

Heavy Vehicle National Law Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Heavy Vehicle National Law Amendment Bill 2018.

Summary

Operational provisions of the *Heavy Vehicle National Law Act 2012* (the Act) commenced on 10 February 2014. The Act provides a single national law for the consistent regulation of heavy vehicle operations across most of Australia. The Act also established the National Heavy Vehicle Regulator (the Regulator) to administer the Heavy Vehicle National Law (HVNL) which is contained in the Schedule to the Act.

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 regulates matters relating to the operation of heavy vehicles such as mass and dimension, vehicle safety standards, drivers' fatigue management, heavy vehicle accreditation 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 Bill amends the HVNL to implement nationally agreed reforms that include strengthening investigative and enforcement powers for authorised officers, increasing freight volumes where mass is not a constraint, and transferring load restraint performance standards from guidance material to the HVNL.

The Bill also makes minor or technical amendments resulting from the maintenance process for the HVNL that remove unnecessary administrative or regulatory burdens, and to ensure the HVNL remains contemporary and fit for purpose.

The Bill also inserts a provision into the part of the Act that governs the application of the HVNL in Queensland. This provision will streamline court processes for the prosecution of fatigue-related offences.

Policy objectives and the reasons for them

The Bill contains amendments that will implement key heavy vehicle policy initiatives to reduce complexity and improve the effectiveness of the investigation and enforcement of the HVNL and to improve the productivity of the road network and freight fleet by increasing allowed volume on certain heavy vehicles where mass is not the constraint.

These two initiatives were endorsed by the Transport and Infrastructure Council (the Council) in 2017 following extensive industry and stakeholder consultation.

The Bill also includes several minor and technical amendments to:

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

The Bill also inserts a new section into the Queensland application provisions of the Act. This provision will allow proceedings for fatigue-related offences to be commenced in the court within the district where an offence was detected.

Currently, if a person has committed multiple fatigue-related offences in different court districts, then charges must be brought, and the defendant is obliged to appear, at the courts in each of these districts. This issue is distinctive to fatigue offences because the offences are continuing offences with each single journey potentially giving rise to multiple offences, which may be committed in different court jurisdictions.

The amendment will mean that multiple offences can be heard in a single Magistrates Court. This will reduce unnecessary burdens for both defendants and the prosecuting authority. It will also mean that Queensland has a similar approach to that in other jurisdiction where courts have a greater discretion to determine the location of proceedings.

Achievement of policy objectives

The policy objective of reducing complexity and improving the effectiveness of the investigation and enforcement of the HVNL is achieved by:

- clarifying the authorised officers' information gathering powers;
- removing unnecessary restrictions attaching to certain powers of an authorised officer who is not a police officer to enter and inspect a vehicle involved in an accident;
- providing a broader power to require inspection of a heavy vehicle fleet where there is a reasonable belief the class of vehicles does not comply with the HVNL or is defective;
- providing for additional sanctions, including the issue of a prohibition notice by an authorised officer and the issue of an injunction by the court where there is non-compliance with the HVNL;
- permitting the publication by the Regulator of details of court outcomes;
- clarifying the admissibility of evidence obtained by police under another Act and the admissibility of evidence obtained in another jurisdiction.

The policy objective of improving the productivity of the road network and freight fleet by increasing allowed volume on certain heavy vehicles where mass is not the constraint is achieved by:

- granting PBS level 1 heavy vehicles travelling at or below general mass limits the same road access as other heavy vehicles already accessing the road network at these mass limits;
- requiring a road manager to grant consent to a mass authority at a mass lower than requested if the higher mass requested is the only grounds for refusal.

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

- inserting notes to aid interpretation;
- relocating provisions to group related provisions together;
- clarifying the operation of some administrative provisions.

The policy objective of streamlining Queensland court processes is achieved by inserting a new Queensland specific section into Part 4A of the Act which allows a complaint for a fatigue-related offence to be heard where the offence was detected, that is the place where a driver was required to produce their work diary.

Alternative ways of achieving policy objectives

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 be best achieved and the potential advantages of legislative change over implementation through other administrative options.

Reducing complexity and improving the effectiveness of the investigation and enforcement of the HVNL can only be achieved through legislative amendment. The approach taken is consistent with the approach adopted in other national safety legislation.

Similarly, improving the productivity of the road network and freight fleet by increasing allowed volume on certain heavy vehicles where mass is not the constraint can only be achieved through legislative amendment.

Finally, streamlining court processes for fatigue-related offences in Queensland, requires legislative amendment.

Estimated cost for government implementation

The reform of the investigation and enforcement provisions of 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 of all reforms in the Bill will be met within existing budget allocations of the Regulator and state and territory road agencies.

Consistency with fundamental legislative principles

The amendments to 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 other than as identified below are generally consistent with these principles.

The reformed powers of investigation and enforcement contained in the Bill are being introduced to legislate the third phase of amendments to reform HVNL chain of responsibility (CoR) and executive officer liability provisions. The proposed amendments have been developed by the National Transport Commission in consultation with all state and territory road transport authorities, and received unanimous agreement by the Council.

However, a number of these reformed provisions may raise FLP issues. These issues are raised in:

- amendments to sections which retain offences containing reversal of onus of proof provisions
- amendments to sections 570 and 570A which retain self-incrimination provisions
- amendments to section 521(6) concerning power to require inspection of a class of heavy vehicles.

The clauses of the Bill in which these FLP issues arise, together with explanation of the provision and the justification for a departure (if any), are outlined below.

Amended offences and existing reversal of onus of proof

The Bill will relocate an existing offence from section 153 to new section 25A.

The Bill will amend the existing provisions in section 568 to require a driver to produce their driver licence for inspection by an authorised officer. Failing to comply will, as is the case with other documents that may be required to be produced under this section, constitute an offence.

Although not new offences, these offences contain a reverse onus provision (by providing that the defendant must provide the reasonable excuse) which raises an FLP issue (section 4(3)(d) of the *Legislative Standards Act 1992*). However, this can be justified on the basis that the defendant is best-placed to provide such an excuse and the excuse is within the defendant's knowledge. The amendments retain the operation of these existing provisions and these provisions remain consistent with the operation of other offences in the HVNL.

Protection against self-incrimination

Clause 23 amends the existing power of an authorised officer to require information under section 570 (Power to require information about heavy vehicles) to include information known to a responsible person about anyone else the responsible person reasonably believes holds information about the heavy vehicle.

Clause 24 restates existing section 570A (Requiring information) to recognise the terminology and expanded executive officer liability provisions related to safety duties contained in the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018. The substantive effect of the section is unchanged.

These sections currently, and will continue to, provide that it is not a reasonable excuse for a person to fail to comply with a requirement on the grounds that complying might tend to incriminate the individual. This raises a FLP issue (section 4(3)(f) of the *Legislative Standards Act 1992*).

However, the provisions are consistent with these existing and other offences in the HVNL. Additionally, use and derivative use immunity is provided for as is legal professional privilege.

The amendments do not alter the original intent of the relevant provisions which were 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 subsection 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.

Power to require inspection of a fleet of heavy vehicles or a class of heavy vehicle

Section 522 of the HVNL provides that an authorised officer may require to be produced for inspection, a heavy vehicle that the authorised officer reasonably believes has in the preceding 30 days been used – in very general terms – in a manner not compliant with the HVNL. Clause 20 extends the 30-day timeframe from 30 days to 60 days.

Clause 20 inserts proposed new section 522(1A) which expands this existing power to permit certain authorised officers to require to be produced for inspection a class of heavy vehicles that the authorised officer reasonably believes has in the proceeding 60 days been used – in very general terms – in a manner not compliant with the HVNL.

The reason for the expansion of the power to require a class of vehicles to be produced for inspection is to address those situations where there is a reasonable belief that a fleet of vehicles may (for example) be defective but the authorised officer has not physically sighted each individual vehicle. The proposed amendment closes a loophole in the existing provisions and allows serious safety concerns to be addressed appropriately.

These powers to require vehicles to be produced for inspection are independent of a warrant, which raises an FLP issue. Authorised officers must however have a reasonable suspicion of wrong-doing, and the exercise of the powers in section 522 are subject to the existing safeguards in Chapter 9 of the HVNL, including no use of force and no authority to enter premises. Further, the powers of an authorised officer under new subsection 522(1A) can only be exercised where the officer is specifically authorised.

The proposed amendment to section 522 will improve the ability for authorised officers to respond to known safety issues and address systemic failures. On this basis the proposed provisions are justified.

Consultation

The amendments to the HVNL were developed by the National Transport Commission in consultation with the Regulator and state and territory government transport and enforcement agencies. Consultation was also undertaken with peak transport industry organisations and other key stakeholder representatives, including the Queensland Trucking Association and the Local Government Association of Queensland.

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 indicated support for these amendments.

Consistency with legislation of other jurisdictions

The HVNL is national scheme legislation that, once commenced in Queensland, will be applied in all participating states and territories. The Bill will ensure the consistent and equitable regulation of the heavy vehicle industry is maintained across participating jurisdictions.

Notes on provisions

Clause 1 states that when enacted, the Bill will be cited as the *Heavy Vehicle National Law Amendment Act 2018*.

Clause 2 provides for commencement of the *Heavy Vehicle National Law Amendment Act 2018*.

Clause 3 states that this part amends the *Heavy Vehicle National Law Act 2012*.

Clause 4 inserts new section 42E into Part 4A of the Act which contains provisions that are specific to Queensland's application of the Heavy Vehicle National Law.

The amendment means that proceedings for a fatigue-related offence may be held in the Magistrates Court in the district where an offence was detected, that is the place where a driver was required to produce their work diary.

The fatigue-related offences to which this section will apply are identified in a definition inserted by this clause.

New subsection (3B) indicates that subsection (3A) has effect despite, but does not limit the *Justices Act 1886*, section 139. This means that court proceedings for fatigue-related offences may be brought in the district where an offence occurred (as currently provided for in section 139(1) of the *Justices Act 1886*), or in the district where an offence was detected (as provided for in the amendment contained in this clause).

Clause 5 states this Law amends the *Heavy Vehicle National Law*.

Clause 6 replaces the definition for *notice* and inserts a new definition for *prohibition notice*.

This clause also inserts notes into the definitions for *container weight declaration*, *extract journey documentation registration item*, and *transport documentation* to aid interpretation.

This clause also amends the definition of *information* and inserts a note to aid interpretation.

Clause 7 amends section 23(5A) to require a PBS vehicle approval to state the performance level for the approval. This information is required for the operation of new section 136(2) (clause 13 of the Bill), which inserts a new definition of *specified PBS vehicle*.

Clause 8 inserts new section 25A. This is a relocation of existing section 153 so that it appears with other provisions regarding PBS vehicles. Section 153 will as a consequence be omitted by clause 14.

Clause 9 relocates the definition of *safety duty* from section 26D to section 5.

Clause 10 inserts a reference to general mass limits into section 95(2), which are prescribed under the regulations. A reference to general mass limits is required in the HVNL for the

operation of new section 136(2) (clause 13 of the Bill), which inserts a new definition of *specified PBS vehicle*.

Clause 11 provides that the general provisions of section 96 relating to non-compliance with general mass limits do not apply to a *specified PBS vehicle*. This is because, by definition, such a vehicle will always be within general mass limits, otherwise it remains a class 2 vehicle.

Clause 12 replaces existing section 115 to reflect that the load restraint performance standards will be prescribed in the regulations instead of being set out in the Load Restraint Guide.

Clause 13 amends section 136 to exclude a *specified PBS vehicle* from the definition of class 2 heavy vehicle. The effect of this and other related amendments is that such a vehicle will have access to the general road network.

This clause also inserts a definition of *specified PBS vehicle* into section 136. The effect of this and other related amendments is that certain PBS vehicles at or below general mass limits will have access to the general road network without the need for a permit, notice or other authorisation.

Clause 14 omits section 153. The requirements currently set out in section 153 will be relocated to new section 25A (clause 8).

Clause 15 amends section 153A(3) so that a *specified PBS vehicle* is excluded from the definition of *restricted access vehicle*. The effect of this and other related amendments is that a *specified PBS vehicle* will have access to the general road network without the need for a permit, notice or other authorisation.

Clause 16 replaces section 156 and inserts new section 156A. Matters dealt with in existing subsections 156(3) and (4) will be relocated to new section 156A. New section 156A essentially contains a new provision in subsection (2) that requires a road manager to grant consent to a mass authority at a mass lower than requested if the higher mass requested is the only grounds for refusal.

Clause 17 is a consequential amendment to correct cross referencing in section 172, arising from the relocation of provisions from section 156 to new section 156A.

Clause 18 inserts a note into section 490 to aid interpretation.

Clause 19 amends section 521(6) so that an authorised officer who is not a police officer can exercise certain powers under the section if acting under the direction of a police officer. Currently only an authorised officer who is a police officer can exercise these powers.

Clause 20 amends section 522(1)(a) to extend the operation of the section to a vehicle that has been used within the last 60 days instead of the current 30 days. This overcomes an impediment to assessing compliance with, or investigating breaches of, the HVNL.

This clause also inserts a new subsection 522(1A). This new section allows an authorised officer to require a category of vehicles to be produced for inspection under certain circumstances. This expands the existing provisions which only apply to an individual and identified heavy vehicle.

This clause also inserts new subsection 522(6). This new subsection provides that the powers of an authorised officer under new subsection 522(1A) can only be exercised where the officer is specifically authorised. This is consistent with existing provisions regarding inspection of an individual vehicle.

Clause 21 replaces subsections 568(2) and (3). The effect of the amendment is to permit an authorised officer, for compliance purposes, to require a driver to produce their driver licence under certain circumstances. The penalty for failing, without reasonable excuse, to comply will be \$6,000.

This clause also makes consequential amendments to subsections 568(4)(a) and (8) to reflect that the section will also apply to the production of a driver licence.

This clause also inserts a note in subsection 568(4) to aid interpretation.

This clause also makes a consequential amendment to subsections 568(5)(a) to reflect that the section will also apply to the production of a driver licence.

This clause also replaces subsection 568(6) and is a consequential amendment reflecting that the section will also apply to the production of a driver licence.

Clause 22 inserts a note in subsection 569(1) to aid interpretation.

This clause also replaces subsection 569(3) to allow the production of a document to an authorised officer by electronic means.

This clause also inserts a note in subsection 569(4) to aid interpretation.

Clause 23 inserts new subsection 570(1)(c). The new subsection requires a responsible person to provide a new category of information to an authorised officer – for compliance purposes – on request. The new category of information is details of another person who the responsible person reasonably believes holds information about a heavy vehicle (an example is a third-party supplier of record keeping services). It will be an offence not to provide the information without reasonable excuse.

This clause also inserts a note in subsection 570(1) to aid interpretation.

This clause also amends subsection 570(2) so that – for compliance purposes – an authorised officer may request information from a responsible person about a past journey as well as a current or intended journey.

This clause also inserts new subsection 570(2A). The new section makes explicit that a request for information under new section 570(1)(c) is to be given in writing and state certain details.

This clause also inserts a note in subsection 570(5) to aid interpretation.

This clause also inserts new section 570(5A). The new section provides a safeguard against self-incrimination when complying with a requirement to provide certain information under new section 570(1)(c).

Clause 24 replaces section 570A(1) to (4). Section 570A was inserted into the HVNL by the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* and has not commenced. Section 570A deals with the requirement for a person to give information to an authorised officer regarding a possible contravention of a primary safety duty. Section 570A will be amended so that the section also applies to giving information regarding a possible contravention of a duty of an executive officer to exercise due diligence (such a duty being imposed by amendments to the HVNL contained in the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018). The amendments will also make explicit that a request under this section for a person to provide information or appear before a person appointed by an authorised officer is to be given in writing and state certain details.

This clause also inserts a note in subsection 570A(6) to aid interpretation.

This clause also inserts new section 570A(7). The new section provides a safeguard against self-incrimination when complying with a requirement to provide certain information under section 570A.

Clause 25 inserts new Part 9.4, Divisions 5A and 5B, containing new sections 576A to 576E.

New section 576A permits an authorised officer to issue a prohibition notice to a person where the authorised officer reasonably believes there is an activity occurring (involving a heavy vehicle) that involves or will involve an immediate or imminent serious risk to a person. The prohibition notice prohibits the carrying out of that activity until the matters giving rise to the risk have been remedied. The direction may be given orally but must be confirmed by written notice – a *prohibition notice* - as soon as practicable.

New section 576B sets out what a prohibition notice must state and other matters that may be included in the notice.

New section 576C provides that it is an offence not to comply with a direction under section 576A(2) or a prohibition notice, with a penalty of \$10,000.

New section 576D defines the meaning of *notice* for Division 5B.

New section 576E provides that an authorised officer may apply to the Supreme Court for an injunction compelling a person to comply with a notice or restraining the person from contravening a notice. An application for a restraining order may be made regardless of whether a proceeding has been brought for an offence under the HVNL in connection with any matter in relation to the notice. The application can only be made by certain authorised officers.

Clause 26 inserts notes in sections 577(3)(a) and 577(6) to aid interpretation.

Clause 27 is a consequential amendment to section 588(1) so that the section applies to new subsections 570(1)(a) and (b).

Clause 28 inserts new Part 10.3, Division 2A, containing new section 596A.

New section 596A provides that if a court, including a court that deals with summary proceedings, convicts a person of an offence against this law, the court may issue an injunction requiring the person to cease contravening this Law.

Clause 29 amends section 641(8) definition of *dissatisfied person*, paragraph (f), to reference prohibition notices as a consequence of the new prohibition notice provisions contained in clause 25.

Clause 30 is a consequential amendment to section 653(1)(l)(ii) so that the section applies to new section 156A.

Clause 31 inserts new sections 726B and 726C.

New section 726B clarifies that evidence lawfully obtained by a police officer using other powers under other laws is not inadmissible in a proceeding for contravention of the HVNL only because it was obtained under another law.

New section 726C clarifies that evidence obtained in one jurisdiction is not inadmissible in a proceeding for contravention of the HVNL only because it was obtained in another jurisdiction.

These provisions are intended to remove any doubt that such evidence is not inadmissible only for these reasons.

Clause 32 inserts new Part 13.3, Division 3, containing new section 726D into the HVNL.

New section 726D will provide that the Regulator may publish on its website information about convictions for offences under the HVNL. The details that may be published include the offence and the penalty imposed. The new section also provides that the Regulator may publish information about court orders, other than information that could identify or lead to the identification of a person.

Clause 33 amends section 727(1) definition of *driver fatigue provision* to refer to Chapter 1A. Chapter 1A contains the new safety duties provisions (as inserted into the HVNL in the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*).

This clause also makes a consequential amendment to section 727(1) definition of *driver fatigue provision* paragraph (d) to refer to the new paragraph (aa) inserted by this clause.

This clause also makes a consequential amendment to section 727(1) definition of *electronic work protected diary protected information*.

The amendments to section 727(1) in this clause make it clear that electronic work diary information may be used for the purposes of compliance and enforcement of the safety related driver fatigue obligations in Chapter 1A. The amendment overcomes a technical issue in the operation of these provisions.

Clause 34 inserts a note in section 730(3)(b) to aid interpretation.

Clause 35 amends section 737 to clarify that the indexation of penalties under this section is not limited by the maximum penalty amounts that may be prescribed under the regulations.

The effect is to make clear that a maximum penalty of \$4,000 prescribed as a penalty under a regulation is still to be indexed annually even though the resulting effective penalty will exceed this amount.

Clause 36 amends section 750(4) to reduce administrative burden in the event the Regulator amends or cancels an instrument carried over from previous legislation. The effect is that the Regulator will not have to publish notice in a national newspaper. This makes this provision consistent with other similar provisions in the HVNL.

Clause 37 amends Schedule 3, Part 2, so that a decision of an authorised officer, who is not a police officer, to issue or amend a prohibition notice is a reviewable decision.

This clause also makes a consequential amendment to Schedule 3, Part 3 to correct cross referencing, arising from the relocation of provisions from section 156 to new section 156A.

Clause 38 amends Schedule 4 so that the new offence in section 576C (contained in clause 25) of failing to comply with a direction or a prohibition notice is one an executive officer of a corporation may also be prosecuted for.