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| **Submission to:** | Transport, Housing and Local Government Committee |
| **Title:** | Transport and Other Legislation Amendment Bill 2014 |
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# Introduction

The Transport, Housing and Local Government Committee has been asked to report to Parliament on the Transport and Other Legislation Amendment Bill 2014 by 30 June.

The Bill amends a number of transport and non-transport Acts to support the delivery of infrastructure projects, improve legislative processes, reduce red tape and clarify existing definitions and requirements to simplify the regulatory framework.

The ATA is responding to the Committee to support the proposed amendments to the *Heavy Vehicle National Law Act* in Part 3 of the Bill.

# About the Australian Trucking Association

The ATA is the peak body that represents the trucking industry. Its members include state and sector-based trucking associations, some of the nation’s largest transport companies, and businesses with leading expertise in truck technology.

# ATA recommendation

The Queensland Parliament should pass Part 3 of the Transport and Other Legislation Amendment Bill 2014 without amendment.

# Why Part 3 of the Bill is necessary

## 4.1 National Heavy Vehicle Accreditation Scheme

Part 3 of the Bill amends the provisions in the Heavy Vehicle National Law that relate to the National Heavy Vehicle Accreditation Scheme (NHVAS).

NHVAS is one of the three audited accreditation schemes that are available for road transport businesses. The other two are the Western Australian Heavy Vehicle Accreditation Scheme and TruckSafe, run by the ATA.

In Queensland, NHVAS was administered by the Department of Transport and Main Roads until January 2013. Since then, it has been run by the National Heavy Vehicle Regulator, first in co-operation with the state regulators and then, from February 2014, under the Heavy Vehicle National Law.

Accreditation under NHVAS is voluntary, although some commercial contracts require NHVAS or TruckSafe certification as a condition of work. Operators accredited under NHVAS are required to comply with a series of accreditation standards, internal reviews and compliance checks. Operators are externally audited by Exemplar Global auditors on a two-yearly basis, on average, and operators can be subjected to random audits by state authorities or Exemplar Global auditors if non-compliant activity is detected.

The scheme has four accreditation modules: mass management, maintenance management, basic fatigue management (BFM) and advanced fatigue management (AFM). Operators can seek accreditation under one or more these modules.

NHVAS accreditation has a number of benefits for trucking operators.

Operators in NHVAS mass can access what are known as concessional mass limits and higher mass limits. Concessional mass limits allow an operator to carry an extra five per cent extra mass; higher mass limits allow an operator to carry additional weight on particular vehicles. The vehicles must be fitted with road friendly suspension and in Queensland and NSW must be enrolled in the Intelligent Access Program. HML vehicles can only travel on approved HML routes.

In Queensland, vehicles accredited under the maintenance management module do not have to undergo yearly inspections – a considerable cost and time saving for industry and government – because the NHVAS maintenance standards are considered to deliver continuous roadworthiness compliance.

The two NHVAS fatigue modules provide truck operators and drivers with flexible work and rest hours to enable them to manage the risks of fatigue.

For example, to meet the NHVAS BFM standards:

* operators must have a fatigue risk management system in place - including practices and procedures
* drivers must be certified as fit to drive by a medical practitioner, must be trained and inducted in the operator’s fatigue management system and must complete a nationally recognised fatigue management course
* supervisors, managers and schedulers must also undertake nationally recognised fatigue management training.[[1]](#footnote-1)

Vehicles in NHVAS mass and maintenance are required to be identified with numbered accreditation labels. Vehicles accredited under NHVAS mass or maintenance also need to have, in their cabs, interception books for police and enforcement officers to use.

Under sections 80A and 86 of the *Heavy Vehicle Driver Fatigue National Model Legislation*, implemented in Queensland by sections 141 and 150 of the *Transport Operations (Road Use Management—Fatigue Management) Regulation 2008* (now repealed), operators and drivers in the two NHVAS fatigue modules had to meet additional record carrying requirements.

Under these requirements, vehicle drivers had to carry:

* a copy of the accreditation certificate for the operator’s fatigue accreditation
* a document, signed by the operator of the vehicle holding the fatigue accreditation, stating that the driver:
* was working under the operator’s accreditation
* had been inducted into the operator’s fatigue management system
* met the requirements relating to drivers under the accreditation, and
* if the driver was operating under AFM, a document stating the work/rest hours applying under the accreditation.

The justification for these additional requirements was that drivers operating under the fatigue modules had to be certified as fit to drive, inducted and trained. They also had to work for a fatigue accredited operator. As a result, it was appropriate to require them to carry documents to confirm this.

## 4.2 Implementation of NHVAS under the Heavy Vehicle National Law

The NHVAS is now implemented by chapter 8 of the Heavy Vehicle National Law.

Sections 468-470 of the law continue and expand the requirement for vehicle drivers to carry accreditation information.

The relevant paragraphs of s468 are as follows:

**Section 468- Driver must carry accreditation details**

(1) The driver of a heavy vehicle who is operating under a heavy vehicle accreditation must keep in the driver’s possession—

(a) a copy of the accreditation certificate for the accreditation; and

(b) a document, signed by the operator of the vehicle who holds the accreditation, stating that the driver—

(i) is operating under the operator’s heavy vehicle accreditation; and

(ii) has been inducted into the operator’s relevant management system; and

(iii) meets the requirements relating to drivers operating under the operator’s heavy vehicle accreditation (if any); and

(c) for a driver operating under AFM accreditation, a document stating the AFM hours applying under the accreditation.

The critical difference between the former model law and the HVNL provision is that the requirement now applies to all NHVAS accreditations, including mass and maintenance, not only to the two NHVAS fatigue modules.

The logistics of providing every driver with these extra documents has proved to be a considerable problem, because drivers swap trucks and trailers, including between accredited and non-accredited vehicles.

Under the law as enacted, even short term agency drivers need to be given letters of induction and copies of accreditation certificates. Those drivers must then be pressed to return their letters and accreditation certificates on completing work.

Requiring drivers to carry mass and maintenance accreditation documents does not deliver any safety benefits. Enforcement officers have always been able to identify vehicles in NHVAS mass and maintenance by checking their accreditation labels.

As the Explanatory Note for the Bill points out, the expanded ‘must carry’ requirements were the result of a drafting error:

In drafting sections 468, 469 and 470, the requirements applying to drivers and operators were inadvertently extended to include all forms of heavy vehicle accreditation, including mass and maintenance accreditation. This has resulted in increased red tape and an unnecessary regulatory burden on industry.[[2]](#footnote-2)

In early March, the NHVR issued instructions to the relevant state and territory road transport authorities not to enforce the ‘must carry’ requirements in relation to NHVAS mass and maintenance. The authorities were tasked with instructing authorised officers under the Heavy Vehicle National Law:

* not to request nor to require the production by drivers of these mass or maintenance accreditation documents at the roadside, and
* not to issue any sanctions for failure to carry or produce the documents.[[3]](#footnote-3)

# Proposed amendments

The amendments to the Heavy Vehicle National Law Act in Part 3 of the Bill would rectify the drafting error by:

* restricting the application of ss468 and 469 to drivers operating under BFM or AFM accreditation (clauses 6 and 7)
* consequentially amending the s470 requirements applying to operators with heavy vehicle accreditations (clause 8).

# Application to other jurisdictions

Once passed by the Queensland Parliament, these proposed amendments to the Heavy Vehicle National Law would automatically become law in NSW, Victoria and Tasmania, and in the ACT when it applies the law’s accreditation provisions. The amendments would not automatically take effect in South Australia, but its version of the HVNL has a Henry VIII clause that enables the state governor to amend it by regulation to match the Queensland text.

It could therefore be said that the committee is scrutinising Part 3 of the Bill on behalf of the parliaments of NSW, Victoria, South Australia, Tasmania and the ACT as well as the Queensland Parliament.

1. NHVR, *Basic Fatigue Management Accreditation Guide*. [www.nhvr.gov.au](http://www.nhvr.gov.au), accessed 7 May 2014. [↑](#footnote-ref-1)
2. Explanatory notes, p8. [↑](#footnote-ref-2)
3. NHVR, “Accreditation paperwork burden removed from drivers and operators,” NHVR news update, 5 March 2014. [www.nhvr.gov.au](http://www.nhvr.gov.au), accessed 7 May 2014. [↑](#footnote-ref-3)