

# Heavy Vehicle National Law and Other Legislation Amendment Bill 2016

## Explanatory Notes

### Short title

The short title of the Bill is the *Heavy Vehicle National Law and Other Legislation Amendment Bill 2016*.

### Summary

#### Heavy Vehicle National Law

The *Heavy Vehicle National Law Act 2012* (the HVNL Act) and Schedule—Heavy Vehicle National Law (HVNL) provides for a single national law to regulate the use of heavy vehicles and establishes the National Heavy Vehicle Regulator (the Regulator) as administrator of the HVNL.

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

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

The HVNL commenced operation on 10 February 2014.

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

The Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 (the Bill) amends the HVNL Act and the HVNL to implement reforms for the national heavy vehicle industry to better align the obligations of chain of responsibility parties and executive officers with national safety laws, improve compliance and simplify enforcement. The amendments also make a number of minor maintenance amendments to improve administration of the law.

#### Taxi and Limousine Industry Assistance

On 11 August 2016, the Queensland Government announced reforms to the regulation of personalised transport services in Queensland, including taxi, limousine and booked hire services. A \$100 million Industry Adjustment Assistance Package (IAAP) was also announced to assist the taxi and limousine industry to adjust to these reforms. The IAAP includes:

- transitional assistance payments of \$20,000 per taxi service licence capped at 2 licences per holder and \$10,000 per limousine service licence other than special purpose limousine service licences (\$60 million);
- a hardship fund (\$26.7 million);
- business advisory support (\$3.7 million);
- fee waivers (\$4.3 million); and
- incentive payments for wheelchair accessible services (\$5.6 million).

The Bill amends the *Transport Operations (Passenger Transport) Act 1994* to allow a regulation to be made providing for a scheme for the payment of financial assistance to the taxi and limousine industry in order to implement the main elements of the IAAP.

## **Policy objectives and the reasons for them**

### Heavy Vehicle National Law

The Bill contains a range of amendments to implement key heavy vehicle policy initiatives relating to chain of responsibility and heavy vehicle roadworthiness endorsed by the Transport and Infrastructure Council (the Council). The amendments reformulate the existing HVNL obligations on all current chain of responsibility parties as an overarching and positive duty of care, consistent with the duty of care approach adopted in other national safety laws, such as the Model Work Health and Safety Act (Model WHS Act). In particular these reforms amend the HVNL so that each party in the chain of responsibility has a primary duty of care to ensure the safety of their transport activities ‘so far as reasonably practicable’ and includes appropriate penalties for breaches of those primary duties. To further ensure consistency with national safety laws, a positive due diligence obligation on executive officers is introduced in relation to the new primary duties obligation.

These changes will address issues identified with the HVNL which create complexity and unnecessary compliance costs for industry. That is where:

- it is inconsistent with other national safety laws;
- the penalties are inadequate to address offending that results in death or serious injury;
- the duties on chain of responsibility parties are duplicated for different subject matters; and
- there are inconsistencies in these duties.

The Bill also includes a range of minor and technical amendments to:

- reduce the administrative or regulatory burden for the Regulator 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.

### Taxi and Limousine Industry Assistance

The Bill also contains amendments to the *Transport Operations (Passenger Transport) Act 1994* to provide for the administration of transitional assistance payments and the hardship fund in relation to eligible taxi service licence holders and limousine service licence holders. Legislating these elements of the IAAP is intended to provide certainty and ensure the integrity

of the administration of the IAAP. The intent of financial assistance provided through the IAAP is to assist the existing taxi and limousine industry to transition to a more competitive market.

## **Achievement of policy objectives**

### Heavy Vehicle National Law

#### *Chain of Responsibility & Executive Officer Liability*

The amendments contained in this Bill will enable a more flexible approach to compliance, reduce the regulatory burden and more closely align the approach to chain of responsibility and executive officer liability in the HVNL with other safety legislation.

These reforms will contribute to improvements in safety outcomes in the road transport sector by requiring parties in the chain of responsibility, and executive officers, to focus on overall safety outcomes, and will enable parties to be more innovative in responding to safety concerns. Reframing duties as a positive ‘must ensure’ obligation with a reasonable excuse defence will create diligence in activities, such as document keeping requirements in sections 132, 133, 151, 152 and 153, and false or misleading documentation in sections 186 and 187 and facilitate compliance cultures within companies.

The proposed reforms will benefit governments by reducing the requirements and costs associated with enforcing and prosecuting breaches of the HVNL.

The amendments will do this by:

- adopting a standard of care of ‘so far as reasonably practicable’ for the primary duty, to align with the standard of care applied in other national safety laws;
- adopting a similar positive duties approach and standard of care for those chain of responsibility party offences not subsumed into the primary duty;
- applying the same approach to all offences in the HVNL for consistency and to reduce complexity in compliance and enforcement by replacing the current standard of ‘all reasonable steps’ and the reasonable steps defence wherever possible, with the ‘so far as reasonably practicable’ standard;
- introducing penalties for breach of the primary duty of care that align with the penalties for breach of duty under other national safety laws, including adopting a hierarchy of penalties based on risk categorisation;
- adopting a set of principles to guide the application and interpretation of the primary duty of care;
- creating a positive executive officer due diligence obligation to ensure chain of responsibility parties comply with their primary duty of care, to complement the existing executive officer liability provisions for other offences;
- revising all offences that attract executive officer liability under the HVNL in accordance with the Council of Australian Governments’ *Personal Liability for Corporate Fault: Guidelines for Applying the COAG Principles* (COAG Guidelines) and reframing the existing executive officer liability provisions to remove the existing reverse burden of proof and to instead place the obligation on the prosecution to prove all elements of an offence;

- strengthening information gathering powers by inserting an additional information gathering power for use when investigating potential breaches of the primary duty as a corollary to the introduction of primary duties;
- specifically incorporating heavy vehicle roadworthiness and vehicle standards into the primary duty of care; and
- enabling the use of enforceable undertakings as an alternative to prosecution for certain offences.

These amendments have significant benefits. They are designed to:

- improve safety through a more proactive, outcomes-focused approach to managing the risks associated with the transport task;
- simplify obligations on parties in the chain of responsibility, remove duplication and consolidate requirements;
- minimise complexity and difficulty in the interpretation of chain of responsibility obligations;
- align obligations with those found in other national safety legislation, including adopting significant penalties for offences resulting in death or serious injury;
- promote proactive enforcement; and
- impose no greater burden on chain of responsibility parties, the regulator, or enforcement agencies.

#### *Maintenance Amendments*

The Bill addresses a number of operational, minor and technical drafting issues that will improve roadside enforcement, reduce the compliance burden for industry and reduce the administrative burden for the Regulator, including:

- introducing self-clearing defect notices as an additional type of defect notice for defective vehicles that do not pose a safety risk or if the vehicle's number plate is obscured;
- creating offences for failing to display and maintain National Heavy Vehicle Accreditation Scheme labels on heavy vehicles to complement the Regulator's obligation to give an operator an accreditation label for each relevant vehicle;
- allowing the Regulator to make amendments to road access statutory instruments in minor ways without the requirement to seek road manager consent; and
- allowing responsible ministers to delegate their approval powers to make minor amendments to guidelines and statutory approvals to the Regulator Board.

#### Taxi and Limousine Industry Assistance

The Bill amends the *Transport Operations (Passenger Transport) Act 1994* to allow a regulation to be made setting out the details of a scheme for the administration of the main elements of the IAAP, specifically transitional assistance payments and a hardship fund for eligible taxi service licence holders and limousine service licence holders.

## **Alternative ways of achieving policy objectives**

### Heavy Vehicle National Law

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

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

Moving to a proactive culture of safety that minimises complexity and difficulty in the interpretation of chain of responsibility obligations can only be achieved through legislative amendment and the introduction of a primary duty of care regime that applies to all parties in the chain of responsibility. This approach is consistent with the approach adopted in other national safety legislation.

### Taxi and Limousine Industry Assistance

It is appropriate to provide a specific legislative framework for the main financial assistance elements of the IAAP in order to provide certainty and ensure the integrity of the administration of these elements of the IAAP.

## **Estimated cost for government implementation**

### Heavy Vehicle National Law

The reform of the chain of responsibility requirements and related obligations under the HVNL will require the development of reference material and training for authorised officers as well as education and compliance guidelines for the heavy vehicle industry. Implementation of the Bill will be the responsibility of the Regulator with the support of state and territory road transport and police agencies. Implementation costs will be met within existing budget allocations by the Regulator and state and territory agencies.

### Taxi and Limousine Industry Assistance

One-off funding of \$100 million has been allocated for the IAAP. The IAAP will not be funded through the imposition of a levy on personalised transport services. Other costs to government of implementing the IAAP and the broader personalised transport reforms will be met from existing departmental resources.

## **Consistency with fundamental legislative principles**

### Heavy Vehicle National Law

The amendments to the HVNL Act and the HVNL have been scrutinised by government agencies across all Australian jurisdictions as well as the parliamentary counsel of each jurisdiction (including the Office of the Queensland Parliamentary Counsel) through their participation in the Australasian Parliamentary Counsels' Committee.

These amendments have been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* and are generally consistent with

these principles. However, the Bill includes two provisions that may be regarded as departures from the FLPs. These departures concern section 4(3)(a) regarding individuals' rights and liberties, and section 4(3)(f) regarding self-incrimination. The clauses of the Bill in which these FLP issues arise, together with the justification for any departure, are outlined below.

Clause 91 – Insertion of new section 570A (Requiring information) – Potential departure from sections 4(3)(a) and (f) Legislative Standards Act 1992

This section creates a power for authorised officers (who have been specifically authorised to use this power by the Regulator or a relevant Police Commissioner) to require information from any person in relation to a possible contravention of the primary duty in new section 26C (Primary duty), or information that will assist to monitor or enforce compliance with that duty. Some concerns with this power may arise because it would potentially allow an authorised officer to require a person to disclose personal information about another person which would invade a person's right to privacy; the information provided may incriminate the person who provides it; and there is no right of review or appeal against an authorised officer's requirement for information.

The provision is modelled on section 155 of the Model WHS Act (although not as broad, as it only applies to information that is relevant to the primary duties obligation) and contains the same safeguards to ensure the power is exercised for proper purposes. For example, the authorised officer must have a reasonable belief that the person is capable of giving the information requested, the request must be made in writing, if the person is required to attend in person they may be accompanied by an Australian legal practitioner, and in particular, information given in compliance with the request (other than a proceeding for false or misleading information) is given evidential immunity and derivative use immunity and therefore cannot be used against the person who provides it.

The penalty for failure to comply with the request for information is \$10,000, which is the same penalty as for other similar existing offences under the HVNL, such as failing to comply with a request by an authorised officer for reasonable help, obstructing an authorised officer, providing false or misleading documentation or entering into a prohibited contract.

The new power is considered necessary for the following reasons:

- sections 569 and 570 of the HVNL provide that authorised officers may require documents and information from a responsible person for a heavy vehicle as defined in section 5, however, persons other than a responsible person for a heavy vehicle may also have information relevant to a breach of the primary duty, such as a third party maintenance provider, fuel company or tolling company; and
- because of the reformulation of many offences in the HVNL as positive obligations, rather than deemed liability or reverse onus offences, the prosecution will bear a greater evidentiary burden and the Regulator and enforcement agencies will need sufficient power to gather evidence to prove relevant breaches beyond reasonable doubt.

In relation to review of decisions, similar requirements in sections 569 and 570 are not subject to review. Neither is section 155 of the Model WHS Act. Other protections are available if a person does not believe he or she should have to provide information. For example, apart from judicial review, the offence itself provides that the person must comply, unless they have a 'reasonable excuse', and the Bill contains a new provision that specifically excludes from the obligation to provide information, information which is subject to legal professional privilege (section 735A).

In relation to privacy, identifying chain of responsibility parties and obtaining information about their actions from other persons is critical to effective enforcement of the primary duties obligation to ensure the safety of the party's transport activities.

Clause 94 – amendment of section 588 (Evidential immunity for individuals complying with particular requirements) – Potential departure from section 4(3)(f) Legislative Standards Act 1992

This section concerns evidential immunity for individuals, and clause 94 is a consequential amendment as a result of the amendment to the definition of *information*. The amendment does not alter the original intent of the section, which excludes documents from the evidentiary immunity on the grounds of self-incrimination, and was justified against the FLPs in the explanatory notes for the *Heavy Vehicle National Law Amendment Bill 2012* as follows:

*‘Proposed section 588 delineates the evidential immunity available for individuals complying with particular requirements under the Act. Use and derivative use immunity is provided in sub-section (2) for information required by an authorised officer to be provided under proposed sections 570 or 577. The effect of this sub-section is to prevent information provided by the individual in response to the named requirements being used against the individual in criminal proceedings. Sub-section (3) applies to abrogate the privilege in relation to documents required by an authorised officer to be produced under sub-section 569(1)(c) to (f) or section 577.*

*Sub-section 588(3) concerns specified documents, directly related to the National Law and regulatory scheme that have been required by an authorised officer to be produced by an individual. It provides that documents produced by an individual in compliance with the authorised officer's requirement are not inadmissible in evidence against the individual in a criminal proceeding on the ground that the document might incriminate the individual. This abrogation of the privilege against self-incrimination is necessary for compliance and enforcement purposes. In the absence of a provision compelling the production of specified documents by an individual, and further providing for the use of those documents as evidence, prosecuting breaches of the National Law would require far greater investigative resources. This applies particularly to offences detected during the course of on-road enforcement activities. Public safety is liable to be compromised if prosecution of heavy vehicle offences is more difficult under the National Law than existing jurisdictional laws.*

It is considered that these original justifications still stand.

Taxi and Limousine Industry Assistance

The amendments to the *Transport Operations (Passenger Transport) Act 1994* are consistent with FLPs.

## **Consultation**

Heavy Vehicle National Law

The amendments to the HVNL Act and the HVNL were developed by the National Transport Commission in consultation with officers from each state and territory government transport

agency and the Regulator. Consultation was also undertaken with peak transport industry organisations such as the Local Government Association of Queensland, (then) Commercial Vehicle Industry Association of Queensland (effective September 2015 the Heavy Vehicle Industry Australia), Toll Group and Transport Certification Australia.

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

Stakeholders have all indicated support for these amendments.

#### Taxi and Limousine Industry Assistance

Extensive community consultation on personalised transport reform has been undertaken as part of the independent Opportunities for Personalised Transport Review commissioned by the Queensland Government.

## **Consistency with legislation of other jurisdictions**

#### Heavy Vehicle National Law

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

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

#### Taxi and Limousine Industry Assistance

The amendments to the *Transport Operations (Passenger Transport) Act 1994* are specific to the State of Queensland. However, New South Wales and Western Australia have legislated elements of their respective industry assistance measures as part of personalised transport reforms in those states. This is broadly consistent with the proposed approach to legislating elements of the IAAP in Queensland.



# Notes on provisions

## Chapter 1 Preliminary

*Clause 1* provides that this Act may be cited as the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*.

*Clause 2* provides that the amendments to the HVNL Act and the HVNL commence on a day to be fixed by proclamation. The date of commencement must be fixed by proclamation to allow sufficient time for implementation of these amendments. On 6 November 2015, the Council noted that a 12 month period from the date of passage of the Bill by Parliament to the commencement of the responsibility amendments contained in Chapter 2 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* would be required to allow industry and regulators, including all authorised officers, sufficient time to adjust to these amendments. The maintenance amendments in Chapter 3 do not require such extensive implementation preparation and can be commenced soon after passage of the legislation. The amendments to the *Transport Operations (Passenger Transport) Act 1994* commence on assent to the Bill.

## Chapter 2 Responsibility amendments

### Part 1 Amendment of Heavy Vehicle National Law Act 2012

*Clause 3* provides that Part 1 amends the *Heavy Vehicle National Law Act 2012*.

*Clause 4* amends section 10(2) of the *Heavy Vehicle National Law Act 2012* to insert section 590D as a sub-section (d). Section 10(2) provides that a Magistrates Court is declared to be the relevant tribunal or court for this jurisdiction for the purposes of sections 556, 560, 565 and 590D.

*Clause 5* removes section 16 of the *Heavy Vehicle National Law Act 2012* which deals with the mistake of fact defence under Queensland law. As the reasonable steps defence will be removed from the HVNL, the mistake of fact defence will apply to all offences.

### Part 2 Amendment of Heavy Vehicle National Law

*Clause 6* provides that Part 2 amends the HVNL as set out in the schedule to the *Heavy Vehicle National Law Act 2012*.

*Clause 7* makes a number of amendments to definitions in section 5 of the HVNL.

Sub-section (1) removes the following definitions, which due to the introduction of the primary duty of care, are no longer required:

- *commercial consignor*,
- *loading manager*,
- *mistake of fact defence*,
- *party in the chain of responsibility* and
- *reasonable steps defence*

Sub-section (2) inserts as a consequential amendment a number of definitions which are required to complement the amendments.

A definition of *business practices* has been provided under section 5. This definition replaces and expands on the definitions of *business practices* previously provided in sections 204 and 230 of the HVNL to refer to a person's practices in running a business associated with the use of a heavy vehicle on the road, including operating policies and procedures, human resource and contract management arrangements and the arrangements for preventing or minimising public risks. The definition better covers the roles of all parties in the chain of responsibility and the functions which they perform.

The definition of *complaint* has been moved from section 707 to section 5. This definition has not been changed.

The definition of *contract* has been moved from section 742 to section 5. This definition has been changed to state that a contract includes an agreement.

A definition of *encourage* is provided under section 5 to clarify that encourage includes to give an incentive.

A definition of *false or misleading* is inserted to mean 'false or misleading in a material particular'. This general definition removes the need for the numerous sections of the HVNL that refer to 'false or misleading in a material particular' and ensures consistency across the HVNL.

A definition of *indictable offence* is inserted in section 5 to mean 'an offence mentioned in section 26F'. This definition covers a category 1 offence under the primary duty of care which includes a custodial sentence of 5 years imprisonment.

A definition of *information* is provided in section 5. Information is defined as including 'information in the form of a document' and 'information' stored electronically'. This definition clarifies the definition of *information* as previously provided in section 570.

The definition of *loading manager* has been amended to remove the distinction between the term used in Chapter 4 and the rest of the HVNL. This distinction is no longer required as the loading manager responsibilities under Chapter 4 have been replaced by the primary duty of care on all parties in the chain of responsibility.

The definition of *management member* has been moved from section 638 to section 5. This definition has not been changed.

The definition of *party in the chain of responsibility* has been moved from sections 214 and 227 to section 5. The definition has been consolidated and 'packer' included, to cover the additional chain of responsibility party previously listed in section 183.

A definition of *promisee* has been inserted which refers to the use of the term in section 590A.

A definition of *public risk* has been inserted to mean a safety risk or a risk of damage to road infrastructure. This definition supports the primary duty of care and encompasses the objects of the HVNL.

A definition of *reasonably practicable* has been inserted to support the primary duty of care on chain of responsibility parties. The term has been adopted from other national safety laws, including the Model WHS Act and the Rail Safety National Law, and refers to that which is

reasonably able to be done weighing up all relevant matters, including the likelihood of a safety risk or damage to road infrastructure happening; and the harm that could result from such a risk or damage. It also encompasses what the person knows, or ought reasonably to know, about the risk or damage; the ways of removing or minimising the risk and the costs associated with the available ways. Examples of the activities that could be undertaken to ensure so far as is reasonably practicable the safety of a party's transport activities, include a chain of responsibility party, for example an operator, consulting with drivers and other parties in the Chain of Responsibility as to alternative measures of compliance, consignors undertaking risk assessments, or an operator implementing engineering controls.

A definition of *transport activities* has been inserted to support the primary duty of care on chain of responsibility parties. This term has been drafted to encompass the components of a transport business (eg. physical, management, labour and service), and the activities for which the parties in the chain of responsibility are expected to be responsible, for example driving, directing, employing or contracting drivers, loading and scheduling.

The definition of *unincorporated body* has been moved from section 638 to section 5. This definition has not been changed.

The definition of *consign and consignor* is amended to remove numerous references to 'if there is no person as described in paragraph ...x...' thus removing the exclusive elements of the definition. This amendment is more aligned with the principles of shared responsibility and accountability under the primary duty of care regime.

The definition of *entity* is amended to include 'an unincorporated partnership' after the word 'person'. This amendment has been made to address a technical drafting issue within the definition of entity.

The definition of *record keeper* is amended to remove 'for the purposes of Chapter 6,'. This qualification is unnecessary as the term is used only in relation to Chapter 6 'Fatigue Management'.

The definition of *regular loading or unloading premises* is amended to remove reference to sections 227, 238, 239 and 261 from within the note. As part of the introduction of the primary duty of care these offences are being removed from the HVNL.

**Clause 8** removes section 14 of the HVNL which deals with the mistake of fact defence. As the reasonable steps defence will be removed from the HVNL, the mistake of fact defence will apply to all offences.

**Clause 9** amends section 18 of the HVNL to clarify that the primary duty of care is complementary to the health and safety duties under the primary WHS Law but focuses on the safety of road transport operations. The amendments provide that the duties under the primary WHS Law apply in addition to the HVNL and, to the extent of any inconsistency, the provision of the primary WHS Law prevails. The amendment states that where an act, omission or circumstance constitutes an offence under both laws, an offender is not liable to be punished twice for the act, omission or circumstance. The term *primary WHS Law* is currently defined in section 18 of the HVNL.

**Clause 10** inserts a new chapter, Chapter 1A Safety Duties, into the HVNL and is directed to chain of responsibility parties. It includes principles of shared responsibility (sections 26A and 26B), a primary duty to ensure the safety of transport activities (section 26C), a due diligence

obligation on executive officers of legal entities with a primary duty (section 26D), and a prohibition on requests and contracts that would cause a driver or chain of responsibility party to breach fatigue requirements or speed limits (section 26E). The new chapter also creates three categories of offence in relation to the primary duty (sections 26F, 26G and 26H).

Section 26A and section 26B are modelled on similar provisions in the Model WHS Act and the Rail Safety National Law. These common principles are intended to guide duty holders and the courts in interpreting and applying the primary duties under section 26C and 26D.

Section 26A states that safety of transport activities is a shared responsibility of each party in the chain of responsibility for the vehicle, and that the level and nature of the responsibility depends on the person's functions rather than their job title or functions described in a contract; the nature of the public risk created by the transport activity; and the party's capacity to control, eliminate or minimise the risk. *Public risk* is defined in section 5 to mean a safety risk or a risk of damage to road infrastructure.

Section 26B clarifies that a person may have more than one duty because of their functions; that more than one person can concurrently have a duty, that each duty holder must comply with the duty to the standard required by the HVNL; that if more than one person has a duty for the same matter, each person retains responsibility for the duty and must discharge the duty to the extent to which they have the capacity to influence and control the matter; and that a duty under the HVNL may not be transferred.

Section 26C creates a primary duty on each party in the chain of responsibility for a heavy vehicle to ensure, so far as is reasonably practicable, the safety of the party's transport activities relating to the vehicle. Without limiting this general requirement, each party must, so far as is reasonably practicable eliminate or minimise public risks; and ensure the party's conduct does not directly or indirectly cause or encourage the driver or another person, to contravene the HVNL or the driver to exceed a speed limit. Examples of the activities that could be undertaken to comply with the primary duty include providing training to staff and other parties in the Chain of Responsibility on safe business practices and conducting regular maintenance of vehicles and vehicle components to ensure vehicles are compliant with vehicle standard requirements and safe to use on the road.

This section replaces a number of specific offences in the HVNL that place obligations on chain of responsibility parties or impose liability on the party on the basis of the driver's offending behaviour, for example, section 207 (Duty to ensure driver's schedule will not cause driver to exceed speed limit), section 230 (Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued) and section 183 (Liability of employer etc. for contravention of mass, dimension or loading requirement).

Section 26D creates an offence for an executive of a legal entity with a primary duty to fail to use due diligence to ensure the legal entity complies with that duty. The executive may be convicted of an offence even if the legal entity has not been proceeded against for, or convicted of, an offence relating to the duty. The penalty is the penalty for a contravention of the duty by an individual.

*Due diligence* is defined in section 26D in the same way as in the Rail Safety National Law. Due diligence includes taking reasonable steps to acquire, and keep up to date, knowledge about the safe conduct of transport activities; to gain an understanding of the nature of the legal entity's transport activities and the hazards and risks associated with the activities; to ensure the legal entity has and uses appropriate resources to eliminate or minimise the hazards and

risks; to ensure the legal entity has, and implements, processes for eliminating or minimising those risks, for responding in a timely way to information about the hazards and risks and any incidents and for complying with the legal entity's primary duty; and to verify resources and processes are being provided, used and implemented. Examples of the due diligence activities that could be undertaken include developing a safety management plan that identifies hazards for certain transport activities, ensuring that information is readily available about procedures to ensure the safety of specific road transport operations, ensuring that appropriate resources and processes are used to eliminate or minimise risks in relation to the maintenance of vehicles and establishing processes for considering and responding to information about incidents, hazards and risks.

*Legal entity* is defined in section 26D as meaning a corporation, an unincorporated partnership; or an unincorporated body. *Executive* of a legal entity is also defined in section 26D, as meaning an executive officer of a corporation; a partner of an unincorporated partnership or a management member for an unincorporated body.

This section creates a specific positive duty on executives in relation to the primary duty that mirrors the duties on executive officers, partners and management members in sections 636, 637 and 638 for specific offences committed by corporations, unincorporated partnerships and unincorporated associations in the HVNL.

Section 26E(1) makes it an offence for a person to ask, direct, or require a driver or chain of responsibility party to do something that the person knows, or ought reasonably know, would have the effect of causing the driver to exceed a speed limit or to drive while fatigued or in breach of a work or rest hours requirement. Section 26E(2) creates a similar offence regarding contracts that would have the effect of causing the driver, or would encourage the driver, or would encourage a party in the chain of responsibility to cause the driver to exceed a speed limit or to drive while fatigued or in breach of a work or rest hours requirement. Section 26E replaces the existing offences in sections 215 and 216 (regarding speeding) and sections 240 and 241 (regarding fatigue) and covers the same scope. The penalty for the new offence (\$10,000) is the same as the penalties for the replaced offences.

The offences and penalties contained in Chapter 1A, sections 26F, 26G and 26H, mirror the offence and penalty structure of the Model WHS Act. A category 1 offence (section 26F) applies where a party has a primary duty and without a reasonable excuse, engages in conduct that exposes an individual to a risk of death or serious injury or illness, and is reckless to the risk. The penalty is \$300,000 or 5 years imprisonment, or both for an individual and \$3 million for a corporation. A category 2 offence (section 26G) applies where a party has a primary duty, breaches the duty and thereby exposes an individual, or class of individuals, to a risk of death or serious injury or illness. The penalty is \$150,000 for an individual and \$1.5 million for a corporation. A category 3 offence (section 26F) applies where a party has a primary duty and breaches that duty. The penalty is \$50,000 for an individual and \$500,000 for a corporation.

**Clause 11** amends section 33 of the HVNL to remove reference to 'so far as is reasonably practicable' and replace it with 'to the fullest extent possible'. The 'so far as is reasonably practicable' standard of care is used in conjunction with the primary duty of care and therefore alternative wording is used in this section. Section 33 is in Chapter 2 Registration, which has not yet commenced operation. This amendment is made so that when Chapter 2 comes into operation relevant sections in the Chapter will be consistent with other parts of the HVNL which have been similarly amended.

**Clause 12** amends section 50 of the HVNL to remove the phrase ‘in a material particular’. This terminology is not required as it is included within the new definition of *false or misleading*. Section 50 is in Chapter 2 Registration, which has not yet commenced operation. This amendment is made so that when Chapter 2 comes into operation relevant sections in the Chapter will be consistent with other parts of the HVNL which have been similarly amended.

**Clause 13** substitutes sections 82(3) to (6) with a new section 82(3) which removes the reasonable steps defence and the exclusion of the mistake of fact defence, and reframes the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation, and to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder must comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 14** substitutes sections 83(3) to (6) with a new section 83(3) which removes the reasonable steps defence and the exclusion of the mistake of fact defence, and reframes the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation, and to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder must comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 15** omits subsections 91(5) and (6) to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate given the nature of the offence (tampering).

**Clause 16** omits sections 93(7) and (8) to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate given the nature of the offence (tampering).

**Clause 17** amends section 96(1) and omits sections 96(2) and (3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence and reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to comply with mass limits, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalties.

**Clause 18** amends section 102(1) and omits sections 102(2) and (3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to comply with dimension limits, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the

requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalties.

**Clause 19** amends section 111(1) and omits sections 111(2) and (3) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence and reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to comply with loading requirements, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalties.

**Clause 20** substitutes sections 130(3) and (4) with a new section 130(3) to remove the deemed liability offence for the operator and to reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL laws. There is no change to the existing penalty of \$6,000.

**Clause 21** substitutes sections 132(3) to (6) with a new section 132(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation, and to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 22** substitutes sections 133(3) to (6) with a new section 133(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 23** substitutes sections 151(3) to (6) with a new section 151(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 24** substitutes sections 152(3) to (6) with a new section 152(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with

the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 25** substitutes sections 153(2) to (5) with a new section 153(2) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 26** removes Part 4.8- Extended Liability, as the deemed liability offence under section 183, is the only section in Part 4.8 and these obligations are covered by the primary duty of care in section 26C.

**Clause 27** substitutes sections 186(2) to (7) with new sections 186(2) to (5) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. These amendments are required to remove complexity and ensure consistency across the HVNL. In addition these amendments insert new definitions of *Australian-packed goods* to mean goods packed on a pallet or other means in Australia, *consignment documentation* to clarify that the documentation relates to mass, dimension and loading requirements and *overseas-packed goods* which means goods packed on a pallet or other means outside Australia. There is no change to the existing penalties of \$10,000.

**Clause 28** amends sections 187(2) and (3) and omits sections 187(5) and (6) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL. There is no change to the existing penalties of \$10,000.

**Clause 29** amends section 190(1) and omits sections 190(2) and (3) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to provide compliant contained weight declarations, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$6,000.

**Clause 30** amends sections 191(1) to (3) and omits sections 191(4) and (5) to remove the reasonable steps defence and the exclusion of the mistake of fact defence. For the operator obligation not to allow the driver to transport a freight container unless the driver has been provided with a complying container weight declaration, replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. Knowing the correct weight of a container is critical for drivers to be able to comply with vehicle mass limit requirements, and it is considered that no other defence than the mistake of fact defence is required.

The operator commits an offence if the driver does not have a complying weight contained declaration, and the amendment provides the operator with the reasonable excuse defence. The



‘so far as is reasonably practicable’ standard of care is not suitable for a defence, and it is considered that for this offence, the duty holder should be held responsible, unless they can provide a reasonable excuse.

For the operator obligation to provide a non-road transport carrier with a complying container weight declaration, the amendment reframes the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. The ‘so far as is reasonably practicable’ standard of care is not considered appropriate here. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

These amendments are required to remove complexity and ensure consistency across the HVNL. There is no change to the existing penalties of \$6,000.

**Clause 31** amends sections 192(1) and (2) and omits sections 192(3) and (4) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and reframe the provision to provide a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For these driver obligations to have and carry required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalties of \$6,000.

**Clause 32** substitutes sections 193(2) to (4) with a new section 193(2) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL. There is no change to the existing penalty of \$10,000.

**Clause 33** removes section 194 which provides for an offence for the consignee. These obligations are covered by the primary duty of care in section 26C.

**Clause 34** amends section 199(1)(b) to remove the phrase ‘in a material particular’. This terminology is not required as it is included within the new definition of *false or misleading*.

**Clause 35** omits Chapter 5, which created obligations for chain of responsibility parties in relation to heavy vehicle speeding, as all of the provisions and offences in this chapter are covered by the primary duty of care in section 26C and by section 26E (prohibited requests and contracts) in new Part 1A.

**Clause 36** amends the definition of *loading manager* in section 221 to remove reference to sections 227, 238, 239 and 261 from the note, as following the introduction of the primary duty of care provisions these offences will be removed from the HVNL. In addition, the definition of *party in the chain of responsibility* has been removed as it is now covered by the definition in section 5.

**Clause 37** amends section 227 to remove the definition of a *party in the chain of responsibility* as it is now covered by the definition in section 5.

**Clause 38** amends the heading of Part 6.2, Division 2 to remove the words ‘and prevent’. As the chain of responsibility obligations in this part are covered by the primary duty of care and section 26E (prohibited requests and contracts) in Chapter 1A ‘Safety Duties’, Part 6.2 will only be concerned with the driver’s obligations in avoiding fatigue.

**Clause 39** removes the chain of responsibility offence under section 229 as this obligation is covered by the primary duty of care in section 26C.

**Clause 40** removes Divisions 3 to 8 of Part 6.2 as the obligations in these Divisions are for chain of responsibility parties and are covered by the primary duty of care in section 26C and by section 26E (prohibited requests and contracts) in new Chapter 1A.

**Clauses 41 to 46** amend sections 250, 251, 254, 256, 258 and 260 to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the 'so far as is reasonably practicable' standard of care is not considered appropriate given the nature of the offence (driver exceeding work/rest hours).

**Clause 47** removes Part 6.3, Division 6 Extended Liability, as the deemed liability offence under section 261 is the only section in Part 6.3, Division 6, and is covered by the primary duty of care in section 26C.

**Clause 48** amends section 263 to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL, Replacing the reasonable steps defence with the 'so far as is reasonably practicable' standard of care is not considered appropriate given the nature of the offence (driver exceeding work/rest hours).

**Clause 49** amends section 264(2) and omits section 264(3) and (4) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive 'must ensure' obligation with the 'so far as is reasonably practicable' standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL. There is no change to the existing penalty of \$6,000.

**Clause 50** substitutes sections 287(3) to (6) with a new section 287(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive 'must ensure' obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the 'so far as is reasonably practicable' standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 51** substitutes sections 288(3) to (6) with a new section 288(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive 'must ensure' obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the 'so far as is reasonably practicable' standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 52** omits sections 311(4) and (5) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the 'so

far as is reasonably practicable' standard of care is not considered necessary as the offence already provides for 'as soon as reasonably practicable after being informed'.

**Clause 53** amends section 312(3) and omits sections 312(5) and (6) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this record keeper obligation where an electronic work diary is reported destroyed, lost or stolen, the 'so far as is reasonably practicable' standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 54** amends section 313(3) and omits sections 313(8) and (9) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this record keeper obligation where an electronic work diary is reported not working or malfunctioning, the 'so far as is reasonably practicable' standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 55** amends section 315 to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive 'must ensure' obligation with the 'so far as is reasonably practicable' standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL. There is no change to the existing penalty of \$6,000.

**Clause 56** amends section 319(1) and omits sections 319(4) and (5) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this record keeper obligation to keep records for 100km work, the 'so far as is reasonably practicable' standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 57** amends sections 321(1) and (3) and omits sections 321(5) and (6) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For these record keeper obligations to keep records for 100km plus work, the 'so far as is reasonably practicable' standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirements unless they can provide a reasonable excuse for not complying.

**Clause 58** amends sections 322(2) and (4) and omits sections 322(6) and (7) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence and to include a reasonable excuse defence for the driver, and the 'so far as is reasonably practicable' standard of care for the record keeper obligation. This amendment is required to remove complexity and ensure consistency across the HVNL. For the driver obligation to give the record keeper copies of work diary entries within 21 days, the 'so far as is reasonably practicable' standard of care is not considered appropriate. It is considered that the driver should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 59** amends sections 323(2) and (3) and omits sections 323(6) and (7) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence and to include a reasonable excuse defence for the driver, and the ‘so far as is reasonably practicable’ standard of care for the record keeper obligation. This amendment is required to remove complexity and ensure consistency across the HVNL. For the driver obligation to give a new record keeper copies of work diary information, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the driver should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 60** amends section 324(2) and omits sections 324(4) and (5) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this record keeper obligation to give the driver copies of electronic work diary information, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 61** amends section 325 to remove the phrase ‘in a material particular’. This terminology is not required as it is included in the new definition of *false or misleading*.

**Clause 62** amends section 335(5) and omits sections 335(3) and (4) to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate given the nature of the offence (tampering). Section 335 is also amended to rectify a minor typographical error.

**Clause 63** omits sections 336(2) and (3) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate given the nature of the offence (tampering).

**Clause 64** omits sections 336A(3) and (4) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate given the nature of the offence (tampering).

**Clause 65** omits section 337(3) and (4) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure the consistency across the HVNL. Replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate given the nature of the offence (tampering).

**Clause 66** amends sections 341(1) to (5) and (7) and omits sections 341(9) and (10) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For these record keeper obligations to keep records for a certain time, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 67** omits sections 376(3) to (6) and inserts a new section 376(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 68** amends section 396(2) and omits sections 396(3) and (4) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this owner obligation to maintain the vehicle odometer, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 69** omits sections 398(3) and (4) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence. This amendment is required to remove complexity and ensure consistency across the HVNL. Replacing the reasonable steps defence with the ‘so far as is reasonably practicable’ standard of care is not considered appropriate given the nature of the offence (repairing a malfunctioning odometer as soon as practicable after being informed of the fault).

**Clause 70** amends section 399(2) and omits sections 399(3) and (4) and note to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision to include a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this employer/operator obligation to not allow a vehicle they have been informed has a broken odometer to be driven, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 71** amends section 404 to remove the phrase ‘in a material particular’. This terminology is not required as it is included within the new definition of *false or misleading*.

**Clause 72** amends section 405 to remove the ‘take all reasonable steps’ requirement and reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this operator obligation to inform a driver the vehicle is being monitored as part of the intelligent access program, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clause 73** amends section 407 to remove the ‘take all reasonable steps’ requirement and reframe the provision as a positive ‘must ensure’ obligation, with a reasonable excuse defence. This amendment is required to remove complexity and ensures consistency across the HVNL. For this operator obligation to tell the driver about the driver’s obligations to report system malfunctions, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying.

**Clauses 74 to 76** amend sections 410, 412 and 421 to remove the ‘take all reasonable steps’ requirement and reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL. There are no changes to the existing penalties.

**Clauses 77 and 78** amend sections 427 and 428 to remove the ‘take all reasonable steps’ requirement and reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL.

**Clause 79** amends section 437 to remove the ‘take all reasonable steps’ requirement and reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL. There is no change to the existing penalty of \$6,000.

**Clauses 80 to 82** amend sections 441, 442 and 450 to remove the ‘take all reasonable steps’ requirement and reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably practicable’ standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL.

**Clause 83** amends section 459 to replace ‘taken all reasonable steps’ with ‘exercised reasonable diligence’. This amendment is required to ensure the phrase ‘reasonable steps’ is not used except in the definition of *due diligence* for the purposes of section 26D.

**Clause 84** omits sections 468(3) to (6) and inserts a new section 468(3) to remove the reasonable steps defence and the exclusion of the mistake of fact defence, and to reframe the provision as a positive ‘must ensure’ obligation with a reasonable excuse defence. This amendment is required to remove complexity and ensure consistency across the HVNL. For this obligation to ensure the driver carries required documents, the ‘so far as is reasonably practicable’ standard of care is not considered appropriate. It is considered that the duty holder should comply with the requirement, unless they can provide a reasonable excuse for not complying. There is no change to the existing penalty of \$3,000.

**Clause 85** amends section 518 to remove reference to ‘ensure, so far as is reasonably practicable’ and replace it with ‘exercise reasonable diligence to ensure’. The ‘so far as is reasonably practicable’ standard of care is used in conjunction with the primary duty of care and conveys a different meaning to that used in relation to section 518.

**Clause 86** amends section 556 to replace ‘take reasonable steps’ with ‘exercise reasonable diligence’. This amendment is required to ensure the phrase ‘reasonable steps’ is not used except in relation to the definition of *due diligence* for the purposes of section 26D.

**Clause 87** amends section 557 to replace ‘all reasonable steps have been taken’ with ‘the authorised officer exercises reasonable diligence’. This amendment is required to ensure the phrase ‘reasonable steps’ is not used except in relation to the definition of *due diligence* for the purposes of section 26D.

**Clause 88** amends section 558 to remove the ‘take all reasonable steps’ requirement and reframe the provision as a positive ‘must ensure’ obligation, with the ‘so far as is reasonably

practicable' standard of care. This amendment is required to remove complexity and ensure consistency across the HVNL.

**Clause 89** amends section 569 to remove sub-section (10) which refers to the business practices offences under sections 204 and 230 as these sections are repealed and the obligations they contain are covered by the primary duty of care in section 26C. '*Business practices*' is a defined term and is defined in section 5. Except for section 569, the term business practices is only used within the section 5 definition of '*transport activities*', which has been inserted to support the primary duty of care in section 26C and the executive officer due diligence obligation under section 26D. The requirement to produce documents relating to a person's business practices under section 569(1)(e) can therefore only be exercised in relation to an alleged or possible offence against section 26C and/or 26D.

**Clause 90** amends section 570 to remove the definition of *information* as it is now covered by the definition in section 5.

**Clause 91** inserts a new section 570A to enable certain authorised officers, including police, to require information, documents and evidence from any person the authorised officer reasonably believes capable of giving information in relation to a possible contravention of the primary duty of care, or that will assist the authorised officer to monitor or enforce compliance with the primary duty of care. This provision is modelled on section 155 of the Model WHS Act and is intended to supplement and complement the existing information gathering powers of the HVNL. Similar to section 155 of the Model WHS Act, the provision provides at section 570A(5) that failure to comply without reasonable excuse is an offence with a \$10,000 maximum penalty.

For the purposes of this provision, self-incrimination is not a reasonable excuse. However the provision also provides that information given by a person in compliance with this provision, including any information directly or indirectly derived from that information, is not admissible as evidence against that person in any civil or criminal proceeding that may be brought against them, other than a proceeding for false and misleading information.

**Clause 92** amends section 578 to replace 'take all reasonable steps' with 'exercise reasonable diligence'. This amendment is required to ensure the phrase 'reasonable steps' is not used except in relation to the definition of *due diligence* for the purposes of section 26D.

**Clause 93** amends section 579 to replace 'take all reasonable steps' with 'exercise reasonable diligence'. This amendment is required to ensure the phrase 'reasonable steps' is not used except in relation to the definition of *due diligence* for the purposes of section 26D.

**Clause 94** amends section 588 as a consequence of the amendment to the definition of *information*. Section 588(2) provides evidential immunity and derivative use immunity to information obtained by an authorised officer using the information gathering powers under sections 569, 570 and 577. Section 588(3) excludes documents from inadmissibility on the ground of self-incrimination. The new definition of information includes 'information in the form of a document', which creates an inconsistency between subsections (2) and (3). The amendment to section 588(2) resolves this inconsistency and preserves the original intent of the section.

**Clause 95** amends section 590 to replace 'taken reasonable steps' with 'exercised reasonable diligence'. This amendment is required to ensure the phrase 'reasonable steps' is not used except in relation to the definition of *due diligence* for the purposes of section 26D.

**Clause 96** inserts a new Part 10.1A that provides a new power for the NHVR and prescribed classes of authorised officer (including police) to enter into enforceable undertakings with parties who agree to take specified steps to ensure compliance as an alternative to prosecution in cases where the NHVR or prescribed classes of authorised officer have evidence an offence has been committed. Enforceable undertakings must be entered into voluntarily and must be made in writing.

The power to enter into enforceable undertakings is modelled on the powers provided under the Rail Safety National Law and Model WHS Act. Contravention of an undertaking is an offence with a \$10,000 maximum penalty and if breached, proceedings could be brought for the original contravention to which the undertaking relates.

**Clause 97** amends section 592 to remove the reference to ‘extended liability offence’ as these offences are repealed and covered by the primary duty of care in section 26C.

**Clause 98** amends the note in section 611 to specify that the period within which proceedings, other than for an indictable offence, must start is provided for in section 707A.

**Clause 99** removes Divisions 1 and 2 of Part 10.4 concerning ‘reasonable steps’ and the ‘reasonable steps defence’, including section 625 concerning the use of registered industry codes of practice as proof of compliance. These provisions are no longer required as ‘reasonable steps’ is only used in relation to the definition of *due diligence* for the purposes of section 26D. New section 632A deals with industry codes of practice and is located in Division 3.

**Clause 100** amends the heading of Division 3 Part 10.4 (Other Defences) to remove reference to ‘other’. This word is no longer required as a consequence of the removal of Divisions 1 and 2 of Part 10.4.

**Clause 101** inserts a new section 632A to provide that in a proceeding for an offence against the HVNL a registered industry code of practice is admissible as evidence of whether or not a duty or obligation under the HVNL has been complied with. Under this provision a court may have regard to a registered industry code as evidence in determining what is known about a particular hazard or risk, risk assessment or risk control and what is reasonably practicable in the circumstances. This provision models section 275 of the Model WHS Act and replaces the previous section 625, removed as a consequence of the removal of Divisions 1 and 2 of Part 10.4.

**Clause 102** amends section 634 to specify that two or more breaches of a particular primary duty arising out of the same factual circumstances may be charged as either a single offence or as separate offences. This mirrors section 233 of the Model WHS Act and has been adopted to ensure consistent approaches across the national safety laws.

**Clause 103** amends section 636 to change the executive officer liability offence at section 636(2) and (3) from a deemed liability offence with a reverse onus of proof to a positive reasonable diligence obligation. The amendment makes an executive officer of a corporation guilty of an offence if the corporation commits an offence prescribed in column 3, schedule 4 of the HVNL and the executive officer failed to exercise reasonable diligence to ensure the corporation did not engage in conduct constituting the offence.

In deciding if the executive officer exercised reasonable diligence, a court must have regard to whether the officer was in a position to influence the corporation’s conduct; and the action the



officer took, or could reasonably have taken, to prevent the corporation's conduct. This construction changes the offence from a Type 3 offence to a Type 1 offence, and conforms to the COAG Guidelines. The offences retained in column 3, Schedule 4 have also been assessed against the COAG Guidelines as appropriate offences to attract executive officer liability. There is no change to the existing penalty, which is the penalty for a contravention of the underlying offence by an individual.

**Clause 104** amends section 637, which is similar to section 636 but deals with the liability of partners of unincorporated partnerships. This clause amends sections 637(5) and (6) to change the deemed liability offence with reverse onus of proof, to a positive reasonable diligence obligation. These amendments mirror the amendments to section 636 in clause 103. There is no change to the existing penalty, which is the penalty for a contravention of the underlying offence by an individual. Section 637(4), regarding accessorial liability, is also amended to clarify that the relevant unincorporated partnership offences that this section applies to are in column 2, schedule 4. This is a technical amendment.

**Clause 105** amends section 638, which is similar to section 636 but deals with the liability of management committee members of unincorporated associations. This clause amends section 638(5) and (6) to change the deemed liability offence with reverse onus of proof, to a positive reasonable diligence obligation. These amendments mirror the amendments to section 636 in clause 103. There is no change to the existing penalty, which is the penalty for a contravention of the underlying offence by an individual. Section 638(4), regarding accessorial liability, is also amended to clarify that the relevant unincorporated association offences that this section applies to are in column 2, schedule 4. This is a technical amendment.

**Clause 106** amends section 701 to remove the phrase 'in a material particular'. This terminology is not required as it is included within the new definition of *false or misleading*.

**Clause 107** amends section 702 to remove the phrase 'in a material particular'. This terminology is not required as it is included within the new definition of *false or misleading*.

**Clause 108** amends section 707 and inserts a new section 707A. These sections detail how proceedings for offences are to be taken, and are required because of the addition of an indictable offence (section 26F) to the HVNL. Section 707 as amended allows the prosecution to bring a proceeding for an indictable offence on indictment or in a summary way. However the amendment also prohibits a court of summary jurisdiction hearing an indictable offence in a summary way if the defendant asks for the charge to be prosecuted on indictment; the court is satisfied either that the defendant may not be adequately punished on a summary conviction; or that the charge should not be heard and decided in a summary way because of exceptional circumstances. Section 707A provides that proceedings for offences other than indictable offences must be brought in a summary way, details the timeframes for bringing a proceeding and allows a statement that the matter of the complaint came to the complainant's knowledge on a stated day to be evidence of when the matter came to the complainant's knowledge. These matters were previously contained in section 707. The definition of *complaint* has also been moved to the general definitions in section 5.

**Clause 109** amends section 710 to remove the definition of *complaint*, as the definition is now included in the definitions under section 5.

**Clause 110** inserts a new section 726A that replicates the evidentiary provisions previously provided in each of the deemed liability provisions. Section 726A provides that evidence of a court convicting a person of a heavy vehicle offence, or evidence of details stated in an

infringement notice, are evidence that the offence happened at the time and place and in the circumstances detailed. The effect of this evidentiary provision is that in a proceeding for an offence against the HVNL the prosecution does not have to prove the time, place and circumstances of the offence.

**Clause 111** inserts a new section 735A to expressly provide for legal professional privilege. This provision has been modelled on section 269 of the Model WHS Act.

**Clause 112** amends section 742 to remove the definition of *complaint* as it is now included in the definitions under section 5.

**Clause 113** amends Schedule 4 which specifies offences for the purposes of sections 636(2) and (3), 637(4) and (5) and 638(4) and (5). The first of each of these sub-sections creates accessory liability for executive officers (the executive officer knowingly authorised or permitted the behaviour). Offences able to be committed by a corporation and to which accessory liability applies are listed in column 2 of Schedule 4. The second of each of the sub-sections creates a positive obligation to exercise reasonable diligence to ensure the entity does not commit an offence. Offences to which this obligation applies are listed in column 3 of Schedule 4.

Column 2 has been amended to remove offences repealed as a consequence of introducing the primary duties; renumber offences that have been moved to the primary duties chapter; and to include offences introduced under the Heavy Vehicle National Law Amendment Bill 2015.

Column 3 has been amended to remove offences that did not satisfy the criteria specified in the COAG Guidelines for director liability; remove offences repealed as a consequence of introducing the primary duties; renumber offences that have been moved to the primary duties chapter; and include section 153A that was introduced in the Heavy Vehicle National Law Amendment Bill 2015 and new section 26E in this Bill, as both have satisfied the criteria specified in the COAG Guidelines for director liability.

## **Chapter 3 Maintenance amendments**

### **Part 1 Amendment of Heavy Vehicle National Law Act 2012**

**Clause 114** provides that the following part amends that *Heavy Vehicle National Law Act 2012*.

**Clause 115** amends section 26 to remove the mandatory requirement for the Regulator to publish notice of an amendment or cancellation of a mass or dimension exemption notice in a national newspaper and provides a discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. The current requirement to publish the notice in the Government Gazette and on the Regulator's website remains.

### **Part 2 Amendment of Heavy Vehicle National Law**

**Clause 116** provides that the following part amends the HVNL as set out in the schedule to the *Heavy Vehicle National Law Act 2012*.

**Clause 117** inserts a definition of *public notice* into section 5 to mean 'in the Commonwealth Gazette and on the Regulator's website and if the Regulator considers it appropriate, in another way, including, for example, in a national newspaper'. This general definition removes the need for references in numerous provisions of the HVNL to the specific ways of making a notice

public. It also removes the requirement for publication in a national newspaper and replaces it with a discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate.

**Clause 118** amends section 45 to remove the mandatory requirement for the Regulator to publish notice of an amendment or cancellation of a registration exemption in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5. Section 45 is in Chapter 2 Registration, which has not yet commenced operation. This amendment is made so that when Chapter 2 comes into operation relevant sections in the Chapter will be consistent with other parts of the HVNL which have been similarly amended.

**Clause 119** amends section 46 to remove the mandatory requirement for the Regulator to publish notice of an immediate suspension of a registration exemption notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5. This amendment also removes the definition of *relevant participating jurisdiction* from section 46(6). This definition refers to where a notice must be published, and is no longer necessary because the mandatory publication requirement is being removed. Section 46 is in Chapter 2 Registration, which has not yet commenced operation. This amendment is made so that when Chapter 2 comes into operation relevant sections in the Chapter will be consistent with other parts of the HVNL which have been similarly amended.

**Clause 120** amends section 66 to remove the mandatory requirement for the Regulator to publish notice of an amendment or cancellation of a vehicle standards exemption notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 121** amends section 67 to remove the mandatory requirement for the Regulator to publish notice of an immediate suspension of a vehicle standards exemption notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 122** amends section 173 to remove the mandatory requirement for the Regulator to publish notice of an amendment or cancellation of a mass or dimension authority notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 123** amends section 174 to include additional circumstances in which the Regulator may amend or cancel a mass or dimension authority notice if requested by a relevant road manager to remove the need to cancel and reissue a notice if the provisions apply. It also replaces the specific notice requirements with the term *public notice* which is defined in section 5.

**Clause 124** amends section 175 to remove the mandatory requirement for the Regulator to publish notice of an immediate suspension of a mass or dimension authority notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 125** inserts new section 175A to allow the Regulator to make minor changes to mass or dimension authority notices for formal or clerical reasons or in other minor ways that do not adversely affect the interests of persons operating under the notice, without the need for road managers' consent. New section 175A is equivalent to current section 180 that allows the Regulator to make minor amendments to permits without the need for road managers' consent.

**Clause 126** amends section 176 to allow the Regulator, on application by the holder of a mass or dimension authority permit, to change the vehicle which is the subject of the permit to an equivalent vehicle without the need for road managers' consent. This clause also inserts a definition of *equivalent* vehicle which must be of the same category as the other vehicle, have mass and dimension requirements that are no more than those applicable to the other vehicle and pose no greater public risk than the other vehicle. The Regulator must notify relevant road managers of the change within 28 days of the amendment.

**Clause 127** amends section 180 to specify time periods within which the Regulator must notify relevant road managers of minor changes to mass or dimension authority permits. For formal or clerical amendments the Regulator must provide notice within 28 days. For other minor amendments that do not adversely affect the permit holder's interests the Regulator must provide notice within 7 days. The amendment replaces the current requirement to 'provide the relevant road manager with notice', which in the absence of a specified time period, under the interpretation provisions of Schedule 1 of the HVNL, means as soon as possible.

**Clause 128** amends section 271 to remove the mandatory requirement for the Regulator to publish notice of an amendment or cancellation of a work and rest hours exemption notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 129** removes sections 272(2) and (3) and inserts a new section 272(2) to remove the mandatory requirement for the Regulator to publish notice of an immediate suspension of a work and rest hours exemption notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 130** amends section 362 to remove the mandatory requirement for the Regulator to publish notice of an amendment or cancellation of a work diary exemption notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 131** amends section 382 to remove the mandatory requirement for the Regulator to publish notice of an amendment or cancellation of a fatigue record keeping exemption notice in a national newspaper and provide discretion for the Regulator to publish elsewhere if the Regulator considers it appropriate. This is achieved by replacing the specific notice requirements with reference to *public notice* which is defined in section 5.

**Clause 132** amends the definition of *mass management system* in section 457 to allow for other measures to weigh a vehicle and its load in addition to the use of mechanical devices. This will align with the other means of calculating mass permitted by the mass management standards

and business rules. The amendment also removes the requirement to record reductions in load each time a load is changed after a journey is commenced.

**Clause 133** inserts into section 466 two offences regarding National Heavy Vehicle Accreditation Scheme labels. The first is a requirement for an operator to attach an accreditation label to a nominated heavy vehicle in a way that it can be read from outside the vehicle, and the second is a requirement for a driver not to drive the vehicle unless the label is attached and legible. The penalty for each offence is \$3,000. This is the same penalty that applies to a driver who fails to carry a copy of the operator's BFM or AFM accreditation. The amendments complement the Regulator's obligation under section 466 to give an operator an accreditation label for each relevant accredited vehicle and the relevant standards and business rules that require identification of accredited vehicles by colour coded labels.

**Clause 134** inserts new sections 531A and 531B to provide for the issue of self-clearing defect notices. Self-clearing defect notices will be an additional type of defect notice that may be issued if the use of the defective heavy vehicle on a road does not pose a safety risk or the vehicle's number plate is illegible. There is no requirement for the heavy vehicle to be presented for inspection to have the notice cleared. Two new offences are inserted: one for a driver who is not the operator of the vehicle and does not give the vehicle's operators the notice, and the other for a person who uses or permits a heavy vehicle to be used in contravention of the notice. The penalty for each offence is \$3,000. This is the same as the penalty for equivalent offences in relation to a minor or major defect notice. Action must be taken to fix the defective vehicle as soon as practicable, however, a default period of 28 days is specified.

**Clause 135** amends section 586 to clarify that authorised officers may issue more than one type of defect notice in relation to a heavy vehicle to ensure that any safety risks posed defective heavy vehicles can be dealt with appropriately. The amendments also clarify that multiple notices of the same type may be issued in relation to the same heavy vehicle.

**Clause 136** inserts new section 655A to allow responsible Ministers to delegate to the Regulator Board the power to approve minor amendments to guidelines and approvals specified in sections 653 and 654. It also inserts a new definition of *minor amendment* which means an amendment 'in a minor respect - (a) for a formal or clerical reason; or (b) in another way that does not—(i) increase a safety risk; or (ii) increase a risk of damage to road infrastructure; or (iii) cause an adverse effect on public amenity; or (iv) make a person liable to a penalty.'

**Clause 137** inserts new section 740A to allow fees set by the Regulator in the National Regulations to be automatically increased on 1 July each year in accordance with the method for increasing fees prescribed in the National Regulations. Before 1 July of each year the Regulator must publish the new fee amounts that will apply in the Commonwealth Gazette, on the Regulator's website and elsewhere if appropriate. This provision mirrors section 737, which regulates the annual increase of penalty amounts in the HVNL.

**Clause 138** inserts new Part 14.4 in Chapter 14 (Heavy Vehicle National Law Amendment Act 2016 (Queensland)) with new section 759 to provide that upon commencement, new 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 penalty commenced. This will ensure that any new penalty amounts are consistent with the value of current penalty amounts. This clause also inserts a definition of *new penalty* to clarify this amendment refers to provisions enacted by the *Heavy Vehicle National Law Amendment Act 2016* (Queensland).

**Clause 139** amends provisions throughout the HVNL but predominantly in Chapter 7 – Intelligent Access Program to change references to ‘intelligent access’ to ‘intelligent access program’, for example, intelligent access auditor to intelligent access program auditor, intelligent access condition to intelligent access program condition, and so on. This creates consistency in the terminology used in Chapter 7.

## **Chapter 4 Amendment of Transport Operations (Passenger Transport) Act 1994**

**Clause 140** provides that Chapter 4 of the Bill amends the *Transport Operations (Passenger Transport) Act 1994*.

**Clause 141** inserts new section 155A.

Section 155A(1) allows for a regulation to be made providing for a scheme for the payment of financial assistance to certain persons who have held or hold:

- a taxi service licence; or
- a limousine service licence (other than a special purpose limousine service licence).

Section 155A(2) lists examples of matters that a regulation made under section 155A may prescribe. These include criteria for eligibility to receive financial assistance, proof of eligibility, applications for financial assistance and determination of applications, the amount of financial assistance payable and conditions on payment, review of decisions relating to applications for financial assistance, and repayment of financial assistance where it is found that a person was not eligible or did not comply with conditions on payment of the assistance.

Section 155A(3) provides that section 155A, and any regulation made under section 155A, expire two years after the commencement of section 155A. This enables removal of the legislative scheme under section 155A in two years’ time, when the administration of financial assistance is expected to have been completed, subject to the operation of transitional provisions made under new section 207.

**Clause 142** inserts new section 207 to allow savings or transitional provisions to be included in a regulation in relation to the expiry or repeal of a regulation made under new section 155A. For example, a regulation may provide that the payment scheme continues to operate for any applications that have been made, but not determined, before the expiry or repeal of a regulation made under section 155A. Transitional provisions may also deal with the review of decisions relating to payment of financial assistance, and repayment of financial assistance, after the expiry or repeal of a regulation made under section 155A.