Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013

Report No. 24
Transport, Housing and Local Government Committee
May 2013
Transport, Housing and Local Government Committee

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Acknowledgements
The Committee thanks those who briefed the committee, made submissions and participated in its inquiry. In particular the Committee acknowledges the assistance provided by the Department of Transport and Main Roads.
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<td>AFM</td>
<td>Advanced Fatigue Management</td>
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<tr>
<td>AgForce</td>
<td>AgForce Queensland Industrial Union of Employers</td>
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<td>ATA</td>
<td>Australian Trucking Association</td>
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<td>BFM</td>
<td>Basic Fatigue Management</td>
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<td>Committee</td>
<td>The Transport, Housing and Local Government Committee</td>
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<td>CTP</td>
<td>Compulsory Third Party</td>
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<td>GVM</td>
<td>Gross vehicle mass</td>
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<td>Gross combination mass</td>
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<td>HVNL</td>
<td>Heavy Vehicle National Law</td>
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<td>LSA</td>
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<td>NHVAS</td>
<td>National Heavy Vehicle Accreditation Scheme</td>
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<td>National Heavy Vehicle Regulator</td>
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<td>NRFA</td>
<td>National Road Freighters Association</td>
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<td>PCC</td>
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<td>SCOTI</td>
<td>Standing Council on Transport and Infrastructure</td>
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<td>Suncorp</td>
<td>Suncorp Group Limited</td>
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<td>The Assembly</td>
<td>The Queensland Legislative Assembly</td>
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<td>TORUM Act</td>
<td>Transport Operations (Road Use Management) Act 1995</td>
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<td>WAHVA</td>
<td>Western Australian Heavy Vehicle Accreditation</td>
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Chair’s foreword

This report presents a summary of the Committee’s examination of the Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013.

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

The public examination process allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland. The Committee received five submissions during the course of its Inquiry and held a public briefing by the Department of Transport and Main Roads.

On behalf of the Committee I thank those individuals and organisations who lodged written submissions on this Bill, and others who have informed the Committee’s deliberations: the Committee’s secretariat, officials from the Department of Transport and Main Roads and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Mr Howard Hobbs MP
Chair

May 2013
Recommendation

Recommendation 1

The Committee recommends that the Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013 be passed.
1 Introduction

1.1 Role of the Committee

The Transport, Housing and Local Government Committee (the Committee) was established by resolution of the Queensland Legislative Assembly (the Assembly) on 18 May 2012. The Committee consists of both government and non-government members and its primary areas of responsibility include transport, main roads, housing, public works, local government and community recovery and resilience.¹

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

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

1.1.1 Referral

The Assembly referred the Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013 (the Bill) to the Committee on 19 March 2013. The Committee is required to report to the Legislative Assembly by 14 May 2013.

1.1.2 Inquiry process

The Committee held a public briefing by the Department of Transport and Main Roads on Tuesday 26 March 2013 (see Appendix A for a list of witnesses).

The Committee invited submissions by emailing 537 subscribers on the Transport, Housing and Local Government Committee’s email subscriber list on 20 March 2013 and emailing a further 16 identified stakeholders on 22 March 2013. The Committee received five (5) submissions (see Appendix B for a list of submissions).

The transcript of the public briefing and submissions received by the Committee are available on the Committee’s webpage at:


1.2 Policy objectives of the Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013

The principal policy objectives of the Bill are to:

- make consequential amendments to existing Queensland legislation to remove provisions that regulate heavy vehicles that will be covered by the Heavy Vehicle National Law and to insert references to the National Law where relevant
- make a small number of changes to the application laws for the Heavy Vehicle National Law Act 2012, which are needed as a result of the Heavy Vehicle National Law Amendment Act 2013 and to address some specific issues about the way the National Law will apply in Queensland; and

¹ Schedule 6 – Portfolio Committees, Standing Rules and Orders of the Legislative Assembly as amended 14 February 2013.
• include transitional provisions specific to Queensland to clarify the operation of the general savings and transitional provisions in the National Law. This is to ensure that there is a smooth transition from the regulation of heavy vehicle operations under the Transport Operations (Road use Management) Act 1995 to the National Law. The Bill also contains provisions which allow heavy vehicle registration to continue under Queensland legislation until the commencement of the registration chapter in the National Law.

These changes will take effect at the same time as the operational provisions of the National Law commence in Queensland. The operational provisions are scheduled to commence on 1 July 2013, subject to all States and Territories having passed the necessary application legislation through their respective Parliaments.

The Bill also contains provisions which allow heavy vehicle registration to continue under Queensland legislation until the commencement of the registration chapter in the National Law. ²

The Bill amends the following Acts for particular purposes:

- **Forestry Act 1959**
- **Heavy Vehicle National Law Act 2012**
- **Motor Racing Events Act 1990**
- **Police Powers and Responsibilities Act 2000**
- **State Penalties and Enforcement Act 1999**
- **Summary Offences Act 2005**
- **Tow Truck Act 1973**
- **Transport Operational (Road Use Management) Act 1995 (TOURUM Act)**
- **Work Health and Safety Act 2011** and
- **Youth Justice Act 1992**

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2 Examination of the Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013

The principal policy objectives of the Bill are to:

- make consequential amendments to existing Queensland legislation to remove provisions that regulate heavy vehicles that will be covered by the Heavy Vehicle National Law (National Law) and to insert references to the National Law where relevant
- make a small number of changes to the application laws for the Heavy Vehicle National Law Act 2012 (HVNL Act), which are needed as a result of the Heavy Vehicle National Law Amendment Act 2013 (HVNLA Act) and to address some specific issues about the way the National Law will apply in Queensland and
- include transitional provisions specific to Queensland to clarify the operation of the general savings and transitional provisions in the National Law.

The Bill also contains provisions which allow heavy vehicle registration to continue under Queensland legislation until the commencement of the registration chapter in the National Law.³

The Department of Transport and Main Roads (TMR) has advised that it is intended that the operational provisions of the Heavy Vehicle National Law Act 2012 will be proclaimed on 1 July 2013. This is also the date for national implementation to ensure a smooth transition for industry. This proclamation date is dependent on the ability of other jurisdictions to achieve passage of their own application legislation, and completion of implementation tasks such as the information communications technology systems to ensure the Regulator’s readiness to commence full operations.⁴

On 9 November 2012, the Standing Council on Transport and Infrastructure (SCOTI) agreed that all jurisdictions will have application laws in place to enable full operations to commence from 1 July 2013, while noting that this excludes Western Australia (WA) which is not a signatory of the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform (2011) but has provided in principle support.

2.1 Policy issues

2.1.1 Changes to application laws required as a result of the Heavy Vehicle National Law Amendment Act 2013

The Bill introduces a small number of changes to the application laws which are needed as a result of the HVNLA Act. For example, the provisions specify that under the National Law as adopted in Queensland:

⁴ TMR, Written briefing to the Committee dated 21 December 2012, p.2.
• police officers may use force against persons in the circumstances provided for in the Police Powers and Responsibilities Act 2000 (see section 491 of the National Law)

• authorised officers are able to use force against property (not persons) for certain powers in the National Law, such as moving heavy vehicles or gaining entry to places (see section 492 of the National Law) and

• authorised officers are able to seize heavy vehicles, for example if they are evidence of an offence against the National Law (see section 552 of the National Law).

The Bill also inserts a provision in the application law allowing an authorised officer to require a driver of a heavy vehicle to produce their driver licence for compliance purposes and inserts provisions to require that the police commissioner’s approval be obtained prior to a blue light being fitted to a heavy vehicle.\(^5\)

At the Public Briefing held on 26 March 2013, Mr Mark Cridland, TMR, advised the Committee that the proposed changes to application laws relate to the Queensland-specific aspects of the legislative scheme that apply to the National Law rather than the National Law itself.

To give you an example of some of the minor changes here, the National Law allows the application law of each jurisdiction to deal with the use of force against property and people. This Bill provides that in Queensland force against a person can only be used by police officers and it can only be done in circumstances already permitted under the Police Powers and Responsibilities Act 2000. So this means no change to the existing policy for the use of force by Queensland police officers. The Bill also permits authorised officers, known as transport inspectors, to use force against property to enforce certain provisions of the National Law. This is entirely consistent with the powers currently afforded to transport inspectors under Queensland legislation and represents no change to policy.

The Bill will also change how the National Law will operate in Queensland with respect to obtaining the consent of the Queensland Police Commissioner for the fitting of blue flashing warning lights on heavy vehicles. This is aimed at preserving the current arrangements which are in place with the Police Commissioner and ensuring the consistency and approval of the use of blue lights, as would make sense.\(^6\)

In response to a question from the Committee Chair, Mr Howard Hobbs MP, regarding an authorised officer’s power to require a driver of heavy vehicle to produce a driver licence for compliance purposes, Ms Kelli Cumming, TMR, clarified that:

Under the National Law there is a requirement for a person to produce a document required to be kept under the National Law. The requirement to keep a driver’s licence is actually under a state based law. So we needed to have a provision there to enable authorised officers to continue to require the production of a driver’s licence for the purposes of the Heavy Vehicle National Law.\(^7\)

The Chair also sought clarification on the provision requiring approval be obtained prior to having a blue light fitted to a heavy vehicle. Mr Cridland, TMR, responded:

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\(^6\) Mr Mark Cridland, Deputy Director-General, TMR, Public Briefing held on 26 March 2013, *Transcript*, p.2.

\(^7\) Ms Kelli Cumming, Acting Director, Heavy Vehicle Strategy, TMR, Public Briefing held on 26 March 2013, *Transcript*, p.3.
My understanding of the current situation in Queensland is that to use a blue light on any type of vehicle other than an emergency vehicle you need the permission of the Queensland Police Commissioner. In the National Law that is not the case. What we are protecting here is the current arrangements. So we are maintaining that say for the Commissioner to determine when blue lights can be used on either light or heavy vehicles. This, for us, is a slight departure—I guess that is the best way to put it—from the National Law. But we wanted to maintain the Police Commissioner’s say on that.  

Ms Cumming provided the following example:

An example might be where a rural or regional fire brigade may request to fit blue lights, because at the moment the fitting of blue lights is not allowed except for particular vehicles. This would maintain the situation where the Police Commissioner has the right of veto, I suppose, to which vehicles blue flashing lights can be fitted to, and that is pretty much to preserve public safety really and the recognition of a flashing blue light in an emergency situation.... It is very unlikely [to be fitted on heavy vehicles] and more often than not it would relate to requests for emergency type vehicles.

Committee Comment

The Committee is satisfied that the changes to application laws required as a result of the Heavy Vehicle National Law Amendment Act 2013 are consistent with current Queensland legislative provisions and represent no change to policy.

2.1.2 Transitional Provisions in Queensland application laws

The Bill inserts new provisions in the Queensland application laws which provide for the operation of the general savings and transitional provision in the National Law. The amendments will ensure that the following are not affected by the commencement of the National Law in Queensland (scheduled for 1 July 2013):

- the enforcement and prosecution of heavy vehicle offences that were committed under the Transport Operations (Road Use Management) Act 1995 (TORUM Act) and
- particular orders that were made under the TORUM Act and which are still in effect at the time of commencement of the National Law.

The Bill also inserts a declaratory regulation-making power that will enable examples of matters such as accreditations, permits, and exemptions that exist under the TORUM Act to be identified in a regulation. The Explanatory Notes to the Bill state that this “will put beyond doubt that these matters are intended to be transitioned to exist under National Law via a general savings and transitional provision in the National Law”.

Chapter 2 of the National Law will not be proclaimed to come into force until the necessary national information and telecommunication infrastructure has been put in place by the National Heavy

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8 Mr Mark Cridland, Deputy Director-General, TMR, Public Briefing held on 26 March 2013, Transcript, p.3.
9 Ms Kelli Cumming, Acting Director, Heavy Vehicle Strategy, TMR, Public Briefing held on 26 March 2013, Transcript, p.4.
Vehicle Regulator (the Regulator) to manage national registration. Until that time, the Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010 will continue to apply to registration of heavy vehicles whose garage address is in Queensland. The Bill contains provisions to assist in interpreting the National Law (other than chapter 2) as it relates to registration. The Explanatory Notes state that “the effect of these provisions is that until the proclamation of chapter 2, registration of a heavy vehicle under a participating jurisdiction’s existing registration laws is taken to be registration for purposes other than Chapter 2.”\(^\text{12}\)

Mr Mark Cridland, TMR, explained to the Committee that:

> This means that Queensland industry can continue to register their trucks in the usual way, through various face-to-face or electronic channels that are currently offered by the Queensland Department of Transport and Main Roads. These transitional arrangements are necessary to ensure that references to registration within the National Law are taken to mean heavy vehicle registration issued by the relevant state or territory under their state based legislation. This aspect of the National Law will transition to the Regulator once the Regulator has set up their necessary technology and telecommunications infrastructure to administer a registration scheme.\(^\text{13}\)

**Committee Comment**

The Committee is satisfied that the proposed new provisions in the Queensland application laws, which provide for the operation of the general savings and transitional provision in the National Law, are appropriate.

### 2.1.3 Consequential amendments

The Bill principally makes amendment to the TORUM Act but also amends the Police Powers and Responsibilities Act 2000 and makes minor consequential amendments to other legislation. While most aspects of heavy vehicle regulation will be dealt with under the National Law some matters will continue to be dealt with in State-based legislation. The Explanatory Notes state that all States and Territories will retain aspects of heavy vehicle regulation in their State-based laws in a similar way to Queensland.\(^\text{14}\)

The Explanatory Notes provide the following detail:

> The following matters will continue to be dealt with under the TORUM Act:

- heavy vehicle driver licensing (including accreditation of driver trainers for heavy vehicle driver licensing)
- transport of dangerous goods
- road rules and matters related to traffic movement and
- drink driving and drug driving.

Regulation of the tow truck industry will continue under the Tow Truck Act 1973. Compulsory Third Party insurance for heavy vehicles will continue to be regulated under the Motor Accident Insurance Act 1994.

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\(^{13}\) Mr Mark Cridland, Deputy Director-General, TMR, Public Briefing held on 26 March 2013, *Transcript*, pp.2-3.

The Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation 2005 will continue to be used to accredit:

- approved inspections stations, at which heavy vehicles are inspected to ensure that they meet vehicle standards
- approved examiners, who conduct the inspections of heavy vehicle at approved inspections stations and
- approved persons, who certify modifications to heavy vehicles.

Authorised officers appointed under the Transport Operations (Road Use Management) Act 1995 (which includes all Queensland police officers) will continue to have enforcement powers for heavy vehicles in relation to the matters outlined above which are not covered by the National Law. For example, authorised officers will continue to have powers to stop, inspect and search heavy vehicles for matters associated with driver licensing, driver training, the transport of dangerous goods, requirements for tow trucks and compulsory third party insurance.

The Queensland Police Service will continue to enforce breaches of the Queensland Road Rules and drink and drug driving by drivers of heavy vehicles.  

At the Public Briefing Mr Cridland, TMR, further explained that:

*In most of these areas the regulation and services will continue to be provided for both light and heavy vehicles by the Department of Transport and Main Roads in Queensland, along with the Queensland Police Service. So it makes sense for those matters to stay in the state law. Over time, the department will work with the National Heavy Vehicle Regulator on the reform agenda further and see if there are any additional matters that we can transition to national law from state law as things kick through.*

### Committee Comment

The Committee is satisfied that the consequential amendments contained within the Bill are appropriate and notes that the Department will continue to work with the Heavy Vehicle Regulator to ensure additional matters are transitioned to the National Law from State Law where appropriate.

#### 2.2 Policy issues relating to the National Law but not specifically relevant to this Bill

A number of submissions raised policy issues that are not specifically relevant to this Bill but are relevant to the National Law. These issues relate to fatigue management and registration of heavy vehicles which were considered by the Committee in its previous examinations of the Heavy Vehicle National Law Bill 2012 and the Heavy Vehicle National Law Amendment Bill 2012 and are discussed again below.

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16 Mr Mark Cridland, Deputy Director-General, TMR, Public Briefing held on 26 March 2013, *Transcript*, p.2.
2.2.1 Fatigue management

Mr Ken Wilkie (owner operator) and the National Road Freighters Association (NRFA) have both submitted that they do not support the fatigue management provisions adopted in the National Law. Both parties have made submissions on the same issue to previous inquiries held by the Committee on the Heavy Vehicle National Law. These submitters prefer the flexibility afforded by the WA fatigue management scheme.17

TMR previously provided the following advice to the Committee in response to submissions proposing the WA fatigue management scheme would be a better model for work and rest hours:

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

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

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

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

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

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

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

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17 Mr Ken Wilkie, Submission No.1 and NRFA Submission No.2.
Transport and Other Legislation (HVNL) Amendment Bill 2013

Examination of the Bill

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Heavy vehicle driver fatigue is a significant road safety issue, with many heavy vehicle incidents occurring due to driver fatigue. The fatigue management provisions of the HVNL have been developed in consultation with independent fatigue experts and are designed to provide an appropriate balance between promoting industry productivity and efficiency, driver wellbeing and road safety.18

Committee Comment

The Committee notes the concerns raised in submissions on the perceived lack of flexibility in the regulation of fatigue management under the National Law.

The Committee supports the work being undertaken by the Regulator to develop work and rest hour templates, such as the proposed livestock transport template, which aim to provide increased flexibility for transport operators with specific requirements.

2.2.2 Registration of heavy vehicles

Suncorp Group Limited (Suncorp) has raised a number of issues in relation to the registration of heavy vehicles under the National Law in its submission (and in previous submissions to this Committee and its predecessor, the Transport and Local Government Committee, in their examination of the HVNL and HVNLA Bills over the last 15 months).19 While Suncorp is supportive of the Heavy Vehicle National Law it has expressed concerns relating to potential conflicts between the national registration scheme and state or territory based Compulsory Third Party (CTP) schemes.

The primary concern is the decoupling of the national registration scheme of heavy vehicles and CTP processes in many jurisdictions where the two are currently administratively and inherently linked. Suncorp understands this issue will be considered in the proposed Heavy Vehicle National Law Regulations. However, it is timely to repeat the potential issues that decoupling is likely to raise in respect to coverage, premium compliance and administrative issues for the Queensland and other Australian CTP schemes.20

Provisions dealing with the registration of heavy vehicles in Chapter 2 of the HVNLA Bill (passed by the Queensland Parliament on 14 February 2013 and assented to on 26 February 2013) will not be proclaimed into force until the necessary national information and telecommunication infrastructure is in place. Until that point, the current local laws will continue to apply to manage registration functions. The application laws enacted by states and territories may modify or supplement terms used elsewhere in the National Law to ensure the appropriate integration of the local registration laws21. The registration provisions in the HVNLA Bill set the broad outline for how the registration scheme will function in the future.

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20 Suncorp, Submission No.3, p.2.
In December 2012, TMR advised the Committee that:

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

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

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

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

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

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

At the public briefing held on 26 March 2013, the Committee Chair, Mr Howard Hobbs, MP asked the Department whether there had been any further discussion about the concern that people in the trucking industry may want to register their vehicles in a different state to minimise cost.

Mr Cridland, TMR, responded:

"Yes. There are a couple of processes underway. One is what is called the annual determination, which looks at nationally set registration fees for heavy vehicles which the ministers each year consider, and they usually come into force around 1 July each year. There is a review of the process that determines those registrations and road user charges happening as we speak via the National Transport Commission, and my understanding is that that will look to report back towards the middle of 2014 with a new process. So, in

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terms of the current determination process, even though the registration fees are set each year, the actual process that determines those registration fees is now in its seventh year, I understand. So it is time for that to be updated and look behind that at generally the configuration of the industry to see whether the determination process is right. So the registration fees will continue to be set nationally. So in terms of the advantage of going jurisdiction shopping, that really is not an option because all the ministers agree to the chart. What was raised last time, if I recall, was that a jurisdiction had decided not to pass on those increases – particularly the West Australian jurisdiction had decided not to do that. That is an issue that ministers will have to address when the new determination kicks in probably in the middle of next year.\textsuperscript{24}

\textbf{Committee Comment}

The Committee has noted the issues consistently raised by Suncorp regarding heavy vehicle registration. The Committee has been advised that the Standing Council on Transport and Infrastructure endorsed the regulations on 25 February 2013 but they are not yet publicly available. The Committee considers that this issue will need to be monitored as the National Laws are implemented throughout the country.

For further information on the proposed regulations see section 2.3 of the Report below.

\section*{2.3 Heavy Vehicle National Law regulations}

Section 730 of the Heavy Vehicle National Law Act 2012 requires regulations to be made by the Queensland Governor on the unanimous recommendation of responsible Ministers.

TMR has advised the Committee that National Regulations are planned for commencement at the same time as the National Law (currently anticipated for 1 July 2013). Preliminary drafts of the national regulations were publically released by the National Transport Commission on 28 February 2011. This coincided with the release of the Heavy Vehicle National Law Draft Regulatory Impact Statement and an exposure draft of the National Law, with public comments submitted by 6 May 2011. Fourteen industry representatives (including peak body representatives) have continuous access to all drafting instructions.

The full suite of draft National Heavy Vehicle Regulations have been considered by the Parliamentary Counsels’ Committee SCOTI. They include the:

- Heavy Vehicle (Fatigue Management) National Regulation 2013
- Heavy Vehicle (General) National Regulation 2013
- Heavy Vehicle (Mass Dimension and Loading) 2013 and
- Heavy Vehicle (Vehicle Standards) National Regulation 2013.\textsuperscript{25}

The Committee has been advised by TMR that SCOTI endorsed the regulations on 25 February 2013 but they are not yet publicly available. The next stage is for each of the individual states and territories to progress the legislation.

\textsuperscript{24} Mr Mark Cridland, Deputy Director-General, TMR, Public Briefing held on 26 March 2013, Transcript, pp.4-5.

3 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 considered the fundamental legislative principles issues stemming from the Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013 and identified several potential departures from these principles which are explored below.

Issues of fundamental legislative principle sufficiently canvassed in the fundamental legislative principle section of the Bill’s Explanatory Notes have not been further raised in this Report.

3.1 Rights and liberties of individuals

3.1.1 Provision of information – Privacy of personal information

Clause 15 inserts proposed new section 42 into the HVNL Act 2012 which authorises the chief executive or an officer or employee of the department to provide to the Regulator with information, including personal information and information given in confidence, that is reasonably required by the Regulator for administering the law.

The section authorises the provision of information despite any other Act or law and provides that provision of the information is exempt from liability under a contract, agreement, understanding or undertaking or because of breach of any duty of confidence. Therefore, section 42 permits very broad disclosure of information both at the information holder’s initiative and at the Regulator’s request.

The Explanatory Notes state that the ‘protected information’ provisions of the National Law will apply to a disclosure of information under section 42, for example, sections 728 ‘Duty of confidentiality’ and 729 ‘Protected information only to be used for authorised use’ (National Law). These provisions will help preserve the confidentiality of the information once it has been provided to the Regulator.

Participants in the heavy vehicle industry have rights of privacy to personal information. Although not specifically listed in the Legislative Standards Act 1994, section 4, privacy has been recognised as a right or liberty of individuals that the Legislative Standards Act 1994 is designed to protect27. As a general principle, incursions into privacy of personal information require justification related to the purpose of the Bill.

The Committee sought advice from the Department about whether it is appropriate for provision of personal or confidential information for administration of the heavy vehicle national law scheme to override other legal obligations, for example, a legally enforceable duty of confidence.

The Committee sought advice from the Department on the issues outlined above. The Department advises that it believes that the provision has sufficient regard to the rights and liberties of drivers and others to whom the information relates because:

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26 Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013, Explanatory Notes, p.11.
27 See, for example, Alert Digest 13 of 2008 of the former Scrutiny of Legislation Committee, pp. 12 – 14.
• the information must be reasonably required by the Regulator for the purpose of administering the heavy vehicle national law. This would prevent information being disclosed that was not necessary for the administration of the law.

• information disclosed to the Regulator is subject to the safeguards contained in the national law. For example, section 728 imposes a duty of confidentiality and any unauthorised disclosure of the information attracts a large fine. Section 729 requires that use of the information be restricted to authorised uses as defined in the national law.

• proposed section 42 is necessary to make a seamless transition from state-based regulation of heavy vehicle operations to regulation by the National Heavy Vehicle Regulator. In the absence of such a provision, the Regulator would need to potentially source the required information relating to existing heavy vehicle operations directly from industry – for example information regarding an existing heavy vehicle fatigue accreditation currently held by the department would need to be obtained again directly from the relevant trucking company. This would not only be administratively untenable, it could provide an additional layer of red tape for industry in having to provide information again that had already been provided in order to secure the accreditation. This would be contrary to one of the desired outcomes of the heavy vehicle reforms – to cut red tape for industry.²⁸

Committee Comment

The Committee is satisfied that there are sufficient safeguards and constraints on the provision of information (Clause 15) to ensure the confidentiality of information. The Committee notes that the flow of information under the terms described in this legislation is essential for the smooth transition to regulation by the National Heavy Vehicle Regulator.

3.1.2 Protection against self-incrimination – production of a driver’s licence

Clause 15 inserts new section 39, ‘Power to require production of driver licence’. As a result of proposed new section 39, a driver of a heavy vehicle who is required by an authorised officer to produce for inspection a driver licence may not rely on the excuse that providing the licence might tend to incriminate him or her. Breach of section 39 is punishable by a penalty of up to $4950.

As a matter of fundamental legislative principle, legislation should provide appropriate protection against self-incrimination. This issue of fundamental legislative principle is raised in the Explanatory Notes which provide the following reasons as to why it is considered appropriate that a person not have the privilege against self-incrimination:

• the driver of a heavy vehicle is required to be licensed to drive the vehicle and as a professional driver, must carry their licence at all times;

• the driver licence is a document issued as part of a regulatory scheme to ensure appropriate licensing of drivers;

• production of the driver licence is necessary to secure compliance with the requirements of the National Law for drivers of heavy vehicles’.²⁹

The Explanatory Notes also point out proposed new section 39 is supplementary to section 568 of the National Law.

The Committee sought advice from the Department about the behaviour intended to be addressed by section 39(3)(b), and whether this section overrides protections against self-incrimination.

The Department advises that:

...section 39(3)(b) has been included to prevent a heavy vehicle driver suspected of having committed an offence, from refusing to produce the driver licence on the basis that the provision of his driver licence would identify him as the one against whom proceedings may be commenced. As the explanatory notes outline, the provision of the driver licence is necessary to secure compliance with the national law and therefore section 39(3)(b) is integral to enforcement of the law.\(^30\)

**Committee Comment**

The Committee is satisfied with the explanation provided by the Department as to why a driver of a heavy vehicle will not be able to rely on an excuse that providing their licence might tend to incriminate them and notes that the provision of a driver licence by the driver of a heavy vehicle is necessary to ensure compliance with the National Law.

### 3.2 The institution of parliament

#### 3.2.1 Amendment of an Act only by another Act and Delegated legislative power subject to scrutiny by the Legislative Assembly

Clause 18 inserts proposed new section 50 which creates a head of power for a declaratory regulation to be made. A declaratory regulation may declare the extent to which the general savings and transitional provision (section 748 of the National Law), applies to a thing done under the former legislation before the commencement. A declaratory regulation may therefore have the effect of amending the National Law and on this basis it would be a Henry VIII provision.

The Explanatory Notes identify this potential issue of fundamental legislative principle and lists the following reasons for why fundamental legislative principle considerations have been adequately taken into account:

- *the purpose of the regulation-making power is to demonstrate the intended operation of the general savings and transitional provision in the National Law (see s. 748). It is envisaged that the regulation will do this by identifying specific examples of more significant Queensland instruments intended to be covered by the operation of section 748. This is intended to give industry further assurance of the ongoing validity under the National Law of matters such as fatigue, mass, and maintenance accreditations, and permits or guidelines that have been issued under Queensland legislation and are in existence at the time of the commencement of the National Law; and*

- *any regulation made under this head of power cannot have retrospective operation and also cannot operate to the disadvantage of any person.*\(^32\)

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Section 50 imposes some limitations on a regulation made under the section, in that, a declaratory regulation may not have retrospective operation, must declare it is a declaratory regulation and must not operate to decrease a person’s rights or impose liabilities on a person.

The former Scrutiny of Legislation Committee recognized there were situations when the use of a Henry VIII provision may be justified if there was a genuine need which included transitional provisions and national schemes of legislation32 and they recommended limiting transitional Henry VIII provisions as follows:

- the transitional phase for legislation should be limited to a maximum of 2 years and therefore transitional regulation making powers should be subject to a sunset clause; and

- all regulations made pursuant to transitional regulation making powers should be subject to sunset clauses which bring about their expiry at the same time as the head of power expires33.

Proposed new section 51(6) provides ‘This section and a transitional regulation expire 2 years after the day the regulation commences.’ However there is no such provision included in section 50.

The Committee sought advice from the Department about whether there is a genuine need for proposed section 50.

The Department provided the following advice:

...section 50, unlike section 51 is not a transitional provision of the nature that requires a sunset provision. This is because section 50 envisages a regulation which is merely declaratory in nature. It is intended to give Queensland-specific examples of the intended operation of the general savings and transitional provision in section 748 of the national law. As mentioned in the explanatory notes, these provisions are intended to give industry clear assurance of the ongoing validity of various accreditations, permits or guidelines that are in existence prior to the commencement of the national law. The declaratory regulation can do no more than what is achieved by section 748.34

Committee Comment

The Committee is satisfied with the explanation provided by the Department and notes that section 50 (Declaratory regulation-making power for general savings and transitional provision) does not require a sunset provision to be included due to the nature of the regulations made under the section (i.e. declaratory).

3.3 Explanatory Notes

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

The Explanatory Notes tabled when the Bill was introduced are fairly detailed and generally provide the information required by section 23 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

34 29 April 2013, TMR response to FLP Report, p.3.
Appendices

Appendix A – List of witnesses at the Public Briefing Tuesday 26 March 2013

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<td>Deputy Director-General, Policy Planning and Investment, Department of Transport and Main Roads</td>
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<td>Ms Kelli Cumming</td>
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<td>Acting Director Heavy Vehicle Strategy, Department of Transport and Main Roads</td>
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<td>Ms Cathy Tonkin</td>
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<td>Manager Transport Legislation Reform, Department of Transport and Main Roads</td>
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Appendix B – List of submissions

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<td>National Road Freighters Association</td>
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<td>3</td>
<td>Suncorp Group Limited</td>
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