



SUBMISSION TO THE QUEENSLAND TRANSPORT AND PUBLIC WORKS COMMITTEE

HEAVY VEHICLE NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL 2018

22 MARCH 2018

Introduction

The Heavy Vehicle National Law (HVNL) is a co-operative national legislative scheme hosted by the Queensland Parliament. The other states in the HVNL system (NSW, Victoria, South Australia, Tasmania and the ACT) have passed legislation adopting the HVNL as their own heavy vehicle law. In general, HVNL amendments passed by the Queensland Parliament take effect automatically in the other participating states.

The HVNL implements an important principle called chain of responsibility. Under chain of responsibility, participants in the road transport chain – including consignors and consignees – can be held to account for safety issues on the road. The HVNL also provides that directors and executives of chain parties can be held personally liable for safety issues under some circumstances.

The *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* made important changes to the chain of responsibility provisions in the law. These changes:

- introduce a primary safety duty into the law. Primary duties define the broad scope of a duty holder's responsibilities and require them to consider their own business risks and how they can reasonably be eliminated or minimised. The model Work Health and Safety (WHS) Act and the Rail Safety National Law (RSNL) are also based on this approach.
- extend CoR to cover vehicle maintenance and repairs, as proposed by the then Chair of the ATA, David Simon, in 2013.
- replace the duty of care in the existing law, 'all reasonable steps,' with the WHS duty of care, 'so far as is reasonably practicable.'
- impose explicit due diligence obligations on the executives of chain parties, with the prosecution bearing the burden of proof. These obligations are comparable to s 27 of the model WHS Act.¹

The amendments are expected to come into force in mid-2018.

Part 4 of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 would make additional changes to the HVNL. Most importantly, the Part would bring the other duties of executive officers into line with the due diligence approach in the 2016 Act.

Parts 2, 3 and 5-9 of the Bill would amend Queensland-specific transport legislation. The ATA does not have a national view on these provisions, and refers the committee to the submission from the Queensland Trucking Association.

¹ ATA, [Heavy Vehicle National Law and Other Legislation Amendment Bill 2016](#). Submission to the Queensland Transportation and Utilities Committee, 28 September 2016.

The amendments are important – and should come into force as soon as possible

The amendments to the HVNL in the *Heavy Vehicle National Law Amendment Act 2016* and this bill are important to the safety of trucking businesses and road users generally.

The NHVR and industry bodies have delivered extensive training about the amendments up and down the supply chain.

As a result, the ATA considers that the amendments should be proclaimed and brought into force as soon as possible, with minimal or no delay.

Why the amendments are important for safety

The overwhelming majority of trucking businesses are small businesses: 94 per cent of Australia's 50,000 trucking businesses have a turnover of less than \$2 million.²

The disparity in size between trucking businesses and their customers has long raised safety concerns. For example, National Transport Commission research in 2012 found that:

A significant operational problem that companies and drivers associated with working hours was around pressure of deadlines and 'time slots', where delays negatively impact on work/rest times.³

The chain of responsibility concept was developed to help address these operational problems, by ensuring that customers can be held to account for their demands on trucking businesses.

In turn, the 2016 amendments and this bill will require customers and trucking businesses to increase their focus on developing systems to maintain safety.

Training and consultation

The amendments have been accompanied by extensive training and consultation.

For its part, the NHVR has delivered workshops across the country and published guidance material including videos, podcasts, fact sheets and an interactive safety gap assessment tool.⁴

With support from the Australian Government and the NHVR via the Heavy Vehicle Safety Initiative program,⁵ the ATA and the Australian Logistics Council (ALC) are developing a master registered industry code of practice to help businesses comply with the law.

The code is nearing completion and has involved extensive consultation up and down the supply chain.

² ABS, [Counts of Australian Businesses, including Entries and Exits, Jun 2013 to Jun 2017](#). ABS cat 81650, February 2018.

³ NTC and AMR, [Reform evaluation in the road transport industry, 2012: survey on driver fatigue](#), 46.

⁴ See www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/changes-to-chain-of-responsibility

⁵ Chester, D. [Funding boost for heavy vehicle safety programs](#). Media release, 26 May 2017.

The ATA and its member associations are providing the trucking industry with comprehensive information about the amendments. For example, Trucking Australia 2018, to be held in Canberra from 18-20 April 2018, will feature certificate workshops on how to use the new master code and how to comply with the executive officer due diligence obligations in the HVNL and other laws.

Concerns raised by primary producers

The ATA is aware that the NFF and other farm associations have raised concerns about the impact of the CoR amendments on the farm sector.⁶

It needs to be emphasised that the CoR amendments would only require primary producers to ensure secure safety so far as is reasonably practicable. This is the same standard that they are required to meet under the model WHS Act.

Reasonably practicable steps that primary producers could undertake with respect to contracted transporters would include:

- making sure that their conduct does not contribute to unsafe practices by a transporter.
- providing information about the expected weight of goods or stock so that the transporter knows which vehicle is appropriate, and which permits if any would be required.
- helping the transporter with scheduling by providing realistic estimates of the time required for loading, any confirmed delivery times and travel times on local roads.
- making sure there is safe access to the producer's property, equipment or people necessary for loading.⁷
- correctly applying feed and water curfews to livestock
- in particular, understanding the provisions of the HVNL and not expecting drivers or trucking businesses to break or evade them.

As one owner-driver in the livestock sector said:

If people hire trucks, they should be obligated to make sure they are unloaded in a timely way, and if it's livestock it should be as soon as they arrive. Multinational companies should not be turning trucks full of livestock away; drivers should not be expected to try to sleep with animals on board and no alternative accommodation.

Businesses in the primary production supply chain can meet many of these requirements by selecting transporters that can prove they have a good safety and compliance history, such as businesses in the ATA's TruckSafe program.⁸ These businesses have to meet high safety standards and are audited regularly by independent auditors.

⁶ Bettles, C. "NFF: ramifications of new trucking laws could be 'quite enormous.'" Farm Online News, 7 February 2018. [Link](#)

⁷ NHVR, [Primary producers and heavy vehicle safety: common questions about working with upcoming changes to chain of responsibility](#). Fact sheet, 2018.

⁸ See www.trucksafe.com.au

Executive officer liability for corporate offences

When it comes into force, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* will impose a positive due diligence obligation on executive officers to ensure chain parties comply with their primary safety duty.⁹

This due diligence obligation would replace the executive officer liability provisions in the HVNL that relate to CoR offences.

But the HVNL also makes executive officers liable for other offences in the law, including important safety related provisions such as:

- operating an unsafe heavy vehicle¹⁰
- contravening conditions of mass or dimension exemptions¹¹
- tampering with a speed limiter fitted to a heavy vehicle¹²
- tampering with an approved electronic recording system.¹³

In 2015, transport ministers agreed to extend the executive officer due diligence obligation to include these other provisions, subject to the outcomes of a RIS.¹⁴

The RIS examined four options:

1. Impose the positive due diligence obligation in relation to CoR offences only. Executive officer liability for non-CoR offences would not be changed, although the burden of proof for the remaining offences listed in column 3 of schedule 4 of the HVNL would be imposed on the prosecution
2. Remove executive officer liability for all non-CoR offences
3. Extend the due diligence obligation for CoR offences to cover specified non-CoR offences
4. Extend the due diligence obligation to cover the executive officers of any party with a duty or obligation under the HVNL.¹⁵

The ATA recommended that ministers adopt **option 3**, on the grounds that it would create a consistent approach to executive officer liability across the HVNL, and lead to higher levels of compliance and safety.¹⁶

The ATA pointed out that option 1 would, if implemented, have incorporated two different mechanisms for extending liability to executive officers in the same law. This would unnecessarily complicate the development of corporate safety systems.

Option 2 would have affected safety outcomes by restricting the scope of executive officer liability across the law, including for safety-related offences.

⁹ *Heavy Vehicle National Law Amendment Act 2016*, ch 2, pt 2, new s 26D.

¹⁰ HVNL, s 89(1).

¹¹ HVNL, ss 129(1)-(3).

¹² HVNL, ss 93(1)-(3).

¹³ HVNL, s 335(1); s 336(1).

¹⁴ NTC, *Heavy Vehicle National Law – Extension of Executive Officer Due Diligence Obligation Decision Regulatory Impact Statement*. November 2016, 15. [Link](#).

¹⁵ NTC, 23.

¹⁶ ATA, [Executive Officer Due Diligence Consultation RIS: Australian Trucking Association Response](#). 22 April 2016. 2.

Option 4 would have extended the liability of executive officers to include some 200 additional offences, including the replacement of defaced, lost or stolen permits.¹⁷ It would not have increased safety, because it would have swamped critically important safety obligations under a requirement for executive officers to exercise due diligence to prevent an overwhelming number of less serious offences.

The bill would implement option 3, as recommended by the ATA.

Clause 16 would amend new s 26D (Duty of executive of legal entity) to extend the due diligence obligation to cover all of the executive officer liability offences under s 636(2), 637(5) and 638(5) of the HVNL, as amended by the 2016 Act and the omission of Chapter 2.¹⁸

The explanatory note emphasises that:

The amendments cover all major safety offences in the HVNL (which have a direct safety link and that executive officers are able to manage as part of their role) and do not expand the scope of executive officer liability.¹⁹

In practice, the ATA would expect that measures to comply with these provisions would be included seamlessly in the policies and procedures of trucking businesses and other chain parties.

Recommendations

Recommendation 1

The *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* and the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 should come into force in mid-2018 as planned.

Recommendation 2

The Queensland Parliament should pass Part 4 of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018. The bill should not be amended.

¹⁷ HVNL, s 80(1).

¹⁸ Clause 17.

¹⁹ [Heavy Vehicle National Law and Other Legislation Amendment Bill 2018: Explanatory Notes](#). 14.