



INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr GJ Butcher MP
Mr MJ Hart MP
Mr S Knuth MP
Mrs BL Lauga MP
Mr LL Millar MP

Staff present:

Ms E Pasley (Research Director)
Ms M Telford (Principal Research Officer)
Ms M Westcott (Principal Research Officer)

PUBLIC BRIEFING—EXAMINATION OF THE HEAVY VEHICLE NATIONAL LAW AMENDMENT BILL 2015

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 3 JUNE 2015

Brisbane

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Committee met at 10.14 am

BURKE Mr Marcus, Project Director, Heavy Vehicle Compliance and Technology, National Transport Commission

CUMMING, Ms Kelli, Senior Manager, Heavy Vehicle Reform, Department of Transport and Main Roads

FRAINE, Mr Graham, Deputy Director-General, Customer Services, Safety and Regulation, Department of Transport and Main Roads

WOLTER, Mr Jeremy, Manager, National Law, National Transport Commission

CHAIR: Good morning everyone. Welcome to Parliament House today. Everybody has been very cheery here today so we want to make you feel that way as well. I declare open the public briefing for the committee's examination of the Heavy Vehicle National Law Amendment Bill 2015. I thank you for your attendance here today. I am Jim Pearce, the member for Mirani and I am chair of the committee. The other committee members here with me today are Mr Michael Hart, who is the deputy chair and member for Burleigh; Glenn Butcher at the far end there is the member for Gladstone; Shane Knuth is the member for Dalrymple; Mrs Brittany Lauga is the member for Keppel and Mr Lachlan Millar is the member for Gregory.

The briefing is being broadcast live by the Parliamentary Service's website and a transcript will be made by parliamentary reporters and published on the committee's website. For the benefit of Hansard, can I please request that representatives speak clearly into the microphone. Could I also remind you that the microphones need to be turned on before speaking and turned off immediately after speaking.

This briefing is a formal committee proceeding and as such you should be guided by schedules 3 and 8 of the standing orders. Copies have been provided. The aim of the briefing today is for the committee to gather preliminary information in relation to the bill. I now welcome representatives from the Department of Transport and Main Roads. Would you like to make an opening statement?

Mr Fraine: Thank you, chair and thank you, committee, for the opportunity to brief the committee on the Heavy Vehicle National Law Amendment Bill today. By way of background before we get into some of the details of the bill, I thought that it would be useful to start with a bit of background on the process of the bill and how we have come to be here with this amendment bill today.

The heavy vehicle national law—or the HVNL as I will sometimes slip into, so forgive me if I use the acronym—is really the cornerstone of the work that has been going on at national and COAG level for a number of years now in terms of the reform of heavy vehicle regulation. In July 2009, COAG agreed to develop a National Heavy Vehicle Regulator and, along with that, basically, a national law that would underpin the operation of heavy vehicles and their operations around this country. It was along the lines of the one rule book, one law type of concept so that interstate operators and drivers did not find themselves in a situation where if you were on one side of the border at Tweed Heads you had one set of rules and on the other side down in New South Wales you had another set. So effectively the regulator and the law was looking to bring together in a consolidated form all legal and legislative matters related to heavy vehicles over 4.5 tonnes. The only exclusions in terms of what was dealt with at that time are issues to do with heavy vehicle driver licensing, the carriage of dangerous goods and bus operator accreditation. All other elements really around heavy vehicles, be they freight or buses, for instance, are captured under the law.

In 2010, Queensland was nominated as the host for the national legislation and the state indeed where the National Heavy Vehicle Regulator is based. If anyone has cause to be down at Green Square in Fortitude Valley, the National Heavy Vehicle Regulator has its offices down there and they would be certainly happy at any time to give committee members a bit of a view of what they do. Of course, as part of that, as host, the Queensland parliament hosts the legislation and, therefore,

the bill itself and any subsequent amendments are passed and debated first by the Queensland parliament before being automatically applied in other participating jurisdictions by way of each state and territory applying the law.

The law as it stands today was effectively developed in two stages. The bill received assent on 29 August 2012 and it provided basically the legislative framework for the establishment of the regulator as well as really the bulk of the consolidation of the law from all the different states' and territories' own statute at that time. This effectively provided all the wherewithal under which the regulator board and the regulator's corporate structures were established and the regulator itself got up and running in its first form in October 2012.

A subsequent amendment bill was passed in 2013. This bill provided a range of amendments to refine the consolidation of the laws—and I will turn more to this shortly—and dealt with some of the outstanding policy issues. So with the exception of chapter 2 and the modification issues contained in chapter 3—and committee members might recall that we appeared briefly before you roughly about a month ago in regard to heavy vehicle registration schemes as part of another bill—the heavy vehicle national law fully commenced on 10 February 2014.

So that is a little bit about the history of where we are at today. Effectively, as you can imagine committee members, with a consolidated body of national law like this and, certainly, in bringing together the bodies of law from the separate states and territories that are involved there was always a process and a plan to undertake amendment bills over time for a couple of reasons, both in terms of continuing some of that consolidation around policy positions but also, as can occur with the creation of a national body of law, just ironing out some of the issues that you find as you put such a body of law in place. The bill before the committee today is predominantly really a maintenance bill, as we would call it, that has been prepared by the National Transport Commission that has a function nationally on behalf of the Commonwealth, the states and the territories in terms of regulatory reform. But it is work in consultation, obviously, with all jurisdictions, with industry and the heavy vehicle regulator themselves.

As I mentioned earlier, the work that happens around this law is part of a rolling maintenance program and it is underpinned by a maintenance working group that contains the jurisdictions as well as a range of industry members, including Toll logistics, the Australian Trucking Association, the National Road Transport Association and the Australian Logistics Council. So it is trying to bring that sense of co-regulatory approach to the work that is done in the way this legislation works.

The bill before you today includes a range of minor technical amendments that have been identified through this working group process to ensure that there is effective administration and enforcement of the law. It also includes some amendments to give effect to further national reforms agreed by the ministerial council, the Transport and Infrastructure Council, including enabling work around electronic work diaries, which I will turn to shortly, and to also further align some of the penalties and sanctions within the law.

Turning to a couple of things around the detail of the bill, the first one that I would draw to the committee's attention is the very exciting world of electronic work diaries. Electronic work diaries—sometimes called EWDs, so forgive me if I go into the acronym—really represent a significant advancement in the way in which drivers and operators of heavy vehicles can record information about a driver's work hours, rest hours and basically how they conduct their shifts around fatigue management. Currently, as some members may be aware, drivers are required to record and calculate all of their work and rest periods in a written paper diary and provide effectively duplicate copies of everything they record through to various parties in the chain. Record keepers are then effectively required to keep and, if required, produce these records for about a three-year period. Electronic work diaries will take away that set of manual requirements. They automatically record a driver's work and rest times and provide electronic reports to the record keeper without the need for a paper system at all. Certainly, if the committee is interested, there has been a trial of electronic work diaries undertaken in New South Wales in which Queensland has been in the working party on. That has helped inform some of where we are at today in this legislation.

The other important thing about the work diaries is that it takes away the need for drivers to calculate their work time and determine when they will need to take a rest. The EWD has the functionality to alert drivers to their required rest times and by the time they need to stop driving they will also know how long they will need to stop and take that break to keep within their shift requirements.

We know from the trial and what we are doing in terms of what is in front of you for consideration that there are some concerns among the industry about privacy issues with regard to the use of electronic work diaries and also the transparency of the electronic monitoring devices that effectively

these EWDs are. This is one of the reasons electronic work diaries are being introduced on a voluntary basis. Under the law, operators will still retain the choice to use paper or electronic work diaries. The law continues to make provision for both. But the bill does contain some amendments to protect the privacy of those whose information is recorded by EWDs. That effectively is to ensure that the information that is captured by electronic work diaries can be used only for fatigue related compliance purposes and not for a broader set of compliance and enforcement purposes. Certainly, in our discussions with industry, that has been a very key thing for them in terms of having that assurance that this is not a form of regulation by stealth to look into other areas of their lives that are not relevant to the data that is collected.

One of the other key amendments that is in the bill from the industry's perspective is around clauses 23 and 24 of the bill. These amendments make an allowance for what we would term small breaches of work requirements totalling not more than eight minutes in a 24-hour period. If, indeed, you are within that eight minutes within the 24-hour period you do not incur a penalty. The story behind that is that, really, this allowance recognises that the real-time recording that the electronic work diary brings really does give you second-to-second notification of what is going on in the cab. It does recognise, though, that, currently, with paper diaries there is some leniency given in the way timing is rounded. In the rounding of what happens with your work diary, you effectively can have a few minutes over a 24-hour period where there is that window where you might be over the stated figures but, because of the way it is rounded in the diary, it provides a way of not unfairly penalising the driver. What we are doing by the amendment in the bill, as I mentioned, is allowing small breaches within that eight-minute window over a 24-hour period. That will mean that those drivers using electronic work diaries are treated in the same way as those using the paperwork diaries.

Moving on to other elements of the bill, it also amends a small number of penalty provisions to ensure consistency and equity in the penalty amounts for similar offences. As committee members may well imagine, one of the challenges that comes with bringing effectively seven sets of laws from around the country into one is how you deal with penalty provisions in the various different states' and territories' law. As I mentioned earlier, that has been an iterative approach over various versions of the law and effectively the amendment bill in front of you continues that journey.

The penalty levels established in the first two bills did align the penalty provisions as close as possible, but there did remain a number of anomalies and inconsistencies that we are now looking to deal with in this bill. The recommendations and the work that is in there have been considered by ministerial council and agreed at ministerial council and if committee members have had the chance, or when you do get the chance, to have a look in there I think you will see that there is probably about 15 or so in there.

There is one area in particular I would like to draw the committee's attention to in the penalty and sanctions space, because I am sure it will draw your eye when you have a chance to look at it, and it is in regard to the proposed changes to the penalties for disclosing or misusing personal information that is collected for the purpose of intelligent access under chapter 7. On the face of it, and when you look at the figures, you will see that the maximum penalty for that offence rises from \$6,000 to \$20,000. That caught my eye the first time I looked at it so I suspect it may catch yours. What I would say on that one is that these penalties apply to only a very small group of people who have a specific regulatory role under the HVNL and I am certainly happy to go into more detail on this if you would like. These offences do not apply to the heavy vehicle industry more broadly. The change will bring those penalties for groups misusing that data, such as intelligent access service providers, auditors and for a group called Transport Certification Australia, which again look after a lot of the back-end dealing of data from anything from electronic work diaries to other elements, into line with other offences that are of a similar nature for those parties in the heavy vehicle national law. As I mentioned, this is really for a small and specific group of users in the chain of that data.

As I mentioned earlier, just to finish up, the bill also contains a range of minor amendments to streamline administrative processes, clarify requirements and to reduce red tape. Certainly we would be happy to take questions on any of those. In closing, Mr Chair, I would just like to again recognise the effort of both governments but also industry in the development of this work and we would certainly welcome any questions from the committee on the bill.

CHAIR: Thank you very much. When you are talking about the new technology and how it works, I thought I heard you say a couple of times eight minutes over a specific time for fatigue.

Mr Fraine: Yes, certainly.

CHAIR: How could you apply eight minutes to transporters out on the highway? He has only got eight minutes to go 50 kilometres? How does that work?

Mr Fraine: Indeed, Chair, and that is the very reason, in fact, why the bill is building in that little bit of discretion in the use of electronic work diaries. Because at the moment if you are using a paper diary it does, through that rounding set of mechanisms, provide that bit of discretion. If you are 10 seconds over that period within 24 hours therefore you are gone with the electronic work diaries, because they have that precision. One of the issues associated with that is that it could inadvertently do that. A driver who for all intents and purposes is doing everything that is asked of them and is not driving whilst they should not be, if we did not—I am trying not to use a double negative—build in something akin to what is in the bill they could be inadvertently captured and fined. That is what we are trying to build in.

CHAIR: Sorry to go back to it again, but I travel a lot of Central Queensland and am always facing heavy vehicles out on the highway. Often you hear them talking in truck stops about, 'I have got to get going because there is rain coming. I need to get to such-and-such a point.' Roadworks can hold people up. What if the technology picks up on a person who maybe, because of circumstances, finds themselves one or two hours over and that is not uncommon.

Mr Fraine: Absolutely.

Mr Burke: Just to add a couple of points there, one is that the basic limits in the law under standard hours is 12 hours in a working day. What we are talking about is when a driver goes a few minutes over that current limit in the law. As part of formulating that we received advice from fatigue experts who are keen that we did not significantly extend the hours that are currently in the law through a fear that that would create an additional safety risk. It may also be just worth mentioning there is some provision in the law, for example, when a driver is not able to find an appropriate rest place for their short rest breaks, to be able to extend their time in that situation. So, there are some of those scenarios covered in the current law as well.

CHAIR: I still do not understand how a driver is going to escape being penalised simply because of circumstances. I talk about the weather patterns out west where the roads are not good so the driver has to make a decision about how far he can drive: I know I am going to be breaking the law, but I have got to travel another 50 kilometres to get myself across an area that will become flooded. That seems a little bit tough on the truckie who is trying to put himself in a situation where he can get on with the task after he does have a rest. I mean, I know the technology is good and these things have to be taken into consideration especially around fatigue. I have got fatigue issues in Central Queensland with mine workers. I am not clear on why people should be penalised if they are trying to put themselves in a better position to be able to complete their tasks.

Mr Fraine: Chair, if I understand your question, it is really around if I am a driver and I am operating within certain hours for fatigue based and I am part way through my shift and all hell breaks loose with a storm and I am held up for a couple of hours, how do I manage within the flexibility of what is allowed for me. I am delayed a couple of hours. I am therefore going over my shift because of the holdup.

CHAIR: Or you are getting close to your time and you realise, listening to the radio, that there is a storm on the way or a big rain event. That is where I am coming from. It is more over the time than under the time

Mr Fraine: I might ask Kelli to speak to that.

Ms Cumming: I suppose it is important to note that this does not change what the standard hours are for a driver. The work and rest hours required of a driver under a written or an electronic work diary do not change and nor do the defences available to drivers if they find themselves in that situation where they can go up to 45 minutes over that in certain circumstances. That does not change. The eight minutes is really more to reflect the real time capture that occurs in an electronic work diary where, if you have driven for five and a quarter hours and you are required to have a 15 minute rest break, say you have driven five hours and 16 minutes, the system, without this safeguard in it, would actually show an enforcement officer that that was equivalent to a minor breach. Obviously that is not a sensible thing if in a written work diary the driver would round that time down to the 15 minute mark. The eight minutes is just to provide a bit of a safeguard for drivers where they do find themselves in a situation where they cannot stop right on their rest time. They should be planning in advance for when they can stop, that should be part of the scheduling, but if they do find themselves in a situation where they have to go a couple of minutes over that they can do that without risk of offending.

Mr HART: Can I point out the anomaly there? I understand that all we are doing here is introducing a different way of timing, but surely if what you are saying is that the paperwork can be adjusted to suit people not facing penalties then are we not doing something wrong here?

Ms Cumming: The law actually requires drivers to round time to the favour of the rest, I suppose. We need to reflect though what actually happens on the road. The industry sees some of the benefits of electronic work diaries. It provides a much better way for them to effectively manage their fatigue and have better real time information about their drivers, but they are reticent about finding themselves in a situation where they are going to be breached for something because of the real time capture that would not necessarily be evident in a written work diary. It is not something we advocate, but it is a concern that industry has raised and this has been the response to that.

Mr Burke: I will just add to that that there are some checks within the written work diary as well, such as the driver having to record their odometer readings, but undoubtedly the electronic work diary data will be more accurate and have greater assurance around it.

CHAIR: You have had an operational pilot in place from 2011 to 2013. There would have been a number of issues that arose during that pilot time. Can you tell us what the main issues that arose during the pilot were and how they were overcome?

Mr Burke: Some of those issues are outlined in the final report of the pilot that New South Wales Roads and Maritime Services put out. I guess the three key concerns for industry were around the privacy of the data and that it would not be used for enforcing other laws or for other purposes. Secondly, the enforcement approach and how drivers would be treated, particularly for these quite small breaches. Then, thirdly, the concern is around cost which will inevitably influence the decision to go with a paper or an electronic version. Some of those costs are still to be determined as it is rolled out.

Mr MILLAR: I fully understand the chair's comments before and where he is coming from because where we come from they are long distances. If you are pulling six decks out of north of Windorah and you try to turn your truck around and you have got a rain event coming, there is the obligation obviously to stick by the rules, which most truck drivers do, but there is also a realistic option of being stuck out there when you are trying to get your cattle off the dirt roads. When you say eight minutes, that is the cut-off time? What are the penalties? Can you explain for the committee what penalties they are looking at?

Ms Cumming: I will take that on notice and get back to you with the schedule of penalties, but fatigue penalties fall into four categories. They are either minor, substantial, severe or critical. These eight-minute breaches that we are talking about are for minor breaches so that drivers do not just start racking up and accumulating multiple minor breaches because of very small infringements that are captured with the EWD that, as I said, would not be evident in a paper diary. I will send the penalties through to the committee today.

Mr MILLAR: Is there any opportunity to look at this as an issue? You are moving to the EWDs so it is an electronic based reporting system. There are going to be circumstances where truck drivers have to move cattle out quickly or move quickly under circumstances such as a couple of flat tyres and getting held up and needing to get to the point of where they have got to go to. Is there any discretion? What is happening here?

Ms Cumming: There are a number of driving hour options under the heavy vehicle national law. What we are talking about here is standard hours. Particularly for livestock operators, they invariably work under either a basic fatigue management or an advanced fatigue management regime and that provides them with additional hours to the standard hours—that is, they are involved in an accreditation program. Therefore, they are eligible for those extra things.

I know that the National Heavy Vehicle Regulator has an advanced fatigue management framework that is specifically designed for livestock carriers. It provides that real flexibility for them to run quite over what would be normally standard hours on a set number of occasions when the need arises. So it provides a greater degree of flexibility. I suppose when we are talking about these minor eight-minute breaches they relate only to standard hour and basic fatigue management operators, not to advanced fatigue management.

Mr MILLAR: Moving on to another issue, the EWDs are electronic and obviously internet based. How do I fill one out at Stonehenge or Jundah? What do I do there?

Mr Burke: As you say, it is electronic. It is based on communicating back to a server back at base or provided by a service provider through the mobile phone network. The way it is designed within a draft specification that has been produced is that you can continue to put information into the device in the vehicle and, if you are out of range of the mobile phone network, once you come back in range it will then pass the information on. That was certainly a scenario that was discussed and tested through the course of the pilot that took place.

Mr MILLAR: So what sort of form are these EWDs? Are they iPads or smartwatches? What are we looking at?

Mr Burke: The draft specification that has been released is performance based, so they may take a number of different forms. But the key elements are that there will be an in-vehicle unit, so there will be something within the vehicle with some sort of interface which typically these days would be a touch screen of some sort that a driver would use to put their work and rest times into the device. It is designed to be performance based as well in the sense that it can be a device that is used for other purposes. So a transport operator could use it for their fleet management system and have other types of applications running on the same device, rather than having multiple boxes within the vehicle.

Mr MILLAR: What is the cost of this? If I were a truck driver, what am I up for?

Mr Burke: The cost is still to be determined. There were some estimates made as part of the pilot. I do not have those in front of me, but I can provide those to you. The cost will be based on some things like uptake and how many providers decide to enter the market which are still to be determined.

Mr HART: Do you anticipate at the end of the day from talking to manufacturers that it will be a standard fitting in a truck?

Mr Burke: It may or may not be a standard fitting, although there are certainly truck manufacturers who are starting to put telematics, which is the broad term for these sorts of devices, into the vehicle when it is sold. There are quite a number of different providers of telematic services already in the market. So there would be a number of different providers we would anticipate out there, but that is dependent upon the finalisation of the implementation and who actually sets—

Mr HART: Do they meet the standard that you have set already?

Mr Burke: There is a draft specification which has been released which Transport Certification Australia produced. The National Heavy Vehicle Regulator is leading the implementation including things like developing approval processes for these providers. So that is something that they are leading. There are still a number of steps they need to go through.

Mr HART: These things happen overseas somewhere. We do not make trucks here as far as I know. Do other countries already have these things in place as a standard?

Mr Burke: There are different approaches in different countries. Europe has quite a different approach where the device is mandatory and built into the vehicle. The US has a more similar approach to Australia where it is a more performance based approach rather than the one set device. But the specifications that have been developed in Australia are broadly consistent with those particularly in the US.

CHAIR: So I am out on the highway driving along singing, 'I've been everywhere,' and all of a sudden the diary breaks down. What happens then?

Mr Burke: There is provision for that in the law similar to today if a driver lost their written work diary or it was destroyed. They still have to keep records in another form in order to have those records available. It is similar to the current situation with a written work diary.

Mrs LAUGA: Have any other stakeholders been consulted prior to today in terms of the Transport Workers' Union or the Australian Trucking Association?

Mr Burke: I can talk about the process for the pilot and also the process that the National Transport Commission went through. The pilot ran over the course of two years. There was an industry reference group for the pilot, which included the Australian Trucking Association, amongst other industry groups, to provide input and advice to the pilot. As part of the release of the final report of the pilot, the NTC put out an issues paper on the legislative issues that we are talking about today. That was put out for public consultation and we had a range of submissions come in on that. As part of the pilot, we spoke to many industry groups and drivers.

Mr MILLAR: You are talking about industry stakeholders. This will apply to graziers and farmers who have their own trucks and trailers whether it is a type 1 road train or a semitrailer. Have you consulted with AgForce and those representatives as well?

Mr Burke: The Australian Livestock and Rural Transporters' Association was also part of the industry reference group for the pilot.

Mr MILLAR: What about farmers? This device would apply to farming operations that have a truck, I would gather—whether I am carting grain, carting livestock or carting heavy machinery.

Mr Burke: Potentially if they are currently required to carry a written work diary, this will provide them with an option to move to an electronic work diary. In terms of the consultation, I am not aware of any consultation specifically with farmers' groups.

Mr MILLAR: But trucking operators, whether you are a farmer or a livestock transporter or whatever, you must complete a diary. Therefore, if you are a farmer and you have a truck, whether it is a semitrailer or a road train, you would be required to fill this out or have this device on your truck.

Mr Fraine: It will not be required, remembering that this is providing an alternative to the paper diary, not a replacement for it.

Mr MILLAR: Okay. So it is an alternative, not a replacement.

Mr Fraine: Correct.

Mr MILLAR: So it is not mandatory; it is voluntary.

Mr Fraine: Correct.

Mrs LAUGA: In New South Wales, after the two-year pilot, have they implemented the electronic work diaries?

Mr Burke: It is being implemented at the national level by the National Heavy Vehicle Regulator. They are looking to the National Heavy Vehicle Regulator to do that rather than having any separate implementation at a state level.

Ms Cumming: The bill before the committee will have the effect of actually implementing these changes for all of those participating jurisdictions including New South Wales.

Mr KNUTH: Graham, following on from your answer to Lachie's question in regard to it not being mandatory at present, how is that going to work? Is it going to be reviewed after 12 months or two years? Obviously you were saying that those with paper logbooks will be treated the same as those with electronic diaries, but how is it all going to work?

Mr Burke: We did have in the recommendations which were endorsed by ministers last year a review specifically of the eight minutes that we are talking about today after two years of implementation to see how that is tracking, but we do not have to my knowledge any other broader reviews of the use of these systems scheduled in.

Mr KNUTH: In regard to the small business truck drivers, have the National Road Freighters Association made a submission to you in their representation? You have the big company drivers that have more or less the shuttle runs and likewise the road freighters cannot really compete against the big operators. Have you had any dialogue with them?

Mr Burke: I am just looking at the list of the formal submissions that we received to our issues paper that the NTC put out. We did not have anything specifically from the Road Freighters Association. We had a number of other industry groups, including the ATA, NatRoad, the South Australian Road Transport Association, that did contribute formal submissions to that process.

Ms Cumming: The National Road Freighters Association were involved actually in the review of the written work diary. So there was a working group put together to look at the content of the written work diary, the instructions in that diary, and they did participate in that. Because this is a voluntary system—the take-up of EWD—you are only affected insofar as you choose to use the EWD system.

Mr KNUTH: Do you feel as a department that there is a transitional period where it is not compulsory but that as time goes by those truck drivers will say, 'We are better off under this new electronic system,' and will gradually work their way towards grasping it?

Mr Fraine: To speculate, we may see that over time, if the early take-up of electronic work diaries is seen as a success story by those that take it up. Certainly the success or otherwise will be pretty well known within the industry in pretty early days as those operators do start to dig their toes into this space. If indeed, as we would hope, it turns out that EWDs are a success story, we would certainly expect to see broader take-up of it. But to come back to one of the earlier questions, at this stage there is no proposal or plan to specifically revisit the issue about allowing a take-up of either EWD or paper. So there is no current plan to say within two years we will review whether we just close the paper option down altogether. That is not currently under any discussion.

Mr KNUTH: Kelli, you mentioned before that a greater degree of flexibility particularly in regard to the livestock industry can apply to extend those hours for specific purposes. Is there something available right now where the truck driver realises he has to get cattle to the trucking yards to water the cattle? There have been delays in regard to mustering or yard problems or breakdowns or roadworks. Is there a call centre that he can call to say, 'Hey, I am over'? How does that system work?

Ms Cumming: At the moment there is a defence under standard hours where a person has had to exceed their driving hours because of any one of those sorts of scenarios. There is not a call centre per se that you can ring up and say, 'I have exceeded my hours and I need to get to where I am going.' Obviously we would hope that enforcement officers take those sorts of circumstances into consideration when they are intercepting vehicles. But at the end of the day this is why work hours are spread over a 24-hour period. So in a 24-hour period under standard hours you can work for 12 hours. If the driver happens to be held up somewhere, he could take a rest break provided he is not doing any other work associated with the vehicle. If he is just simply outside of the truck waiting, that can be recorded as rest time. So that period of time does not actually count towards his maximum work hours. So when he can get on the road again and get moving, it will use that where there is as an example of that. If he is just held up somewhere resting, he can then continue his work hours and that rest time does not count towards that, providing he does not exceed that 12 hours in the 24-hour period and he has a minimum of seven continuous hours of rest.

Mr KNUTH: In regard to the increase in the fine from \$6,000 to \$20,000, what does that consist of?

Ms Cumming: They are very specific offences for people who have a regulatory function under the national law. Currently, there is already an offence in the heavy vehicle national law for an official to misuse protected information. If I as a public servant have some information about you as a truck driver and I disclose that inappropriately, I could incur a penalty of \$20,000. It is imposing a similar level of penalty on other organisations or individuals who have a regulatory function under the national law. In this technology space, obviously a lot of private information is collected and dealt with by intelligent access service providers, auditors and the TCA. This is just so those organisations would incur the same level of penalty if they misused or inappropriately disclosed private information.

Mr KNUTH: If it was something like \$600 to \$20,000; it seems like that is very high—\$6,000 straight up—for an offence.

Ms Cumming: I suppose we look at the severity and, as we have said, the privacy concerns of industry. Quite rightly, they are reluctant I suppose to embrace technology because of all of this information that is collected about them as individuals and held about them. It really does compromise the integrity of the whole system if the penalties for the misuse of that information are not sufficiently severe.

Mrs LAUGA: Could the committee get a copy of the NTC issues paper please?

Mr Burke: Certainly. It is publicly available on the website and we can provide that. There was an issues paper that we put out for public consultation and then a final report which we will provide to you as well.

Mr BUTCHER: Is there a risk that the electronic system can be tampered with? We know there have been cases before where the paper system has been fraudulently dealt with. Is that possible under this new system of the electronic device?

Mr Burke: It was certainly one of the concerns that was tested out during the pilot. There are specific offences for tampering. It will be part of the process of a service provider gaining approval to ensure that they have appropriate systems in place to monitor the data and to look out for anything that is anomalous. Certainly some of those security issues are strongly taken into account.

Mr Fraine: That is a very good question and we have been here before with the concept of speed limiters on heavy vehicles. I do not think at this stage we are in a space to say that these things are tamper proof, as in it will not happen. It is really around from a risk based perspective how you build into both the legislative framework and also the technology itself. You minimise that risk and you also maximise the chance to pick it up when it happens.

Ms Cumming: There are also some specific requirements on the individuals who capture that information. If the system stops reporting for some reason, there is a requirement on the person who is in charge of that information to actually report that the system is not working. It may not be evident at the time that it has been tampered with, but for whatever reason they have to report that.

Mr HART: This committee has not had carriage of transport before; this is something new in this parliament so excuse my ignorance. What happens in other jurisdictions once this is passed? Does that legislation then go to the parliament? What I am getting at is whether there is any oversight in the other states—Senate inquiries or committee inquiries—or does this committee need to expand outside of Queensland in our submissions that we are seeking?

Ms Cumming: Most of the other jurisdictions—and I say 'most' with the exception of South Australia—have applying law, so as soon as this law is passed and commenced in Queensland it becomes law automatically in those jurisdictions. They do, however, have a requirement to table that

legislation, so their individual parliaments have an opportunity to look at that. Having said that though, the development process and the process I suppose of bringing the national laws to the Transport and Infrastructure Council to vote on prior to them actually even being presented to the Queensland parliament provides that sort of opportunity. The laws are required to be unanimously recommended by all ministers before they are actually even brought to the Queensland parliament. So all of those jurisdictions have had an opportunity to look at the legislation and make their minds up as to whether or not they support it.

CHAIR: I think we are getting towards the end. Personally, I support technology being used because that is where we are in this world today. It is all about technology and changing technology; it changes every week. I am finding that out on my computer, which I am using now, and I am quite proud of that. Management of fatigue is a real issue and it has to be dealt with properly. I have a couple of questions. Have you had drivers who have been using this technology? Have you spoken to them? Is there any intent to speak to them?

Mr Burke: There were certainly drivers using devices as part of the pilot. There was a range of different devices out there on the market, so not all of them would meet the final specification that was developed. The final report developed by New South Wales does go into some of the feedback from drivers. There was a lot of positive feedback, particularly on giving drivers the ability to plan a bit more and taking away some of the challenge for them in understanding the laws and understanding when they need to take breaks—because the electronic system can do that for them and tell them that they need to take a 15-minute rest break within the next two hours or however long it is. So there was some positive feedback in that regard. There were some concerns that I mentioned earlier around privacy and tracking and also how these small breaches would be dealt with.

CHAIR: When you talk about privacy and tracking, does that mean that anybody can log on to that particular piece of technology in a truck and follow that process?

Mr Burke: No. This again goes to the protection of the information that Kelli was talking about earlier. The operator would typically receive the information—as they currently do today with the written work diaries—in order to ensure that they are managing their obligations around fatigue, but it is not something that will be freely available. Again, the security around the data is quite important. The provisions we are talking about today ensure that governments can only access the data for fatigue purposes unless there is a warrant.

CHAIR: In the case of an accident or something like that, who would be able to access the information?

Mr Burke: Are you suggesting to trace back the history?

CHAIR: Yes.

Mr Burke: The current provisions allow the data to be accessed for fatigue purposes and require a warrant for other purposes. We probably need to look at that particular scenario and how it would work, but it would depend if they were looking at that data because of a potential fatigue breach I would imagine.

Ms Cumming: If there was an accident, any authorised officer under the national law would have the right to look at the driver's work and rest times for the purpose of establishing whether or not they were compliant with their work and rest times. I suppose if it was after the event—so it was not immediate, at the roadside, at the incident itself—then we would need to look at the purpose for which that information was being obtained.

CHAIR: Who gives permission for that information to go out to, say, the Police Service or the coroner?

Mr Burke: The police as enforcement officers under the law have the ability to access that data, again, for fatigue purposes. If a coroner did want to access it, I am not sure, I think we would need to look further at the powers of the coroner and what would be involved there.

Ms Cumming: I will use a scenario. We will assume that there has been a fatal incident involving a heavy vehicle and it is suspected potentially that speed may have been a contributing factor. An authorised officer or a police officer could not just go and obtain the information out of the electronic work diary for the purposes of establishing whether speeding had been a factor. They would actually have to go and obtain a warrant to get that information. However, in a fatal incident, it would be quite reasonable to presume that that warrant would be forthcoming and that they would be able to access that information and provide it to the coroner.

CHAIR: This will probably be the last question. Could you explain to the committee why it is necessary to reverse the onus of proof and impose a deemed liability on the executive officer of a corporation who knowingly authorises or permits an offence to be committed by a corporation? Is that a duty of care type principle?

Ms Cumming: I will answer this one, although we could throw a coin I think. Executive officer liability is currently the subject of a national review. The National Transport Commission has been undertaking a review to bring it into line with the COAG guidelines and principles which, as you rightly point out, start with the premise that we should not reverse onus of proof unless there are substantial reasons to. We are not changing the executive officer liability provisions in the national law under this bill; we are simply saying that, for those new offences relative to EWD, executive officer liability would apply. We are not changing the structure of executive officer liability at this point. However, it is the subject of review at the moment.

Mr Fraine: I suspect this will be a topic of some conversation you will wish to have with us at one of the next amendment bills.

CHAIR: There being no further questions, we will close the briefing. We had three issues taken on notice today, and the committee would appreciate it if the answers to those questions taken on notice could be provided by close of business on Wednesday, 10 June. We thank you for your attendance at today's hearing. The committee has gathered valuable information that will assist our examination of the Heavy Vehicle National Law Amendment Bill 2015, and I am sure we will be back here again talking about that. Before I close the meeting, I ask that the committee authorise the publication of the proof transcript of today's proceedings—so moved by Mr Millar and seconded by Mr Butcher. Thank you again for your attendance. I now declare the hearing closed.

Committee adjourned at 11.12 am