievous bodily harm to another person and was an unlicensed driver for the motor vehicle at the time of committing the offence—160 penalty units or 2 years imprisonment; or</p> <p>(b) if the person causes the death of or grievous bodily harm to another person—80 penalty units or 1 year’s imprisonment; or</p> <p>(c) otherwise — 40 penalty units or 6 months imprisonment.</p>	<p>160 penalty units or 2 years imprisonment</p> <p>80 penalty units or 1 year’s imprisonment</p> <p>40 penalty units or 6 months imprisonment</p>
51	<p><b>Amendment of s 92 (Duties and liabilities of drivers involved in road incidents)</b></p> <p>(1) Section 92(1)(c) and penalty - <i>omit, insert—</i></p> <p>(c) if any person is dead or apparently dead—</p> <p>(i) remain at or near the scene of the incident; and</p> <p>(ii) exhibit proper respect for the person’s body and take whatever steps are reasonably practicable to have the body removed to an appropriate place.</p> <p>Maximum penalty -</p> <p>(a) if the incident results in the death of or grievous bodily harm to a person—120 penalty units or 3 years imprisonment; or</p> <p>(b) otherwise - 20 penalty units or 1 year’s imprisonment.</p> <p>(2) Section 92— <i>insert—</i></p> <p>(1A) If the court convicts a person of an offence against subsection (1) in the circumstances mentioned in paragraph (a) of the penalty, the court, whether or not any other sentence is imposed, must disqualify the person from holding or obtaining a Queensland driver licence for a period of at least 6 months.</p>	<p>120 penalty units or 3 years imprisonment</p> <p>20 penalty units or 1 year’s imprisonment</p>
52	<p><b>Insertion of new s 93</b></p> <p><b>93 Duties of a driver involved in a crash — stopping and providing information</b></p>	

	<p>(1) This section applies to a driver involved in a crash on a road or a road-related area.</p> <p>(2) The driver must stop at the scene of the crash and give the driver’s required particulars, within the required time and, if practicable, at the scene of the crash, to—</p> <ul style="list-style-type: none"> <li>(a) any other driver involved in the crash; and</li> <li>(b) any other person involved in the crash who is injured; and</li> <li>(c) the owner of any property (including any vehicle or animal) damaged in the crash, unless, for damage to a vehicle or animal, the particulars are given to the driver of the vehicle or animal.</li> </ul> <p>Maximum penalty—20 penalty units.</p> <p>(3) For subsection (2), the required particulars may be given to a person by giving the particulars to the person’s representative.</p> <p>(4) The driver must also give the driver’s required particulars, within the required time, to an officer of the Queensland Police Service if—</p> <ul style="list-style-type: none"> <li>(a) a person is killed or injured in the crash; or</li> <li>(b) the driver does not, for any reason, give the driver’s required particulars to each person mentioned in subsection (2); or</li> <li>(c) the required particulars for any other driver involved in the crash are not given to the driver; or</li> <li>(d) a motor vehicle involved in the crash is towed or carried away by another vehicle.</li> </ul> <p>Maximum penalty - 20 penalty units.</p> <p>(5) In this section -</p> <p><b>crash</b> means -</p> <ul style="list-style-type: none"> <li>(a) a collision between 2 or more vehicles or animals; or</li> <li>(b) another accident or incident involving a vehicle in which a person is killed or injured, property is damaged or an animal in someone’s charge is killed or injured.</li> </ul> <p><b>driver</b> does not include -</p> <ul style="list-style-type: none"> <li>(a) a person pushing a motorised wheelchair; or</li> <li>(b) a person walking beside and pushing a bicycle.</li> </ul> <p><b>required particulars</b>, for a driver involved in a crash, means—</p> <ul style="list-style-type: none"> <li>(a) the driver’s name and address; and</li> <li>(b) the name and address of the owner of the driver’s vehicle; and</li> <li>(c) the vehicle’s registration number, if any; and</li> <li>(d) any other information necessary to identify the vehicle.</li> </ul> <p><b>required time</b>, for a driver involved in a crash, means as soon as possible but, except in exceptional circumstances, within 24 hours after the crash.</p> <p><b>vehicle</b> includes—</p> <ul style="list-style-type: none"> <li>(a) a tram and train; and</li> <li>(b) a motorised wheelchair that can travel at over 10km/h (on level ground); but does not include—</li> </ul>	<p>20 penalty units</p> <p>20 penalty units</p>
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	<ul style="list-style-type: none"> <li>(c) another kind of wheelchair; or</li> <li>(d) a wheeled recreational device; or</li> <li>(e) a wheeled toy; or</li> <li>(f) a personal mobility device.</li> </ul>	
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### 3.3 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* 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 reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Noela McCrossin, Neil McCrossin, Ian McCrossin
002	Australian Logistics Council
003	Queensland Trucking Association
004	Kate Hardwick
005	National Road Transport Association
006	Australian Livestock and Rural Transporters Association
007	Thomas Glynnwyn (Glynn) Harnell
008	Angela Meiklejohn, Tony Dow and Jacquie Garnett
009	Bicycle Queensland
010	Trisha Mabley
011	Kerri Walker
012	Australian Trucking Association
013	Queensland Law Society
014	AgForce Queensland
015	Queensland Council for Civil Liberties

## **Appendix B – Officials at public departmental briefing – 5 March 2018**

### **Department of Transport and Main Roads**

- Ms Mike Stapleton, Deputy Director-General, Customer Service, Safety and Regulation
- Mr Andrew Mahon, General Manager, Transport Regulation Branch

### **National Heavy Vehicle Regulator**

- Ms Tanya McDonald, Executive Director (Strategy & Stakeholder Relations)

### **National Transport Commission**

- Mr Robert Chamberlain, Manager Legal
- Mr Anthony Pepi, Project Manager

### **Queensland Treasury – Office of State Revenue**

- Mr Jason Mew, Acting Director, Policy and Legislation Division
- Ms Renee Sedman, Senior Policy Officer, Policy and Legislation Division

## **Appendix C – Witnesses at public hearing – 4 April 2018**

### **Individual stakeholders**

- Mrs Noela McCrossin
- Mr Neil McCrossin
- Ms Kate Hardwick
- Ms Angela Meiklejohn
- Mr Glynn Harnell
- Ms Trisha Mabley
- Ms Kerri Walker

### **Bicycle Queensland**

- Ms Anne Savage, CEO

### **Queensland Law Society**

- Mr Ken Taylor, President
- Mr Bill Potts, Deputy President
- Ms Rebecca Fogerty, Deputy Chair of QLS Criminal Law Committee
- Ms Binny De Saram, Acting Principal Policy Solicitor

### **Queensland Council for Civil Liberties**

- Mr Michael Cope, President

### **Queensland Trucking Association/Australian Trucking Association**

- Mr Gary Mahon, CEO, Queensland Trucking Association

### **National Road Transport Association**

- Mr Richard Calver, Adviser Compliance and Workplace Relations

### **AgForce Queensland**

- Mr Zachary Whale, Grains Policy Director
- Ms Amelia Shaw, Policy Officer

## **Appendix D – Officials at public briefing – 4 April 2018**

### **Department of Transport and Main Roads**

- Ms Mike Stapleton, Deputy Director-General, Customer Service, Safety and Regulation
- Mr Andrew Mahon, General Manager, Transport Regulation Branch

### **National Heavy Vehicle Regulator**

- Mr Bill Esteves, National Investigations Coordinator, Regulatory Compliance
- Mr Isuru Neelagama, Manager, Intergovernmental Relations

PO Box 1968  
Mount Isa QLD 4825

**Mount Isa**  
74 Camooweal Street  
P: 07 4730 1100

## **Robbie Katter MP** Member for Traeger



Friday, April 20, 2018

**RE: Statement of Reservation on the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018**

I write to lodge a Statement of Reservation to the Transport and Public Works Committee on the proposed Heavy Vehicle National Law and Other Legislation Amendment Bill 2018.

While I agree with the majority of the objectives outlined in the Bill, my concern relates to the changes in the chain of responsibility components of the Bill and the potential impact this may have on primary producers.

Many primary producers and small business owners have indicated that there is significant uncertainty around the application of the chain of responsibility provisions and they may push the responsibility of poor conduct onto the farmer or business owner to an extent that is impossible to manage.

These parties are concerned that they will be responsible and liable for conduct over which they can have no practical control. This includes roadworthiness of vehicles, accuracy of log books and competence of driver. The possibility of being exposed to these risks and being liable in the event of an accident puts further burden on primary producers and business owners.

I would strongly urge the committee to reconsider the impact on primary producers and small operators to ensure provisions do not add additional burden or liability that cannot be practically managed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robbie Katter', with a long horizontal line extending to the right.

**Robbie Katter**  
Member for Traeger

