

Heavy Vehicle National Law Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Heavy Vehicle National Law Amendment Bill 2015.

Summary

The *Heavy Vehicle National Law Act 2012* (the HVNL) provides for the consistent regulation of heavy vehicle operations across most of Australia and establishes the National Heavy Vehicle Regulator (NHVR) to administer the HVNL.

The HVNL establishes a single, national system for the regulation of heavy vehicles and is the cornerstone of the Council of Australian Governments' (COAG) national heavy vehicle reform agenda.

The HVNL, which commenced on 10 February 2014, provides a single national law for heavy vehicles which ensures industry can operate across state borders without the encumbrance of conflicting regulatory requirements.

The HVNL regulates matters about the operation of heavy vehicles such as the mass and dimensions of heavy vehicles, vehicle safety standards, the work and rest hours of heavy vehicle drivers and other measures to manage fatigue, heavy vehicle accreditation, speed compliance and the use of intelligent transport systems. The HVNL also includes chain of responsibility offences, enforcement powers and administrative provisions.

The Heavy Vehicle National Law Amendment Bill 2015 (the Bill) amends the HVNL and provides for the implementation of further national reforms for the heavy vehicle industry by facilitating the introduction of electronic work diaries (EWDs) and greater harmonisation of penalties under the HVNL. The Bill also makes a number of minor and technical amendments identified by the HVNL maintenance process managed by the National Transport Commission (NTC) that aim to improve safety outcomes and correct minor errors.

Policy objectives and the reasons for them

The Bill contains a range of amendments to implement key heavy vehicle policy initiatives endorsed by the Transport and Infrastructure Council (the Council), including:

- amendment to electronic work diary (EWD) provisions to enable the effective implementation of an approval and monitoring regime that will support the use of EWDs by the heavy vehicle industry; and
- amendment to a number of penalty provisions to ensure consistency and equity in penalty amounts for offences contained in the HVNL. The revised penalties were identified as part of development of a National Penalties Framework prepared by the NTC.

The Bill also includes a range of minor and technical amendments identified as part of the HVNL maintenance program that will:

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

Achievement of policy objectives

Implementation of electronic work diary

EWDs provide an alternative method to the written work diary for fatigue-regulated heavy vehicle drivers to record their work and rest hours. Although EWDs are already recognised in the HVNL and in previous road transport legislation, no EWD has yet been approved by the NHVR, or previously by any other road transport agency.

In 2011-2013, an EWD Operational Pilot was conducted with a small number of heavy vehicle operators and drivers to develop the technical specification for the EWD. As an outcome of the Operational Pilot, a functional and technical specification for EWDs was developed which resulted in the EWD shifting from being a standalone in-vehicle device, to a web-based system using the mobile data network and Global Navigation Satellite Systems (GNSS).

This approach is expected to transform compliance and enforcement practices, enabling operators to better manage driver fatigue, and for regulators and enforcement agencies to access EWD records remotely through wireless technology.

There have been significant technology developments since the provisions for EWDs were first introduced into national model fatigue laws and subsequently the HVNL. Following the development and testing of the functional and technical specification for the EWD, the existing EWD provisions were assessed to ensure their effectiveness and compatibility with the technical design of the system and the international standards for regulatory telematics.

The EWD amendments seek to:

- ensure the EWD requirements in the HVNL are keeping pace with changes in technology and international standards for regulatory telematics;
- ensure regulatory time is counted to the minute, not rounded in 15 minute blocks, to reflect the real-time recording of EWD;
- address the treatment of small breaches (of eight minutes or less) for drivers whose time is recorded in an EWD;
- reduce red tape by facilitating the integration of regulatory, fatigue management and commercial systems, and by removing the handling and storage of paperwork;
- improve privacy safeguards; and
- improve road safety outcomes through:

- increased compliance with work and rest hour regulations;
- improved systems to manage fatigue and to meet chain of responsibility obligations; and
- more efficient enforcement practices.

The treatment of small breaches acknowledges that EWDs are precise systems and users do not have the same opportunity to round their entries as drivers using written work diaries have. It is not intended that drivers have a right to work for an additional eight minutes, but instead the Bill makes provision to apply no penalty where a driver nominally exceeds a maximum work time with certain limitations. The period of eight minutes reflects current fatigue expert advice that this represents a nominal fatigue risk and that the excess time worked must be offset by the driver in the longer term to meet the seven day and 14 day work periods. This ensures that the approach does not incentivise the excess period of eight minutes as additional time that the driver is entitled to work.

The allowable eight minute excess period will not apply to longer work period requirements such as seven days and 14 days. This will mean that drivers who take advantage of the up to eight minute excess period in a 24 hour period, must ensure they reduce their working hours by the same amount of time elsewhere within the seven day and 14 day periods or they will be in breach of maximum work times for those longer work periods.

This approach ensures that occasional small breaches of nominal fatigue risk are not the focus of enforcement activities and prosecution and will limit the ability of drivers, schedulers and operators to factor an additional period of eight minutes into driver schedules.

Harmonise penalties to achieve consistency and equity

In 2013-2014, the NTC undertook a national review of the penalties contained in the HVNL and developed a national penalties framework. The national penalties framework established the underpinning principles for establishing the appropriate penalty level for offences, taking into account comparable state and territory penalties and identified anomalies with the current penalty levels for some offences within the HVNL. The Bill includes a number of amendments to penalties to address the identified inconsistencies.

The NTC has developed a penalties matrix to help ensure that any future penalties for offences set in the HVNL will be justifiable and consistent with existing penalties.

Reduce administrative or regulatory burden for the NHVR and/or the heavy vehicle industry

The Bill contains a range of amendments that will remove unnecessary administrative requirements for the NHVR and reduce the regulatory burden for the heavy vehicle industry, including:

- excluding nominated minor vehicle modifications from the requirement to be approved by the NHVR or an approved vehicle examiner;
- removing the requirement for the NHVR to re-gazette a notice where the only change is adding and/or amending routes. The requirement for the NHVR to publish the amendments on its website remains;

- making provision for the NHVR to include route and condition information in a notice by a map or a list;
- removing the requirement for a label to be fitted to an approved EWD; and
- removing the requirement for the operator of a heavy vehicle that has been issued with a defective vehicle notice, where the vehicle has since been repaired, to seek the permission of an authorised officer to drive the vehicle for the purpose of having the vehicle defect notice cleared.

Clarify existing requirements to aid interpretation of the HVNL

The Bill will help clarify existing requirements for users of the HVNL by:

- providing further information and detail in a number of definitions contained in section 5 of the HVNL;
- including a new definition of *B-triple* to put it beyond doubt that a B-triple is considered a type of road train;
- providing an amended definition of *vehicle modification* which will help to clarify which types of vehicle modifications require the approval of the NHVR and those that can be approved by an approved vehicle examiner. It also provides clarity around how the requirements to have a vehicle modification approved under the HVNL operate with respect to the requirements of the Commonwealth's *Motor Vehicle Standards Act 1989*; and
- more clearly stating the obligations of responsible entities, operators and drivers with respect to complying container weight declarations.

Improve the enforceability of the HVNL

The Bill creates a number of new offences as well as amending certain enforcement provisions contained in Chapter 9 of the HVNL, including:

- creating a new offence for a person to tamper with a vehicle modification plate or label affixed to a heavy vehicle;
- creating a new offence for driving or operating a heavy vehicle without a required mass or dimension exemption;
- clarifying what information must be included in a vehicle defect notice and specifying how an authorised officer is to identify an unregistered vehicle on the defective vehicle label and vehicle defect notice;
- streamlining the process for how an authorised officer may withdraw a vehicle defect notice;
- clarifying that authorised officers do not have the power to issue formal warnings for a substantial, severe or critical risk breach of a maximum work requirement or minimum rest requirement by a driver of a fatigue-regulated heavy vehicle; and

- making provision for an authorised officer who is monitoring compliance with the HVNL, to enter a relevant place that is also a residence where the authorised officer has the consent of the occupier.

Address technical drafting issues

The Bill addresses a number of minor, technical drafting issues including:

- amending the purpose of Chapter 4 to state that the purpose of the chapter is to allow for the operation of heavy vehicles that are overmass and over dimension. The current purpose statement only references overmass heavy vehicles;
- including a reference in section 140 to provide that in addition to a condition to carry the notice, a condition imposed under sections 160 or 161 may also be included on a class 2 vehicle authorisation notice. This is consistent with the approach in sections 119, 125 and 146; and
- amending section 748 to effectively provide for the transition of Higher Mass Limit (HML) declarations and mass and dimension authorities.

Alternative ways of achieving policy objectives

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

In considering national heavy vehicle reform policy initiatives, the Council Ministers also consider how the effective implementation of policy initiatives can best be achieved and the potential need for legislative change over implementation through other administrative options.

The effective introduction of EWD and nationally harmonised penalties can only be achieved by amending the HVNL to update existing provisions to bring them into line with nationally agreed policy and technical specifications.

The policy objectives of reducing administrative or regulatory burden, clarifying existing requirements to aid interpretation of the HVNL, improving enforceability and addressing minor technical drafting issues can only be achieved by amending requirements that currently exist within the HVNL.

Estimated cost for government implementation

The implementation of the Bill is largely administrative in nature and will not involve significant costs. Any implementation costs will be met within existing budget allocations by the NHVR and state and territory agencies.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA) and is generally consistent with these provisions. However, the Bill includes a number of provisions that may be regarded as departures from FLPs. Clauses of the Bill in which FLP issues arise, together with the justification for any departure, are outlined below.

Rights and liberties of individuals (LSA Part 2 section 4)
Reverse onus of proof in criminal proceedings

Modifications of heavy vehicle

The new section 87A makes it an offence to tamper with a plate or label fitted or affixed to a vehicle under sections 86(2) or 87(3). A defence is provided if the defendant can prove that the tampering was done with the written permission of the NHVR.

Tampering with a modification plate or label is usually only permitted by the NHVR when the plate or label contains errors and needs to be corrected, repairs have to be carried out to the vehicle that require replacement of the plate or label, or the plate or label has been damaged or has faded and needs to be replaced.

It could be argued that the absence of written permission of the NHVR should be an element of the offence that must be proved by the prosecution beyond a reasonable doubt. However, it can also be argued that the existence of written permission of the NHVR is an exemption from what otherwise would be an offence and it is reasonable to impose this onus of proof on the defendant. The existence of written permission can easily be proved by the defendant by producing the written permission or a copy of the written permission from the NHVR.

Electronic work diary amendments

An amendment to section 725 provides that a document purporting to be made by an electronic recording system that constitutes, or includes as part of it, an EWD, is presumed unless the contrary is proved, to have been properly made by the system and to be a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system.

While this amendment reverses the onus of proof in criminal proceedings, it is considered reasonable from technical, operational and regulatory perspectives to presume that information collected by the technology is correct unless the contrary is proved.

This reversal of the onus of proof is considered necessary to facilitate prosecutions for breaching work and rest hour requirements while allowing for the evidence to be overturned if further evidence subsequently reveals a problem with the accuracy of the EWD data. The amendment is also consistent with a corresponding provision in section 724 for approved intelligent transport systems used for intelligent access conditions.

Executive Officer Liability

Schedule 4 of the HVNL imposes a deemed liability on executive officers of a corporation who knowingly authorise or permit an offence to be committed by the corporation. The Bill includes new offences in sections 313(3), 347, 728A and 729A listed in Schedule 4. The inclusion of these offences in Schedule 4 can be seen as limiting the rights and liberties of individuals by reversing the onus of proof. However, extending liability for offences to executive officers is intended to ensure parties in a position to control, influence, prevent or encourage on-road breaches are discouraged from such behaviour, and more importantly take active steps to prevent on-road breaches. Offences corresponding to or similar to the new offences already exist in Schedule 4.

The use of evidentiary certificates streamlines the administration of justice and provides cost savings through not having to call a witness for issues that are not in dispute.

Mistake of fact defence.

Electronic work diary amendments

The HVNL includes several offences for which the person charged does not have the benefit of the mistake of fact defence. Instead a reasonable steps defence is provided at section 618, which allows a person charged to attempt to prove that they did not know, or could not reasonably be expected to have known, of the relevant offence, and that they either took reasonable steps to prevent the offence or there were no steps they could reasonably have been expected to have taken to prevent the offence.

This is seen as an acceptable measure as the accused is best placed to prove that they took reasonable steps to prevent the contravention of the HVNL.

This approach is common through the HVNL and is consistent with the approach adopted for equivalent offences such as tampering with a speed limiter, tampering with an approved electronic recording system and keeping a relevant work and rest hours exemption notice.

A new offence in section 336A makes it an offence for a record keeper to fail to inform the NHVR if they know, or have reasonable grounds to suspect, an EWD had been tampered with. As with other similar existing offences in section 336 and section 337 of the HVNL, this offence cannot be defended with the mistake of fact defence. The exclusion of the mistake of fact defence may be seen as a limitation of the rights and liberties of individuals, as it reverses the onus of proof in a criminal proceeding.

In the case of these provisions, however, the reversal is seen as both fair and reasonable, as it can be prohibitively difficult for the prosecution to disprove mistake of fact and it is relatively easy for the accused to prove that they took reasonable steps to prevent the contravention of the HVNL.

Limiting the right of review for decisions

Defect notice amendments

The proposed new section 529A may potentially infringe on the rights and liberties of individuals, including that an administrative power is subject to appropriate review. The new section 529A replaces repealed sections 526(5) to 526(8) and provides for an authorised officer to give permission to use a heavy vehicle that is subject to a vehicle defect notice in limited circumstances.

The decision, or failure to make a decision, by an authorised officer under section 529A is not subject to internal review. Vehicle defect notices are an important tool to ensure the safety of all road users and as such road safety outcomes should take priority.

Similar decisions made by authorised officers to issue, amend or withdraw a vehicle defect notice are also not subject to review under the HVNL and were not previously subject to review under corresponding road transport laws. The power to issue a defect notice is an important safety measure to allow for the immediate restriction and, if necessary, prohibition of the use of unsafe heavy vehicles on public roads. Such an important decision is made for safety reasons and the balance of convenience favours requiring the relevant defect to be resolved, or concerns about the safety of the vehicle to be resolved, before the vehicle defect notice is cleared.

The NHVR has the power under section 530 of the HVNL to clear a vehicle defect notice if it decides that the vehicle is no longer a defective heavy vehicle.

This power of the NHVR is the appropriate mechanism to test the vehicle defect notice decisions made by authorised officers as it requires the NHVR to be satisfied that the vehicle is safe to be used on public roads. A more conventional administrative review process would not necessarily ensure that the heavy vehicle was safe before it was used on public roads.

Consultation

The Bill was developed by the NTC in consultation with officers from each state and territory government transport agency, the NHVR and peak industry associations. Consultation was also undertaken with the Australian Local Government Association and Transport Certification Australia, a government owned company responsible for providing assurance in the use of telematics and related intelligent technologies.

Stakeholders have indicated their support for the Bill.

Consistency with legislation of other jurisdictions

The HVNL is national scheme legislation that, once commenced in Queensland, will be applied in all participating states and territories, excluding Western Australia and the Northern Territory who currently do not participate in the scheme.

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

While Western Australia and the Northern Territory have not applied the national law, they have been consulted on the Bill.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that this Act may be cited as the *Heavy Vehicle National Law Amendment Act 2015*.

Clause 2 provides that the Act commences on a day to be fixed by proclamation. The date of commencement must be fixed by proclamation to allow any participating jurisdiction that does not automatically apply the HVNL sufficient time to arrange for the implementation of the amendments in this Act.

Part 2 Amendment of Heavy Vehicle National Law

Clause 3 provides that the amendments contained in Part 2 amend the *Heavy Vehicle National Law*. The *Heavy Vehicle National Law* is set out in a schedule to the *Heavy Vehicle National Law Act 2012*.

Clause 4 makes a number of amendments to definitions in section 5 of the HVNL.

A definition of *B-triple* is inserted and the definition of *road train* amended to ensure that it is clear that a B-triple is a type of road train and may operate under a class 2 heavy vehicle authorisation.

The definition of *component* is amended to clarify that adding or removing a component vehicle does not constitute a modification of a heavy vehicle for the purpose of Part 3.3.

The definition of *tamper* is amended to recognise the new offence for tampering with a plate or label fitted or affixed to a heavy vehicle that has an approved modification.

The clause also provides for references to new or amended definitions contained in specified sections within the HVNL.

Clause 5 omits the not yet commenced definition of *modification* in section 84 and inserts the new definition which defines *modification of a heavy vehicle* as meaning the addition or removal of components from the vehicle or a change from the manufacturer's specification for that vehicle. The change ensures that any modification to a heavy vehicle, and not just modifications that depart from vehicle standards or a vehicle standards exemption, need to be approved under Part 3.3. The clause also excludes modifications to a heavy vehicle that have already been approved under the *Motor Vehicle Standards Act 1989* of the Commonwealth to prevent the operator of the heavy vehicle having to obtain more than one approval for a modification to the vehicle.

Clause 6 inserts a new subsection (3) into section 85 to provide that the section does not apply to modifications that comply with a prescribed code of practice that expressly states that a modification of that type does not require approval. This clause will allow the NHVR in a prescribed Code of Practice to identify the types of modification to a heavy vehicle that do not adversely affect the safe operation of the heavy vehicle and therefore do not require approval by the NHVR or an approved vehicle examiner. It further reduces the burden on heavy vehicle operators and the NHVR.

A related amendment in the *Heavy Vehicle National Law Amendment Regulation* provides that the NHVR's Code of Practice for the Approval of Heavy Vehicle Modifications is the prescribed Code of Practice for the purpose of section 85 of the HVNL.

Clause 7 inserts a new section 87A that creates an offence for a person to tamper with a plate or label fitted or affixed to a heavy vehicle by an approved vehicle examiner or the NHVR. There is a defence available if the person can prove that the tampering was done with the written approval of the NHVR. This defence is necessary to allow for the NHVR to approve the removal of a plate or label if the heavy vehicle is further modified or it is no longer safe or practical for the plate or label to be fitted or affixed to the vehicle. A maximum penalty of \$3000 applies for a breach of this section.

Clause 8 amends section 94 to clarify the main purpose of Chapter 4. The clause replaces inconsistent terminology by replacing references to "mass limits" and the size of heavy vehicles with "mass requirements" and "dimension requirements". The clause also amends section 94(3) to expressly provide that in particular circumstances heavy vehicles may be allowed to operate on public roads despite not complying with mass and dimension requirements.

Clause 9 amends section 119 by omitting existing subsections (2) to (4) allowing for the NHVR to refer to a stated map in imposing a condition in a mass or dimension exemption (notice) that stated the areas or routes to which the exemption applied. Instead new subsections (2) to (4) are inserted that provide a stated map or stated list may be applied by reference into a mass or dimension exemption (notice), that road or travel conditions may be imposed by reference to a

stated map or stated list, and that a stated map or stated list may be amended by either the NHVR or the relevant road authority.

However, new subsection (5) provides that the relevant road authority, as defined in the renumbered subsection (7), may only amend a map or list in a way that affects a road if it is the road manager for that road or, if not the road manager for the road, it has been advised by the NHVR that the road manager has consented to the amendment.

The amendments ensure that both maps and lists may be incorporated by reference into a mass or dimension exemption (notice) and that road or travel conditions in these maps or lists can also be incorporated by reference. The power of the relevant road authority to add routes or amend road or travel conditions is limited to roads for which it is the road manager as defined in section 5 of the HVNL. This means that local government and similar roads can only be added to a stated map or stated list if the relevant road manager has consented to the route being added.

Clause 10 inserts a new section 119A that explains the process that the NHVR or relevant road authority must follow when a stated map or stated list applied by reference into a mass or dimension exemption (notice) under section 119, is amended. The new section 119A provides that amendments to a stated map or stated list are subject to the provisions in Part 4.7 of the HVNL that require road managers to consent to grants of exemptions that affect their roads (Section 118 and Division 2 of Part 4.7) and require grounds and notice of an amendment to a mass or dimension authority (notice) unless there are grounds for an immediate suspension (Division 3 of Part 4.7). The new section provides that an amendment to a stated map or stated list or a condition in a map or list must be made as if the notice that applies the map or list by reference is being amended.

The new section 119A further specifies that in some circumstances the general rule that Part 4.7 must be complied with when an amendment is made to a stated map or stated list does not apply. When the amendment to a map or list only adds an area or route, the new subsection 119A(2) provides that the NHVR is subject to the requirement under section 118 to obtain consent from the road manager but that there need not be any notice for the amendment. If the relevant road authority adds a route or area to a stated map or stated list, or removes a road or travel condition, it is not required to obtain consent from the road manager, as the road manager for the road will have given consent under section 119(5)(b) to the NHVR. The exceptions reduce red tape by removing the need in certain circumstances to identify grounds for the amendment and the need to give notice of the amendment before it is made.

Clause 11 amends section 140 by providing that a class 2 heavy vehicle authorisation (notice) must be subject to road or travel conditions required by a road manager in accordance with sections 160 and 161 and may be subject to other conditions, including a condition that the driver keep in their possession a copy of the notice. The amendment removes uncertainty about whether the NHVR is required to include road or travel conditions required by a road manager who has consented to the grant of the notice in a class 2 heavy vehicle authorisation (notice). The note explains that the types of road condition that a road manager may require the NHVR to impose on a class 2 heavy vehicle authorisation (notice) are those conditions of a type prescribed by national regulations.

Clause 12 amends section 142 by omitting the existing provision which allows for the NHVR to refer to a stated map in authorising routes or areas in a class 2 heavy vehicle authorisation (notice) when stating the areas or routes to which the exemption applies. It inserts replacement subsections that provide a stated map or stated list may be applied by reference into a class 2

heavy vehicle authorisation (notice), that road or travel conditions may be imposed by reference to a stated map or stated list, and that a stated map or stated list may be amended by either the NHVR or the relevant road authority. New subsection (6) provides however that the relevant road authority, as defined in the renumbered subsection (7), may only amend a map or list in a way that affects a road if it is the road manager for that road or it has been advised by the NHVR that the road manager has consented to the amendment.

The amendments ensure that both maps and lists may be incorporated by reference into a class 2 heavy vehicle authorisation (notice) and that road or travel conditions in these maps or lists can also be incorporated by reference. The power of the relevant road authority to add routes or amend road or travel conditions is limited to roads for which it is the road manager as defined in section 5 of the HVNL. This means that local government and similar roads can only be added to a stated map or stated list if the road manager (usually a local government) has consented to the route being added.

Clause 13 inserts a new section 142A which explains the process the NHVR or relevant road authority must follow when a stated map or stated list applied by reference into a class 2 heavy vehicle authorisation (notice) under section 142, is amended. The new section 142A states these amendments are subject to the provisions in Part 4.7 of the HVNL which require road managers to consent to grants of exemptions that affect their roads (section 139 and Division 2 of Part 4.7) and require grounds and notice of an amendment to a mass or dimension authority (notice) unless there are grounds for an immediate suspension (Division 3 of Part 4.7). The new section provides that an amendment to a stated map or stated list or a condition in a map or list must be made as if the notice that applies the map or list by reference, is being amended.

The new section 142A further provides that in some circumstances the general rule that Part 4.7 must be complied with does not apply. When the amendment to a map or list only adds an area or route the new subsection 142A(2) provides that the NHVR is subject to the requirement to obtain consent from the road manager, but that there need not be any notice for the amendment. However if the relevant road authority adds a route or area to a stated map or stated list or removes a road or travel condition, it is not required to obtain consent from the road manager as the road manager will have given consent under section 119(5)(b). The exceptions reduce red tape by removing the need to identify grounds for a map amendment and the need to give notice of the amendment before it is made.

Clause 14 inserts a new Part 4.6A, section 153A making it an offence for a person to use or permit to be used a restricted access vehicle on a road unless the road is one on which the vehicle is allowed to be used under a mass or dimension authority (being a notice or permit that allows a class 1, class 2 or class 3 heavy vehicle to operate on a public road) applying to the vehicle. A maximum penalty of \$6000 applies to a breach of this section.

A *restricted access vehicle* is defined as a heavy vehicle that together with its load exceeds specified dimension limits which are derived from the general dimension limits for a vehicle or combination in the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*. These specified dimension limits are 4.3 metres in height, 2.5 metres in width, and 12.5 metres in length for a single vehicle (other than an articulated bus), 18 metres in length for an articulated bus, and 19 metres in length for a combination. Any person who uses or permits to be used a heavy vehicle that exceeds these dimensions will be committing an offence under section 153A if the vehicle is used on a public road without a mass or dimension authority. The new offence will ensure that users of larger heavy vehicles will be sanctioned if they fail to ensure that the heavy vehicle has a mass or dimension authority or does not need such an authority to operate on public roads.

This new offence does not however apply to a class 2 heavy vehicle as defined in section 136 of the HVNL (a heavy vehicle such as a B-double, road train, livestock carrier, or vehicle carrier that complies with the mass and dimension requirements applying to the vehicle or a PBS vehicle). Users of a class 2 heavy vehicle will breach section 137 of the HVNL offence if they use this type of heavy vehicle on a road to which no mass or dimension authority class 2 heavy vehicle authorisation for the vehicle applies.

A heavy vehicle that would be a class 2 heavy vehicle as defined in section 136 of the HVNL but exceeds a mass or dimension requirement will be subject to the new offence in new section 153A if they do not have an appropriate mass or dimension exemption authority.

Clause 15 amends the definition of *complying container weight declaration* at section 189 by removing the requirement that the information in the declaration be in a form readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container, and instead requiring that it be written and easily legible. The form that the information is required to take is now included under the new section 192A inserted by clause 19.

Clause 16 amends section 190 to require the responsible entity for a freight container to ensure they provide a *complying container weight declaration* to the operator or driver of a heavy vehicle that will transport the freight container that also contains information in the form required under the new section 192A inserted by clause 19.

Clause 17 amends section 191 by inserting requirements that the operator of a heavy vehicle that will transport a freight container by road provides a *complying container weight declaration* to the driver of that heavy vehicle which also contains information in the form required under the new section 192A inserted by clause 19.

The Clause also omits and inserts a new section 191(3) that sets an obligation on the operator of a heavy vehicle that has transported a freight container by road to provide a fully compliant container weight declaration to another carrier – which includes another operator of a heavy vehicle or a person who will transport the freight container other than by road (such as a rail operator), and sets a penalty for failure to do so. The clause also inserts a new definition of *another carrier* into section 191(6) to cover both another operator of a heavy vehicle or another person who will transport the freight container other than by road. A maximum penalty of \$6000 applies to a breach of this section.

Clause 18 amends section 192 to require the driver of a heavy vehicle loaded with a freight container to keep the complying container weight declaration in a way that ensures information in the declaration is in the form required under the new section 192A inserted by clause 19.

Clause 19 inserts a new section 192A to prescribe the form of information in a container weight declaration. The information must be in a form readily available to the authorised officer who seeks to ascertain it while in the presence of the freight container. The information in the container weight declaration may be accessed by the authorised officer by obtaining documents by radio or mobile telephone or by other means. The information may be contained in more than one document and could be an email, a written sheet of paper, a placard fixed to the container or another document.

Clause 20 amends section 221 to omit the definitions *electronic work diary* and *electronic work diary label*, insert a new definition of *electronic work diary*, and amend the definition of *entry* to recognise that entries to an electronic work diary may be recorded in a way other than by writing. An *electronic work diary* in relation to a fatigue-regulated heavy vehicle is defined as all or part of an approved electronic recording system that is fitted to or used in relation to the vehicle to record information a driver of the vehicle is required by the HVNL to record in a

work diary for the purposes of the HVNL. The requirement for an EWD label to be attached to, or part of, an approved electronic recording system has been removed. An entry in a work record is defined as anything written or otherwise recorded in the work record.

Clause 21 amends the heading of section 246 to recognise the section applies only to written work diaries and inserts a new subsection 246(1) which provides the section only applies to drivers using written work diaries. It also renumbers existing sections 246(1) to 246(4) to sections 246(2) to 246(5).

Clause 22 inserts a new section 246A to provide for counting periods of less than 15 minutes when the driver of a fatigue-regulated heavy vehicle uses an EWD. With an EWD work time and rest time must be counted in 1 minute periods and a period of less than 1 minute must not be counted. A period of rest time of less than 15 minutes does not count towards a recognised period of rest. This means that drivers of fatigue-regulated heavy vehicles using an EWD must, like drivers using the written work diary, rest for at least 15 minutes to satisfy the requirements of the HVNL and the National Regulations.

Clause 23 amends section 249 by inserting new subsections 249(2)(c) and 249(3) which allow a minor risk breach of a maximum work time requirement prescribed in the regulations not to be treated as a minor risk breach or a contravention of sections 250 or 251 of the HVNL which makes it an offence for drivers of fatigue-regulated heavy vehicles not to comply with the standard hours. The amendment provides standard hours drivers using an EWD a period up to eight minutes excess in a 24 hour period without breach.

Clause 24 amends section 253(2) and inserts a new subsection 253(3). The amended subsection 253(2) allows a minor risk breach of a maximum work time requirement prescribed in the regulations not to be treated as a minor risk breach. The new subsection 253(3) provides that a minor risk breach prescribed for the purposes of the new subsection 253(2)(b) is a not a contravention of section 254 or section 256 of the HVNL which makes it an offence for drivers of fatigue-regulated heavy vehicles not to comply with the BFM hours. The amendment provides BFM drivers using an EWD a period up to eight minutes excess in a 24 hour period without breach.

Clause 25 amends subsections 292(1)(b) and 292(1)(c) to provide that the information contained in an EWD fulfils the requirement to carry a work diary under the law. The amendments remove the requirement for drivers to carry printouts of information from the past 28 days that are not stored in the EWD that the driver is currently using. This is because EWD functionality will ensure that the record keeper can electronically duplicate records stored by the driver's previous record keeper, thereby removing any requirements to carry printouts of records from a previous record keeper.

Clause 26 amends section 302(b) to require a driver to record information in an EWD only in a way that complies with the manufacturer's instructions, where there are any instructions.

Clause 27 amends section 305 to remove from subsection 305(4) a reference to a direction to use a written work diary made under section 313. This reflects amendments in clause 31.

Clause 28 amends section 307 to provide that only a driver who is his or her own record keeper is required to notify the NHVR when an EWD is filled up. The clause inserts a new subsection 307(3) to provide that the driver must, within a period required by the NHVR, ensure the EWD is examined and brought into working order, and sets a penalty for failure to do so. A maximum penalty of \$3000 applies to a breach of this section.

Clause 29 amends section 311 to provide that the record keeper who is not the driver must, when they become aware or have reason to suspect the EWD has been filled up, provide the

driver with the record in a way that makes the information readily available to the driver. The clause also inserts a new subsection 311(2)(c) to require the record keeper to notify the NHVR in the approved form that the EWD has been filled up. The amendments require the record keeper not to rely on drivers to notify them of an EWD being filled up. The amendments do not require the record keeper to give the driver a printout of removed information. The record keeper may instead give the driver the information electronically, provided it is readily available to the driver.

Clause 30 amends section 312 about what a record keeper who is not the driver must do to notify the driver (unless the driver has notified the record keeper under section 309) when they become aware or have reason to suspect that the EWD has been destroyed, lost or stolen. It also requires the record keeper give the driver an EWD that is in working order and make the information that was in the destroyed, lost or stolen EWD, readily available to the driver if it is accessible to the record keeper. The clause also inserts a new subsection 312(3) to require the record keeper to notify the NHVR in the approved form that the EWD has been destroyed, lost or stolen. Subsections 312(3) to 312(5) are renumbered as subsections 312(4) to 312(6) and amendments made to these subsections allow for the insertion of subsection 312(3). A maximum penalty of \$6000 applies for a breach of this section.

Clause 31 amends section 313 to provide what the record keeper who is not the driver must do to notify the driver (unless the driver has notified the record keeper under section 309) when they become aware or have reason to suspect that the EWD is not in working order or is malfunctioning. It also requires the record keeper to direct the driver to use a supplementary record and to give the driver information in a way that makes it readily available to the driver if that information relates to any period during the last 28 days and is not stored in the new EWD. The record keeper must also notify the NHVR in the approved form about the fault with the EWD and ensure the EWD is brought into working order and is not malfunctioning within the period required by the NHVR. A maximum penalty of \$6000 applies for a breach of this section.

Clause 32 amends section 319 by inserting a new subsection 319(2) to provide that a record keeper complies with the requirement in subsection 319(1) to record the driver's licence details, date on which the driver drives, and the registration number of each heavy vehicle driven, by having that information recorded in the EWD. Existing subsections 319(2) to 319(5) are renumbered 319(3) to 319(6).

Clause 33 amends section 321 by amending subsection 321(1)(b) to state that a work diary will not have duplicate pages if it is an electronic work diary. A new subsection 321(2) also provides that a record keeper complies with the requirements to record the driver's licence details by having that information recorded in the EWD. Existing subsections 321(2) to 321(7) are renumbered as subsections 321(3) to 321(8).

Clause 34 amends section 322 by amending subsection 322(3) to provide that a driver complies with the requirement in subsection 322(2) about giving a copy of the work diary entry recording information to the record keeper, if the record keeper is maintaining the information in the EWD. This amendment ensures that drivers do not have to give work diary entries to record keepers if the EWD automatically gives this information to the record keeper.

Clause 35 amends section 323 by inserting a new subsection 323(4) to provide that a driver who changes record keeper complies with the requirements in subsection 323(2) if the new record keeper is maintaining the information already recorded in the EWD. The new subsection 323(4) also provides that a record keeper is taken to comply with the requirement of subsection 323(3) if the record keeper maintains the information in the EWD.

Clause 36 amends section 324 by removing references to printouts of information from work diaries and instead requiring the record keeper to give to the driver the information in a way readily available to the driver. The record keeper may comply with the requirement by giving printouts or giving the information to the driver in a way that it can be stored in and used with another EWD.

Clause 37 inserts a new section 324A which requires the record keeper who is not the driver to provide a record held by the record keeper if requested by the driver. The record keeper must give a copy of the record as soon as reasonably practicable or make the record available to the driver. If the information is recorded in an EWD the record keeper must give the driver the information in a way that makes it readily available to the driver. A maximum penalty of \$1500 applies for a breach of this section.

Clause 38 amends the heading of section 326 to more accurately reflect the intent of the section which prohibits possessing or recording information in more than 1 work diary relating to the same period.

Clause 39 inserts a new section 336A creating an offence if the record keeper for the driver of a fatigue-regulated heavy vehicle knows, or has reasonable grounds to suspect, an EWD has been tampered with and the record keeper does not report the matter to the NHVR in the approved form within two business days. If a person is engaged by the record keeper to comply with this requirement then both parties are liable. The persons charged with the offence do not have the benefit of the mistake of fact defence but may rely on the reasonable steps defence. A maximum penalty of \$6000 applies for a breach of this section.

Clause 40 amends section 341 by inserting new subsections 341(6) and 341(7) and renumbering existing subsections 341(6) to 341(8) as subsections 341(8) to 341(10). The new subsection 341(6) provides that the requirement for record keepers to make or keep a record required to be made or kept under Division 3 of Part 6.4 of the HVNL includes a reference to maintaining an EWD if that record satisfies the Division 3 requirements. The new subsection 341(7) provides that the record keeper must, if the driver's work diary is an EWD, maintain a record of the information recorded in the EWD in a way complying with any conditions imposed by the NHVR when approving the EWD, or the manufacturer's instructions if any. A maximum penalty of \$1500 applies for a breach of this section.

Clause 41 amends section 343 to insert new subsections 343(2)(f) and 343(2)(g) and renumber existing subsections 343(2)(g) and 343(2)(h) to subsections 343(2)(h) and 343(2)(i). The new subsections require that the NHVR be satisfied the electronic recording system is capable of enabling the driver to send information to the record keeper and has a mechanism that at least once each day readily indicates to the driver whether information has been sent to the record keeper, before approving an electronic recording system.

Clause 42 amends section 344 by removing the requirement for the NHVR to give the applicant an EWD label that the holder of the approval can use to create a copy for attaching to a device that is or is part of the electronic recording system. Instead the NHVR will now only be required to give the applicant a numbered certificate of approval.

Clause 43 omits Part 6.4, Division 7, Subdivision 2 (Provisions about electronic work diary labels) and inserts a new Subdivision 2 (Using unapproved electronic recording system) to prescribe a single offence for a person using a device as an approved electronic recording system when they know or reasonably ought to know, that device is not an approved electronic recording system. Four offences are replaced with this single offence. Sections 348 to 350 of the HVNL are repealed by this amendment. A maximum penalty of \$10000 applies for a breach of this section.

Clause 44 amends section 355 by revising subsections 355(2), 355(3) and 355(6), omitting subsection 355(8), and renumbering subsection 355(9) as subsection 355(8). The revised provisions require the holder of an electronic recording system that constitutes an EWD or part of the system is an EWD, within a stated period to remove any electronic message on the system's visual display stating the system is or includes an EWD when notified by the NHVR that the approval has been cancelled. The new subsections 355(3) and 355(6) amend the requirements for the holder of the approval to notify other persons who are using the electronic recording system that the approval has been cancelled. The omission of subsection 355(8) removes a now unnecessary offence for not removing an EWD label when the approval for an electronic recording system has been cancelled. A maximum penalty of \$6000 applies for a breach of this section.

Clause 45 amends section 458 by removing reference to the four modules of heavy vehicle accreditation and the concessions available under the modules to simply provide that the NHVR may grant heavy vehicle accreditation.

Clause 46 inserts a new section 463(3) to impose a maximum period of three years for which the NHVR may grant heavy vehicle accreditation. The maximum period of three years was previously prescribed in the now amended section 458.

Clause 47 amends section 494 by replacing the definition of *relevant place* with a new definition that does not exclude a place or part of a place used predominantly for residential purposes. A definition of *residence* is also inserted to define a residence as a relevant place or part of a place mentioned in the definition of relevant place used predominantly for residential purposes.

Clause 48 amends section 495(1)(b) to allow authorised officers to enter a relevant place that is a residence for monitoring purposes if there is consent from an occupier of the place but retains the restriction on entering a residence without consent for monitoring purposes.

Clause 49 amends section 497(1)(d) to ensure the amendment in clause 47 to the definition of *relevant place* does not change the current restrictions on authorised officers entering residences for investigation purposes.

Clause 50 amends the definition of *defective vehicle label* and inserts definitions of *registration authority* and *vehicle identifier* in section 525. The definition of defective vehicle label is amended to provide that the identifying information to be recorded on the label is the vehicle's registration number or if it is not registered, a vehicle identifier for the vehicle. The new definition of *vehicle identifier* means a VIN (vehicle identification number), engine number, chassis number, or another identifying number issued by a registration authority (such as an unregistered vehicle permit number). The new definition of *registration authority* means an authority responsible for the registration of heavy vehicles.

Clause 51 amends section 526 to provide that an authorised officer may issue a major defect notice with one or more directions stating that the heavy vehicle that is subject to the notice must not be used on a road after the notice is issued other than to move it to one or more stated locations in one or more stated ways. These directions may include directions to move the vehicle to a safe location for initial repairs, to move the vehicle to another place for further repairs, and to move the vehicle to another place for an inspection so the vehicle defect notice may be cleared.

Section 526(5) to 526(8) are removed as the new sections 529A and 529B inserted by *Clause 55* now provide for authorised officers to give permission for the use of the heavy vehicle subject to a vehicle defect notice.

Clause 52 amends section 527(1)(b) to recognise the amendment made to section 526 by *Clause 51* that allows for an authorised officer to include one or more directions in a major defect notice about the use of the heavy vehicle subject to the notice.

The clause also amends section 527(1)(e) to remove the reference to a temporary identification number marked on the vehicle and provide for the vehicle's registration number, or if it is not registered a vehicle identifier for the vehicle, or the vehicle's make and category to be stated in a vehicle defect notice, to identify a defective heavy vehicle.

Clause 53 amends section 528(4) to omit a reference to section 531(4) and insert a reference to section 531(5) to reflect the amendments to section 531 made by *Clause 56*.

Clause 54 inserts a new section 528A that provides for an authorised officer to acquire required information about the identity of a heavy vehicle in either a defective vehicle label or a vehicle defect notice only if it is reasonably practicable and safe for the authorised officer to obtain the information. This ensures that authorised officers do not have to include vehicle identifier information in a defective vehicle label or vehicle defect notice when it is impracticable or unsafe to obtain this information before issuing the vehicle defect notice.

Clause 55 inserts new sections 529A and 529B to improve the powers of authorised officers to permit the use of a heavy vehicle subject to a vehicle defect notice in prescribed circumstances. This amendment also allows for the use of a heavy vehicle, subject to a vehicle defect notice, when repairs have been carried out and the vehicle is being taken to a place to be inspected for the purpose of clearing the defect notice.

The new section 529A provides that an authorised officer may, on request made by the operator of a heavy vehicle, give written permission for a heavy vehicle subject to a vehicle defect notice to be used on road for a specific purpose and period stated in the permission if they are satisfied that the heavy vehicle will be used only to drive to and from a place where repairs are to be carried out or to be inspected for the purpose of enabling the vehicle defect notice to be cleared. The authorised officer must also be satisfied that the request is necessary and reasonable and that the use of the vehicle will not pose a safety risk. The authorised officer may require evidence of repairs or other measures and may impose conditions on the use of the vehicle.

This section allows authorised officers to permit the use of heavy vehicles, subject to a vehicle defect notice, to be taken to a place for repairs or may allow the use of a heavy vehicle when it has been repaired but it cannot immediately be taken to a place for inspection for the purpose of clearing the defect notice. This may occur because an operator may have to wait for a vehicle to be inspected because of limited inspection facilities.

The new section 529B permits the use of a heavy vehicle that is subject to a vehicle defect notice on a road without permission of an authorised officer if relevant repairs have been carried out and the vehicle is being taken to a place to be inspected for the purpose of clearing the notice. The heavy vehicle operating under section 529B must not be carrying goods or passengers and the use of the vehicle must not pose a safety risk. The intent of this provision is to allow an operator of a heavy vehicle subject to a vehicle defect notice to use their vehicle once repaired to travel to a place for inspection without the need to first obtain permission.

The new sections 529A and 529B replace sections 526(5) to 526(8) omitted by *Clause 51* and apply to both minor defect notices and major defect notices.

Clause 56 amends section 531 to provide that an authorised officer amending or withdrawing a vehicle defect notice must give notice of the amendment or withdrawal to the NHVR as well as either the person to whom the vehicle defect notice was given, the person in charge of the vehicle or the registered operator or owner (if the heavy vehicle is not registered).

A person other than the NHVR or the person who receives the notice of amendment or withdrawal must give that notice, as soon as reasonably practicable, to the operator. A maximum penalty of \$3000 applies for a breach of this section.

Clause 57 amends section 590 to provide that a formal warning must not be given for a contravention of a maximum work requirement or a minimum rest requirement constituting a substantial, severe or critical risk breach.

Clause 58 amends section 704 to deal with a false representation that a person has been granted or is operating under a heavy vehicle authority, or that a thing (which would include an EWD) has been granted or is operating under a heavy vehicle authority, if that is not the case. Subsection 704(3)(c) adds an electronic recording system approval to the list of documents that a person must not falsely claim to possess. The definition of *heavy vehicle authority* in subsection 704(4) is also amended to include an electronic recording system approval. A maximum penalty of \$10000 applies for a breach of this section.

Clause 59 amends section 725 by inserting a new subsection 725(2)(a) to provide that a document reported as being made by the approved electronic recording system is presumed to have been properly made by the system and to be a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system, unless the contrary is proved. Existing subsections 725(2)(a) and 725(2)(b) are renumbered 725(2)(b) and 725(2)(c).

Clause 60 amends section 727 by inserting new definitions of *driver fatigue compliance function*, *driver fatigue provision*, *electronic work diary authorised use*, *electronic work diary information*, and *electronic work diary protected information* and amending the definition of *protected information*.

The definition of *electronic work diary label* is omitted because labels are now obsolete and will not be used in an EWD.

The definition of *electronic work diary authorised use* is inserted to indicate that information in/transmitted by an EWD may only be used in the exercise of driver fatigue compliance functions, except in prescribed circumstances. This is to assure prospective drivers and operators that EWD information will not be analysed to pursue non-fatigue compliance related action against drivers or operators, except in circumstances where courts issue a warrant or ask for the information to investigate serious breaches of this or other laws, or where information is to be disclosed to duly authorised entities or their agents/employees, or in pursuit of a matter prescribed by the national regulations, or in de-identified (protected) form for research.

The definition of *electronic work diary information* is added to encompass approved electronic recording systems of which each EWD will be a part. The definition of *electronic work diary protected information* is added to reinforce the definition of *electronic work diary authorised use*, while recognising that EWD protected information does not extend to the same information obtained, collected or recorded elsewhere and under another law, or to such information relating to proceedings before a tribunal or court.

The clause also amends subsection 727(2), renumbers subsection 727(3) to subsection 727(4) and inserts a new subsection 727(3) to insert an authorised use of EWD protected information.

Section 727(3) provides for protected information held by a police agency for the purpose of a driver fatigue compliance function to be disclosed to another police agency for the purpose of a driver fatigue compliance function. The amendments clarify that similar information obtained collected or recorded, other than in an EWD, is not *electronic work diary protected information*.

Clause 61 amends the heading of section 728 to clarify the duty of confidentiality relates to protected information.

Clause 62 inserts a new section 728A to impose a duty of confidentiality for a person exercising functions under the HVNL not to disclose EWD protected information to another person. The new duty does not apply if the disclosure is to an entity for an EWD authorised use or the disclosure is made to, or with the agreement of, the person to whom the information relates. The effect of the new section 728A is to impose separate confidentiality requirements with respect to EWD protected information from those imposed for protected information. A maximum penalty of \$20000 applies to a breach of this section.

Clause 63 inserts new sections 729A and 729B to provide that EWD information is only to be used for an EWD authorised use and that a judicial warrant issued under section 507 of the HVNL may authorise EWD protected information to be seized, to be used to provide evidence of any offence under the HVNL (not simply for an electronic work diary authorised use), and may allow for entry of a vehicle at a stated place or wherever the vehicle is located. A maximum penalty of \$20000 applies for a breach of these sections.

Clause 64 inserts a new subsection 748(8) to provide that national regulations may provide for, and from commencement of the amendment could always provide for, the issue of mass or dimension authorities or HML declarations to replace instruments or authorisations preserved by section 748(2), without further procedural requirements under the HVNL. The clause also inserts a new subsection 748(9) which clarifies that a HML declaration is a declaration under the national regulation.

Clause 65 inserts a new Part 14.3 *Heavy Vehicle National Law Amendment Act 2015 (Queensland)* to provide for transitional arrangements relating to the new offence for tampering with plates or labels evidencing approval of a modification to a heavy vehicle, new penalties and for clarifying how the new stated map and stated list provisions for mass and dimension authorities will apply to authorities made before commencement of these amendments.

The new section 756 provides that tampering with a plate or label fitted or affixed to a heavy vehicle as evidence of an approval of a modification by an approved vehicle examiner or the NHVR will be an offence even if the plate or label was fitted or affixed before the commencement of the new section 87A of the HVNL.

The new section 757 provides for the transition of maps, lists, and road or travel conditions that have been incorporated into a mass or dimension authority (notice) made before the commencement of the amended or new sections 119 and 142 of the HVNL. A map, list or condition incorporated into a notice before commencement of this Bill is deemed to have been applied by reference under the amended sections 119, 119A, 142 and 142A and may only be amended under the amended sections.

This will ensure that once the amendments are enacted all maps, lists or conditions applied in a mass or dimension authority (notice) may only be amended using the process specified in sections 119A or 142A. This removes the need for the NHVR or road authority to use different processes for amending a stated map or stated list depending on when the (notice) was made.

The new section 758 provides that upon commencement, new and amended penalty amounts inserted by the Bill will immediately be calculated to include an indexed increase to the penalty amount as if the penalty had commenced before 1 July 2014 and the penalty had increased on 1 July 2014 and any later 1 July happening before the new or amended penalty commenced. This will ensure that any new or amended penalty amounts are consistent with the value of current penalty amounts in the HVNL.

Clause 66 amends Schedule 4 to update the offences specified for executive office liability, to reflect EWD amendments made to the HVNL by clauses 31, 33, 43, 44, 62 and 63.

Clause 67 amends maximum penalties for HVNL offences as listed in the Schedule.