



Heavy Vehicle National Law Amendment Bill 2015

Report No. 5, 55th Parliament

Infrastructure, Planning and Natural Resources Committee

September 2015

Infrastructure, Planning and Natural Resources Committee

Chair	Mr Jim Pearce MP, Member for Mirani
Deputy Chair	Mr Michael Hart MP, Member for Burleigh
Members	Mr Glenn Butcher MP, Member for Gladstone Mr Shane Knuth MP, Member for Dalrymple Mrs Brittany Lauga MP, Member for Keppel Mr Lachlan Millar MP, Member for Gregory
Staff	Ms Kate McGuckin, Research Director Ms Erin Pasley, Research Director Ms Margaret Telford, Principal Research Officer Ms Mary Westcott, Principal Research Officer Ms Dianne Christian, Executive Assistant
Technical Scrutiny of Legislation Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Tamara Vitale, Executive Assistant
Contact details	Infrastructure, Planning and Natural Resources Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6621
Fax	+61 7 3553 6699
Email	ipnrc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/ipnrc

Acknowledgements

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Transport and Main Roads, the National Transport Commission, and other committee secretariats.

Contents

Chair's foreword	v
Abbreviations	vi
Recommendation	vii
1. Introduction	1
1.1 Role of the committee	1
1.2 The referral	1
1.3 The committee's inquiry process	1
1.4 Policy objectives of the Bill	1
1.5 Consultation on the Bill	2
1.6 Should the Bill be passed?	2
2. Examination of the Bill	3
2.1 Background – Heavy Vehicle National Law	3
2.2 Fatigue management	4
2.2.1 <i>Current fatigue management requirements</i>	4
2.2.2 <i>Proposed electronic work diary amendments</i>	5
2.2.3 <i>EWD Operational Pilot</i>	6
2.2.4 <i>Proposed treatment of small breaches</i>	7
2.2.5 <i>Security of EWD data</i>	10
2.2.6 <i>Tampering with an EWD</i>	11
2.2.7 <i>Voluntary use of EWDs</i>	12
2.2.8 <i>EWD Implementation costs</i>	13
2.3 Record keeping exemption for local governments with equivalent fatigue records	14
2.4 Proposed new and amended penalties	15
2.5 Miscellaneous amendments	17
2.6 Technical drafting issues	17
3. Compliance with the <i>Legislative Standards Act 1992</i>	18
3.1 Fundamental legislative principles	18
3.1.1 <i>Rights and liberties of individuals</i>	18
3.1.2 <i>Executive liability</i>	23
3.2 Proposed new and amended offence provisions	26
3.3 Explanatory notes	30
Appendices	31
Appendix A – List of submitters	31
Appendix B – List of witnesses at the public briefing held on Wednesday 13 June 2015	32

Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Heavy Vehicle National Law Amendment Bill 2015.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations who lodged written submissions on the Bill and others who informed the committee's deliberations.

I would also like to thank the officials from the Department of Transport and Main Roads and from the National Transport Commission who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



Jim Pearce MP

Chair

September 2015

Abbreviations

AFM	Advanced Fatigue Management
ALC	Australian Logistics Council
ATA	Australian Trucking Association
BFM	Basic Fatigue Management
COAG	Council of Australian Governments
EWD	electronic work diary
FLPs	fundamental legislative principles
GNSS	Global Navigation Satellite Systems
GVM	gross vehicle mass
HVNL	<i>Heavy Vehicle National Law Act 2012</i>
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
NHVAS	National Heavy Vehicle Accreditation Scheme
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
OQPC	Office of the Queensland Parliamentary Counsel
TCA	Transport Certification Australia
TIC	Transport and Infrastructure Council
WWD	written work diary

Recommendation

Recommendation 1

2

The committee recommends the Heavy Vehicle National Law Amendment Bill 2015 be passed.

1. Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee was established by the Legislative Assembly on 27 March 2015 and consists of government and non-government members.

The committee's areas of portfolio responsibility are:

- Transport, Infrastructure, Local Government, Planning and Trade
- State Development, Natural Resources and Mines.¹

1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of the fundamental legislative principles to the Bill.

On 19 May 2015, the Heavy Vehicle National Law Amendment Bill 2015 (the Bill) was referred to the committee for examination and the Legislative Assembly fixed the committee's reporting date as 1 September 2015.

1.3 The committee's inquiry process

On 21 May 2015, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 24 June 2015. The committee received three submissions (see Appendix A).

On 3 June 2014, the committee held a public briefing with the Department of Transport and Main Roads (the department) and the National Transport Commission (NTC). Copies of the submissions and transcript of the public briefing are available from the committee's webpage.²

1.4 Policy objectives of the Bill

The policy objectives of the Bill are to amend the *Heavy Vehicle National Law Act 2012* (HVNL) to:

- amend the electronic work diary (EWD) provisions to enable the effective implementation of an approval and monitoring regime that will support the use of EWDs by the heavy vehicle industry
- revise a number of penalty provisions to ensure consistency and equity in penalty amounts for offences contained in the HVNL
- reduce the administrative or regulatory burden for the National Heavy Vehicle Regulator (NHVR) and/or the heavy vehicle industry
- clarify existing requirements to aid interpretation of the HVNL
- improve the enforceability of the HVNL, and
- address technical drafting issues.³

¹ Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 17 July 2015).

² See www.parliament.qld.gov.au/ipnrc. All hyperlinks in this Report were accessed on 24 August 2015.

³ Explanatory notes, pp 1-2.

1.5 Consultation on the Bill

The explanatory notes state that the Bill was developed by the NTC in consultation with officers from each state and territory government transport agency, the NHVR and peak industry associations. Consultation was also undertaken with the Australian Local Government Association and Transport Certification Australia (TCA), a government owned company responsible for providing assurance in the use of telematics and related intelligence technologies.

The stakeholders supported the Bill.⁴

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed.

The committee supports the proposed amendments to the *Heavy Vehicle National Law Act 2012* and recommends the Bill be passed.

Recommendation 1

The committee recommends the Heavy Vehicle National Law Amendment Bill 2015 be passed.

⁴ Ibid, p 8.

2. Examination of the Bill

2.1 Background – Heavy Vehicle National Law

The Bill proposes a range of amendments to the HVNL. The HVNL commenced on 10 February 2014, replacing existing laws governing the operation of all vehicles over 4.5 tonnes gross vehicle mass in Queensland, New South Wales, Victoria, South Australia, the Australian Capital Territory and Tasmania.⁵

The HVNL regulates the operation of heavy vehicles, including mass and dimensions, vehicle safety standards, the work and rest hours of drivers and other measures to manage fatigue, heavy vehicle accreditation, speed compliance and the use of intelligent transport systems. It also includes chain of responsibility offences, enforcement powers and administrative provisions.⁶

The legislation was developed through a Council of Australian Governments (COAG) process which commenced in 2009 to ensure the heavy vehicle industry could operate across state borders without being impeded by conflicting regulatory requirements.

In 2010, Queensland was nominated the host jurisdiction for the national legislation and the NHVR, which was established to administer the HVNL. As Queensland hosts the national legislation, any subsequent amendments to the HVNL are considered by the Queensland Parliament before being automatically applied in most other participating jurisdictions by way of each state and territory applying the law.⁷ The department advised:

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 ... The laws are required to be unanimously recommended by all ministers before they are actually even brought to the Queensland parliament. So all of these jurisdictions have had an opportunity to look at the legislation and make their minds up as to whether or not they support it.⁸

Since it was first enacted in 2012, the HVNL has been amended a number of times in order to refine the consolidation of the law. The amendments proposed in this Bill result from a rolling maintenance program underpinned by a maintenance working group that comprises state and territory jurisdictions as well as a range of industry members including Toll Logistics, the Australian Trucking Association (ATA), the National Road Transport Association and the Australian Logistics Council (ALC).⁹

The Bill has been prepared by the NTC on behalf of the Commonwealth, state and territory governments and in consultation with industry and the NHVR.

The department advised that the Bill includes:

- a range of minor technical amendments identified by the maintenance working group process as being required to ensure there is effective administration and enforcement of the law
- amendments to give effect to further national reforms agreed to by the Transport and Infrastructure Council (TIC), including enabling work around electronic diaries, and

⁵ Department of Transport and Main Roads, [‘Fatigue management’](#).

⁶ Explanatory notes, p 1.

⁷ Public briefing transcript, 3 June 2015, p 2.

⁸ Ibid, pp 8-9.

⁹ Ibid, p 2.

- amendments to further align some of the penalties and sanctions within the law.¹⁰

2.2 Fatigue management

2.2.1 Current fatigue management requirements

The HVNL contains legislative measures to combat heavy vehicle driver fatigue including:

- work and rest hours
- work diaries
- fatigue management accreditation schemes, and
- chain of responsibility.¹¹

The NHVR website advises that in addition to the general duty to not drive a fatigue-regulated heavy vehicle¹² on a road while fatigued, heavy vehicle drivers must comply with certain maximum work and minimum rest limits set out in the HVNL. Parties in the supply chain have to take all reasonable steps to prevent the drivers from exceeding these limits. This is similar to occupational health and safety laws and means that drivers must be allowed to stop if they are at risk of exceeding the limits and make alternative arrangements.¹³

The HVNL sets three work and rest options:

- *Standard hours* are the work and rest hours allowed for all drivers who are not operating under National Heavy Vehicle Accreditation Scheme (NHVAS) accreditation or an exemption. They are the maximum amount of work and minimum amount of rest possible that can be performed safely without additional safety countermeasures and allow for work of up to 12 hours in a 24 hour period.
- Those operating under NHVAS with *Basic Fatigue Management (BFM)* accreditation can operate under more flexible work and rest hours, allowing for (among other things) work of up to 14 hours in a 24 hour period. *BFM* gives operators a greater say in when drivers can work and rest, as long as the risks of driver fatigue are properly managed.
- Those operating under NHVAS with *Advanced Fatigue Management (AFM)* accreditation adopt a genuine risk management approach to managing heavy vehicle driver fatigue. Rather than prescribing work and rest hours, *AFM* offers more flexibility than standard hours or *BFM* in return for the operator demonstrating greater accountability for managing their drivers' fatigue risks.¹⁴

Section 222(1) of the HVNL describes the categories of breaches which are declared under the national regulations – minor risk breach, substantial risk breach, severe risk breach and critical risk breach.

Section 249 of the HVNL enables the national regulations to prescribe the maximum work times and minimum rest times (the *standard hours*). Section 253(1) enables the national regulations to prescribe the maximum work times and minimum rest times applying to a driver operating under *BFM* accreditation (the *BFM hours*).

¹⁰ Ibid.

¹¹ Department of Transport and Main Roads, 'Fatigue management'.

¹² Vehicles with a gross vehicle mass of over 12 tonne (for a full list of vehicles included in the definition and work diary exemptions: Department of Transport and Main Roads, 'Fatigue management'.

¹³ National Heavy Vehicle Regulator, '[Work and rest requirements](#)'.

¹⁴ Ibid.

The Heavy Vehicle (Fatigue Management) Regulation prescribes the work diary recording requirements that apply to drivers of fatigue-regulated heavy vehicles, as well as the maximum work and minimum rest hours that apply and prescribes the penalty categories that apply to breaches. In the Regulation:

- Schedule 1 contains a table setting out the standard hours and risk categories for contraventions of *standard hours*
- Schedule 2 sets out *BFM hours* and risk categories
- Schedule 3 provides examples of concurrent fulfilment of minimum rest time requirements
- Schedule 4 sets out risk categories for contraventions of *AFM hours*, and
- Schedule 5 sets out risk categories for contraventions of exemption hours.¹⁵

The current work diary system requires drivers of fatigue-regulated heavy vehicles to record and calculate all of their work and rest periods in a written paper diary and provide duplicate copies to various parties who must keep and, if required, produce these records for a three year period.¹⁶

2.2.2 Proposed electronic work diary amendments

The proposed EWD amendments in the Bill seek to:

- ensure the EWD requirements in the HVNL are keeping pace with changes in technology and international standards for regulatory telematics
- ensure regulatory time is counted to the minute, not rounded in 15 minute blocks, to reflect the real-time recording of EWD
- address the treatment of small breaches (of eight minutes or less for drivers whose time is recorded in an EWD)
- reduce red tape by facilitating the integration of regulatory, fatigue management and commercial systems, and by removing the handling and storage of paperwork
- improve privacy safeguards
- improve road safety outcomes through:
 - increased compliance with work and rest hours regulations
 - improved systems to manage fatigue and to meet chain of responsibility obligations, and
 - more efficient enforcement practices.¹⁷

The EWD amendments are being implemented at the national level by the NHVR rather than having to be separately implemented at a state level:

The Bill before the committee will have the effect of actually implementing these changes for all of those participating jurisdictions including New South Wales.¹⁸

The proposal is for EWDs to provide an alternative (non compulsory) method to the written work diary (WWD) currently used by fatigue-regulated heavy vehicle drivers. While EWDs are already recognised

¹⁵ [Heavy Vehicle \(Fatigue Management\) Regulation](#).

¹⁶ Public briefing transcript, 3 June 2015, p 2.

¹⁷ Explanatory notes, pp 2-3.

¹⁸ Public briefing transcript, 3 June 2015, p 7.

in the HVNL and were also recognised in the previous road transport legislation, no EWD has yet been approved by the NHVR, or previously by any road transport agency.¹⁹

EWDs will remove all the manual requirements by automatically recording a driver's work and rest times and providing electronic reports to the record keeper. The department pointed out that EWDs will take away the need for drivers to calculate their work time and determine when they will need to take a rest '... 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.'²⁰

The NTC indicated that the key benefits of EWDs relate to road safety and productivity:

Harnessing emerging technologies to combat fatigue was recognised in the heavy vehicle fatigue reforms as a key opportunity to further improve road safety. In particular, the electronic work diary will improve upon paper based record keeping because of the transparency, accuracy and certainty that it offers to drivers, operators and agencies.

We are confident that the electronic work diary, and regulatory telematics generally, has the potential to contribute safety and productivity benefits in Australia's heavy vehicle sector. Drivers will save time and be less likely to be exposed to infringements for misunderstanding fatigue requirements; operators will be able to gain productivity improvements and agencies will be able to enforce fatigue provisions more efficiently, with greater confidence in the data.²¹

2.2.3 EWD Operational Pilot

In 2011-13, the NTC conducted an EWD Operational Pilot with a small number of heavy vehicle operators and drivers to develop the technical specification for the EWD. There was an industry reference group for the pilot which included the ATA, the Australian Livestock and Rural Transporters' Association and other industry groups to provide input and advice to the pilot.²²

A functional and technical specification was developed following on from the pilot which resulted in the EWD shifting from being a standalone in-vehicle device to a web-based system using the mobile network and Global Navigation Satellite Systems (GNSS).²³ The explanatory notes state:

This approach is expected to transform compliance and enforcement practices, enabling operators to better manage driver fatigue, and for regulators and enforcement agencies to access EWD records remotely through wireless technology.²⁴

Subsequent to the development and testing of the functional and technical specifications for the EWD, the existing EWD provisions in the HVNL were assessed to ensure their effectiveness and compatibility with the technical design of the proposed EWD system and the international standards for regulatory telematics. The explanatory notes state that the amendments proposed in this Bill are necessary as there have been significant technology developments since the provisions for EWDs were first introduced into national model fatigue laws and subsequently into the HVNL.²⁵

As part of the publication of the final report on the Operational Pilot, the NTC released an issues paper on the legislative issues contained in this Bill. During the pilot, the NTC spoke to many industry groups and drivers and submissions were received from a number of industry groups, including from the ATA,

¹⁹ Explanatory notes, p 2.

²⁰ Public briefing transcript, 3 June 2015, p 2.

²¹ National Transport Commission, [Preparing Australia for Electronic Work Diaries](#), regulatory issues paper, October 2013.

²² Public briefing transcript, 3 June 2015, p 6.

²³ Explanatory notes, p 2.

²⁴ Ibid.

²⁵ Ibid.

NatRoad, and the South Australian Road Transport Association.²⁶ The ATA confirmed its support for EWDs in its submission on the Bill:

... the electronic work diaries that would be approved under this Bill would replace the need for drivers to fill in written work diaries. As a result, electronic work dairies offer the prospect of a considerable reduction in the red tape burden faced by operators and drivers, as well as potential improvements in compliance for some operators.

The operational pilot of electronic work diaries found that a 9 per cent takeup of EWDs could deliver more than \$200 million in savings in net present value terms to operators, EWD system managers and authorities over five years.²⁷

In response to a question from the committee, the department advised that the main issues arising from the Operational Pilot were privacy of data, the enforcement approach in relation to small breaches and implementation costs.²⁸ The NTC provided the following advice on the specific feedback from the drivers involved in the trial:

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 need to take a 15 minute 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 how these small breaches would be dealt with.²⁹

2.2.4 Proposed treatment of small breaches

Clauses 23 and 24 of the Bill propose amendments to sections 249 and 253 of the HVNL to insert new subsections prescribing that a minor risk breach of a maximum work requirement prescribed in the regulations is not to be treated as a minor risk breach and is not in contravention of the relevant offence provisions. The explanatory notes state that these amendments would provide *standard hours* drivers and *BFM* drivers using an EWD with a period of up to eight minutes excess in a 24 hour period without breach.³⁰ They also outline the justification for these amendments:

The treatment of small breaches acknowledges that EWDs are precise systems and users do not have the same opportunity to round their entries as drivers using written work diaries have. It is not intended that drivers have a right to work for an additional eight minutes, but instead the Bill makes provision to apply no penalty where a driver nominally exceeds a maximum work time with certain limitations.³¹

The department advised that the eight minute excess period reflects current fatigue expert advice that this period of time represents the nominal fatigue risk. The excess time worked must be offset by the driver in the longer term to meet the seven day and 14 day work periods which ensures there is no incentive to use the excess period of eight minutes as additional time that the driver is entitled to work.³²

... 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

²⁶ Public briefing transcript, 3 June 2015, pp 6-7.

²⁷ Australian Trucking Association, Submission 2, pp 4-5.

²⁸ Public briefing transcript, 3 June 2015, p 5.

²⁹ Ibid, p 9.

³⁰ Explanatory notes, p 13.

³¹ Ibid, p 3.

³² Ibid.

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 fear that that would create an additional safety risk.³³

The ATA confirmed that the NTC sought advice from fatigue experts, who generally concluded that the safety risk of breaches of less than eight minutes was likely to be negligible, as long as the breaches did not accumulate over multiple work periods and that:

Accordingly, the NTC found that the HVNL and Heavy Vehicle (Fatigue Management) National Regulation should be amended to provide that EWD drivers operating under standard hours or BFM could exceed a work period, under any applicable work rule in the 24 hour period, by up to and including eight minutes in any one incident or in a total over the 24 hour period. The NTC limited this to breaches of the work limits and specifically excluded small breaches of the rest limits from the tolerance.³⁴

The department confirmed that the proposed amendments do not change the standard hours for a driver:

The work and rest hours required for 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 on 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.³⁵

It is proposed that the eight minute excess period will not apply to longer work period requirements such as seven days and 14 days. This means that drivers who take advantage of the eight minute excess period in a 24 hour period, must ensure they reduce their working hours by the same amount of time within the seven and 14 day periods or they will be in breach of maximum work times for those longer periods.

This approach ensures that occasional small breaches of nominal fatigue risk are not the focus of enforcement activities and prosecution and will limit the ability of drivers, schedulers and operators to factor an additional period of eight minutes into driver schedules.³⁶

The ATA submission raised a concern that the tolerance levels in the Bill for small breaches are inadequate and that as a result it anticipates that many operators and drivers will choose to continue using WWDs, despite the potential red tape reduction benefits of switching to EWDs.³⁷ The ATA raised three specific concerns about the NTC's approach to small breaches, as proposed in this Bill:

- the eight minute tolerance would still result in EWD users recording a higher number of minor risk breaches than WWD users
- the approach would apply zero tolerance to small breaches of the rest period requirements, on the grounds that drivers have, in theory, more control over the timing of the end of their rest periods than over their work hours whereas the ATA believes a tolerance should be applied to reflect the real world on how drivers take rest breaks as small breaches do not have serious fatigue or safety consequences, and

³³ Public briefing transcript, 3 June 2015, p 4.

³⁴ Australian Trucking Association, Submission 2, p 8.

³⁵ Public briefing transcript, 3 June 2015, p 4.

³⁶ Explanatory notes, p 3.

³⁷ Australian Trucking Association, Submission 2, p 5.

- the NTC's 2015-2019 work program does not implement its own recommendation that there should be a review of the treatment of small breaches after two years and nor is the review included in the NHVR's 2015-16 to 2017-18 corporate plan.³⁸

While the ATA submitted that ideally the Bill and the Heavy Vehicle (Fatigue Management) National Regulation should be amended immediately to address these concerns, it provided that an alternative approach would be for the recommended two-year review of the tolerances to be locked into the NTC work program and NHVR corporate plan.

The ATA therefore recommended that the committee ask the Deputy Premier to press for the NTC work program and the NHVR corporate plan to include a proposed review of the treatment of small breaches to ensure that it is resourced and scheduled effectively and that the review specifically examine:

- the take up rate for EWDs
- the appropriateness of the eight-minute tolerance for work periods, given the take up rate, and
- if there should be a tolerance applied to the length of the rest periods.³⁹

The committee sought advice on the concerns raised by the ATA and its recommendation. The department responded that the TIC has agreed that the NTC will review the EWD changes to assess the impact on fatigue risk, compliance and enforcement, and operational effectiveness after two years of initial uptake by the industry and that the NTC will work with the NHVR, which will have access to this data.

NTC agrees that the review of the eight minutes should be reflected in its forward work plan – it will be included once the industry uptake has commenced and the two year timeline has been initiated. The criteria for review should be based on an assessment of the impact of the eight minutes on 1) driver fatigue; and 2) compliance and enforcement (as per ministerial decision of May 2014) – the NTC does not agree that the criteria for review should include industry uptake.

The NTC does not agree that the review should include an assessment of whether the eight minutes should extend to rest periods. The exclusion of rest periods from the treatment of small breaches was a clear policy decision of Ministers in May 2014.

It is not considered appropriate that any tolerance be applied to the length of rest period taken by a driver as the ability to rest for the required period is considered to be within the driver's control. Whereas the ability for a driver to locate an appropriate place at which to stop and rest can be subject to external influences that may be beyond a driver's control.⁴⁰

The NTC confirmed that in 2014 the ministers endorsed a review of the eight minute excess period after two years implementation to see how it is tracking.⁴¹

The department clarified:

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.⁴²

³⁸ Ibid, pp 8-9.

³⁹ Australian Trucking Association, Submission 2.

⁴⁰ Department of Transport and Main Roads, correspondence dated 13 July 2015, pp 2-3.

⁴¹ Public briefing transcript, 3 June 2015, p 7.

⁴² Ibid, p 6.

The ALC wrote to the committee raising a concern about the ALC not being provided with a copy of the proposed amending regulation that will allow *standard hours* drivers and *BFM* drivers using an EWD to have a period of up to eight minutes excess in a 24 hour period without breach.

It is particularly good practice that regulations necessary to give effect to provisions contained in a Bill are available at the time this committee is considering the primary legislation, so it can be satisfied that the legislative package as a whole is satisfactory.⁴³

The ALC was also concerned that normal disallowance mechanisms would not apply to subordinate legislation made under the HVNL.

The department responded to these concerns advising that:

- disallowance mechanisms are available for regulations made under the HVNL
- as national scheme legislation that is subject to Ministerial Council consideration, amendments to the HVNL and the national regulations have been prepared in accordance with COAG endorsed *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* which do not require the provision of exposure drafts, and
- the NTC consulted on the drafting instructions, drafts of the Bill and associated national regulation amendments through the HVNL Maintenance Advisory Group, which included the ALC's nominated representatives.⁴⁴

2.2.5 Security of EWD data

While the issue of EWD data confidentiality was not raised in any submissions made to the committee, the department advised that there had been some concerns in the industry about privacy issues with regard to the use of EWDs and also regarding the transparency of the electronic monitoring devices.

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 likely 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.⁴⁵

Clauses 61 to 63 of the Bill propose to amend sections 728 (Duty of confidentiality) and 729 (Protected information only to be used for authorised use) of the HVNL. It is proposed that new sections 728A, 729A and 729B be inserted to specifically protect the confidentiality of EWD information:

- Proposed new section 728A imposes a duty of confidentiality for a person exercising functions under the HVNL not to disclose EWD protected information to another person. The new duty does not apply if the disclosure is to an entity for an EWD authorised use or the disclosure is made to, or with the agreement of, the person to whom the information relates (maximum penalty of \$20,000 applies).
- Proposed new sections 729A and 729B provide that EWD information is only to be used for an EWD authorised use and that a judicial warrant issued under section 507 of the HVNL may

⁴³ Australian Logistics Council, correspondence dated 16 Jul 2015.

⁴⁴ Department of Transport and Main Roads, correspondence dated 7 Aug 2015 to Australian Logistics Council.

⁴⁵ Public briefing transcript, 3 June 2015, p 3.

authorise EWD protected information to be seized, to be used to provide evidence of any offence under the HVNL (not simply for an EWD authorised use), and may allow for entry of a vehicle at a stated place or wherever the vehicle is located (maximum penalty of \$20,000 applies).⁴⁶

In response to a query from the committee, the NTC advised that given the importance of the security of data, the amendments will ensure that government can only access the data for fatigue purposes unless there is a warrant.⁴⁷

The department advised that the proposed new offences in sections 728 and 729 are in line with other offences of a similar nature:

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 services 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.⁴⁸

A potential breach of fundamental legislative principles relating to clauses 62 and 63 of the Bill is discussed in this Report under the section headed 'Compliance with the *Legislative Standards Act 2013*'.

2.2.6 Tampering with an EWD

Clause 39 of the Bill proposes to insert a new section 336A into the HVNL creating an offence if the record keeper for the driver knows, or has reasonable grounds to suspect, an EWD has been tampered with and the record keeper does not report the matter to the NHVR within two business days.⁴⁹

The committee asked about the risk of the EWDs being tampered with and the NTC responded that this was one of the concerns that was tested out during the Operational Pilot:

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.⁵⁰

The department pointed out that at this stage it could not guarantee that the systems are tamper proof:

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.⁵¹

A potential breach of fundamental legislative principles relating to clause 39 is discussed under the section in this Report headed 'Compliance with the *Legislative Standards Act 1992*'.

⁴⁶ Explanatory notes, p 19.

⁴⁷ Public briefing transcript, 3 June 2015, p 9.

⁴⁸ Ibid, p 3.

⁴⁹ Explanatory notes, p 15.

⁵⁰ Public briefing transcript, 3 June 2015, p 8.

⁵¹ Ibid.

2.2.7 Voluntary use of EWDs

While the explanatory notes clearly state that the EWDs are being introduced as an alternative method to the WWDs, the ATA raised a concern in its submission that there are two situations where EWDs could effectively become mandatory. Consequently, the ATA made two recommendations which are discussed below.

The ATA raised a concern that operators accredited under the NHVAS could be required by the NHVR to install EWDs as part of NHVAS accreditation.

The operational pilot noted that an unresolved policy question was whether installing EWDs should be required as part of the NHVAS accreditation. It would no doubt be argued that this would not offend the principle that EWDs should be voluntary, because operators could always choose not to become NHVAS accredited.⁵²

The ATA contended that the NHVAS is essential in many parts of the industry because operators cannot compete effectively without the extra working hours it offers and therefore NHVAS accreditation could be used to effectively make EWDs compulsory.⁵³ The ATA therefore made the following recommendation in its submission:

Recommendation 1: The committee should recommend that the Deputy Premier and Minister for Transport not agree to any change to the NHVAS standards and business rules that would require the installation of EWDs as a condition of accreditation.

The committee sought advice from the department and received the following reassurance:

There is presently no proposal to require EWD be a mandatory requirement for operators and drivers operating under basic fatigue management accreditation. As such, it is not appropriate to direct how the Deputy Premier, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade should vote on any future (hypothetical) contemplation of this issues by the Transport and Infrastructure Council.

The ATA and other industry associations would be fully consulted and their views considered if any such proposal was ever considered in the future. Transport and Infrastructure Council Ministers would be informed of stakeholder positions and the potential impacts, costs and benefits for industry as part of their consideration of such a proposal at that time.⁵⁴

The ATA also raised a concern that an aggressive enforcement agency could argue, in a chain of responsibility case, that a trucking business should have installed EWDs on the grounds that installing an EWD would be seen as a reasonable step to prevent contravention of the law, such as a fatigue breach.⁵⁵ Under the HVNL, chain parties are required to take all reasonable steps to prevent a contravention of the law. The ATA therefore made the following recommendation in its submission:

Recommendation 2: *The committee should recommend that paragraph 27(2)(m) of the Heavy Vehicle (Fatigue Management) National Regulation be amended to make it clear that the system specified in the example does not have to be an electronic work diary system as defined in the HVNL.*

The committee sought advice about this concern and the department advised that it does not support the ATA recommendation on the following basis:

The use of the term “system” within this section is considered clear and unambiguous. EWD is a defined term and, as such, it is considered that the use of the term “system” rather than EWD, clearly

⁵² Australian Trucking Association, Submission 2, p 6.

⁵³ Ibid.

⁵⁴ Department of Transport and Main Roads, correspondence dated 13 July 2015, pp 1-2.

⁵⁵ Australian Trucking Association, Submission 2, p 6.

denotes a different meaning. System could mean EWD, but does not mean EWD exclusively. It could mean any other type of system, including policies or procedures.

In the absence of a definition of “system” in the Regulation, the Oxford Dictionary definition could be used which defines “system” as “a set of principles or procedures according to which something is done; an organised scheme or method.”⁵⁶

2.2.8 EWD Implementation costs

The NTC advised the committee that while there were some costs estimates made as a part of the Operational Pilot, the cost is still to be determined and will be influenced by factors such as uptake and how many providers decide to enter the market.⁵⁷

The Final Report on the pilot (commissioned by NSW Transport) identified that ultimately each transport operator’s decision as to whether or not to take up an EWD will be based on their assessment of the costs and benefits. ‘... The general view expressed in the Pilot was that additional cost would need to be offset by identifiable savings in administration’.⁵⁸ While there are a number of factors that will influence the cost, the Report identified that the equipment costs of an EWD will comprise two main elements with the following values were used in the cost benefit analysis:

- in-vehicle units - \$1,200 plus \$500 installation
- monthly monitoring - \$20 per month per unit.⁵⁹

The Final Report also identified that there will be costs to transport operators for establishing management reporting systems to enable a review of the data from the EWD units.

A survey of transport operators found that:

- of a total of seven operators without existing telematics, three said they would not pay for an EWD and four stated they would pay up to \$500 per unit
- of seven operators with existing telematics, one said they would not pay to upgrade their existing equipment, two would pay up to \$100 and three would pay up to \$500 per unit.⁶⁰

The Report concluded:

While this sample is too small to make a conclusion other than for those operators, we can conclude that where there are existing in vehicle units that are being used or ready to be used for regulatory telematics, the costs are likely to be acceptable, noting there is no additional hardware required (except driver authentication in some cases). There are more than 15,000 in vehicle units currently deployed in heavy vehicles which fit this scenario.⁶¹

The issue of implementation costs in relation to EWDs was not raised in any submissions made to the committee on this Bill.

⁵⁶ Department of Transport and Main Roads, correspondence dated 13 July 2015, p 2.

⁵⁷ Public briefing transcript, 3 June 2015, p 6.

⁵⁸ NSW Transport, [Operational pilot of electronic work diaries and speed monitoring systems](#), final report, 2013, p 54.

⁵⁹ Ibid, p 55.

⁶⁰ Ibid.

⁶¹ Ibid.

Committee comment

The committee has noted that the main concerns raised by the heavy vehicle industry during the EWD Operational Pilot were about the privacy of data, the enforcement approach in relation to small breaches and implementation costs. The committee is satisfied that, in the main part, these issues have been resolved during drafting and consultation on the Bill.

The committee has also reviewed concerns raised in submissions which related to the voluntary nature of EWDs and the need for a review to assess the practical application of the eight minute tolerance for work periods. The committee sought advice on these issues and is satisfied with the department's advice that:

- there is presently no proposal that EWDs will be a mandatory requirement for operators and drivers operating under basic fatigue management accreditation, and
- the TIC has already agreed that the NTC should review the EWD changes to assess the impact on fatigue risk, compliance and enforcement after two years of initial uptake by the industry and that the NTC agrees that the review of the eight-minute tolerance should be reflected in its forward work plan.

The committee has also considered the issue raised by the ALC regarding the proposed eight-minute breach tolerance being implemented through a future amendment of the Heavy Vehicle Fatigue Management Regulation. The committee is satisfied with the advice provided by the department that:

- disallowance mechanisms are available for regulations made under the HVNL
- the national scheme legislation is subject to Ministerial Council consideration and has been prepared in accordance with COAG endorsed principles and guidelines, and
- the NTC consulted, as far as practicable, on the drafting instructions, drafts of the Bill and associated national regulation amendments through the HVNL Maintenance Advisory Group which included the ALC's nominated representatives.

2.3 Record keeping exemption for local governments with equivalent fatigue records

Currently local governments are required to maintain the National Driver Work Diary – Daily Sheets data even though some councils have existing systems that record identical information. The Local Government Association of Queensland (LGAQ) made a submission which seeks additional amendments be included in the Bill to provide that equivalent information recorded about a driver's work and rest hours kept in local government systems be recognised. The LGAQ argued this would improve efficiencies by relieving councils of the requirement to keep two sets of records containing the same information. One council alone has estimated as a potential saving of \$50,000 per year.⁶² The requested exemption would require a legislative amendment to sections 321 (Records record keeper must have) and 322 (General requirements about driver giving information to record keeper) of the HVNL.

⁶² Local Government Association of Queensland, Submission 1, p 1.

The LGAQ advised in its submission that in 2014 it had requested that the NHVR consider providing an exemption for local governments which collect equivalent information.⁶³ The NHVR responded that it was not able to grant the requested exemption as the HVNL does not provide the NHVR with a broad-ranging power to grant exemptions from the provisions of the law but that:

Having had time to consider this issue, the NHVR understands the burden placed on some local government authorities to meet this requirement, especially as many of these authorities already collect information similar to that recorded on the daily sheet in order to participate in the Safe Plan 2 scheme ...

However, the NHVR has already contacted our colleagues at the NTC to ask them to consider broadening the exemption granting provision, to give the NHVR the power to remove the requirement for drivers to hand their daily sheets to their operators, if the operator is in possession of a record keeping exemption.⁶⁴

The department has provided the following update on the progress of the request and advice on the most appropriate way to progress the suggested amendment:

The NTC has advised the LGAQ that it is willing to have the matter investigated through the NTC's Heavy Vehicle National Law maintenance sub-program. This approach allows a proposed amendment to be developed in consultation with the LGAQ, industry and the states and territories.

The NTC's Heavy Vehicle National Law maintenance sub-program exists to ensure the HVNL remains contemporary, nationally consistent, efficient, effective, and aligned with ministerially agreed policy.⁶⁵

Committee comment

The committee has noted the exemption requested by the LGAQ along with the advice provided by the NHVR and the department that the NTC is willing to investigate the HVNL provisions which require local governments to collect and retain two sets of records that in effect duplicate the same information.

The committee is of the view that the appropriate mechanism for consideration of this issue is through the NTC's HVNL maintenance sub-program as this will ensure the HVNL remains nationally consistent and aligned with ministerially agreed policy.

2.4 Proposed new and amended penalties

The NTC undertook a national review of the penalties contained in the HVNL in 2013-14 and subsequently developed a national penalties framework. This framework contains the underpinning principles for establishing the appropriate penalty for offences, taking into account comparable state and territory penalties and identified anomalies with the current penalty levels for some offences within the HVNL.⁶⁶

The department explained the approach taken to aligning penalties across states and territories:

... one of the challenges that come from bringing effectively seven sets of laws from around the country into one is how you deal with penalty provisions in the various states' and territories' law ... that has been an iterative approach over various versions of the law and effectively the amendment bill in front of you continues that journey.⁶⁷

⁶³ Ibid, attachment: correspondence dated 27 June 2014.

⁶⁴ Ibid, attachment: correspondence dated 17 Apr 2015.

⁶⁵ Department of Transport and Main Roads, correspondence dated 13 July 2015, p 1.

⁶⁶ Explanatory notes, p 3.

⁶⁷ Public briefing transcript, 3 June 2015, p 3.

The Bill proposes a number of amendments to penalties to address the inconsistencies identified in the NTC review. The explanatory notes state that the NTC has developed a penalties matrix to help ensure that any future penalties for offences set in the HVNL will be justifiable and consistent with existing penalties.⁶⁸

The Bill proposes a number of new offences as well as seeking to amend certain enforcement provisions in Chapter 9 of the HVNL, including:

- creating a new offence for a person to tamper with a vehicle modification plate or label affixed to a heavy vehicle
- creating a new offence for driving or operating a heavy vehicle without a required mass or dimension exemption
- clarifying what information must be included in a vehicle defect notice and specifying how an authorised officer is to identify an unregistered vehicle on the defective vehicle label and vehicle defect notice
- streamlining the process for how an authorised officer may withdraw a vehicle defect notice
- clarifying that authorised officers do not have the power to issue formal warnings for a substantial, severe or critical risk breach of a maximum work requirement or minimum rest requirement by a driver of a fatigue-regulated heavy vehicle, and
- making provision for an authorised officer who is monitoring compliance with the HVNL, to enter a relevant place that is also a residence where the authorised officer has the consent of the operator.⁶⁹

A complete table of new and amended penalties can be found under the section of this Report headed 'Compliance with the *Legislative Standards Act 1992*'.

In response to a question from the committee about the justification for some proposed large increases in some penalties (up from \$6,000 to \$20,000), the NTC explained:

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.

... 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 the 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.⁷⁰

The appropriateness of the proposed new and amended penalties are discussed further under the section of this Report headed 'Compliance with the *Legislative Standards Act 1992*'.

⁶⁸ Explanatory notes, p 3.

⁶⁹ Ibid, pp 4-5.

⁷⁰ Public briefing transcript, 3 June 2015, p 8.

2.5 Miscellaneous amendments

The Bill proposes a range of amendments that seek to remove unnecessary administrative requirements for the NHVR and reduce the regulatory burden for the heavy vehicle industry, including:

- excluding nominated minor vehicle modifications from the requirement to be approved by the NHVR or an approved vehicle examiner
- removing the requirement for the NHVR to re-gazette a notice where the only change is adding and/or amending routes. The requirement for the NHVR to publish the amendments on its website will remain
- making provision for the NHVR to include route and condition information in a notice by map or a list
- removing the requirement for a label to be fitted to an approved EWD, and
- removing the requirement for the operator of a heavy vehicle that has been issued with a defective vehicle notice, where the vehicle has since been repaired, to seek the permission of an authorised officer to drive the vehicle for the purpose of having the vehicle defect notice cleared.⁷¹

The Bill also proposes amendments that are designed to clarify existing requirements for users of the HVNL by:

- providing further information and detail in a number of definitions contained in section 5 of the HVNL
- including a new definition of a B-triple to put it beyond doubt that a B-triple is considered a type of road train
- providing an amended definition of vehicle modification which will help to clarify which types of vehicle modification require approval of the NHVR and those that can be approved by an approved vehicle examiner
- clarifying the obligations of responsible entities, operators and drivers with respect to complying container weight declarations.⁷²

2.6 Technical drafting issues

The Bill addresses a number of minor, technical drafting issues including:

- amending the purpose of Chapter 4 to state that the purpose of the chapter is to allow for the operation of heavy vehicles that are overmass and over dimensions (the current purpose statement only references overmass heavy vehicles)
- including a reference in section 140 to provide that in addition to a condition to carry the notice, a condition imposed under sections 160 or 161 may also be included on a class 2 vehicle authorisation notice (this is consistent with the approach in sections 119, 125 and 146), and
- amending section 748 to effectively provide for the transition of Higher Mass Limit declarations and mass and dimension authorities.⁷³

⁷¹ Explanatory notes, pp 3-4.

⁷² Ibid, p 4.

⁷³ Ibid, p 5.

3. Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of parliament.

The committee has examined the application of FLPs to the Bill and considers clauses 7, 39, 55, 59 and 66 raise potential FLP concerns. The Bill also includes new and amended offence provisions which are considered below.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA provides the principles of FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals. Sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice, or provides for the compulsory acquisition of property only with fair compensation.⁷⁴

Administrative Power – section 4(3)(a) LSA

Clause 55 of the Bill proposes to insert a new section 529A, replacing sections 526(5) to 526(8) of the HVNL. Proposed section 529A(1) provides that an authorised officer may, on the request of the operator of a heavy vehicle that is the subject of a vehicle defect notice, give written permission for the vehicle to be used on a road during a period stated in the permission. An authorised officer may only give the permission for a vehicle to be used on the road if the officer is satisfied:

- that the vehicle will be used only for the purpose of driving the vehicle to and from a place where repairs are to be carried out, or
- that the relevant repairs have been carried out and the vehicle will be taken within the stated period to be inspected for the purpose of enabling the vehicle defect notice to be cleared under section 530, and
- that the request is necessary and reasonable, and
- that the use of the vehicle will not pose a safety risk.

While proposed new section 529A provides authorised officers with significant powers there is no mechanism for appealing a decision by an officer not to permit a heavy vehicle subject of a defect notice back on the road.

The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.⁷⁵

⁷⁴ *Legislative Standards Act 1992*, s 4(3)(b) & s 4(3)(i).

⁷⁵ Office of the Queensland Parliamentary Counsel, [Fundamental legislative principles: the OQPC notebook](#), p 18.

The explanatory notes for the Bill acknowledge that the lack of review is a potential FLP issue and provide the following justification:

Vehicle defect notices are an important tool to ensure the safety of all road users and as such road safety outcomes should take priority.

Similar decisions made by authorised officers to issue, amend or withdraw a vehicle defect notice are also not subject to review under the HVNL and were not previously subject to review under corresponding road transport laws. The power to issue a defect notice is an important safety measure to allow for the immediate restriction and, if necessary, prohibition of the use of unsafe heavy vehicles on public roads. Such an important decision is made for safety reasons and the balance of convenience favours requiring the relevant defect to be resolved, or concerns about the safety of the vehicle to be resolved, before the vehicle defect notice is cleared.⁷⁶

Committee comment

The committee notes the important safety reasons for issuing a defect notice in the first place and considers the justification provided in the explanatory notes for limiting review of decisions to be appropriate in the circumstances.

Onus of proof – section 4(3)(d) LSA

Section 4(3)(d) of the LSA provides that legislation should have sufficient regard to the rights and liberties of individuals and in this regard should not reverse the onus of proof in criminal proceedings without adequate justification. Several clauses of the Bill seek to reverse the onus of proof.

Clause 7

Clause 7 of the Bill proposes to insert a new section 87A in the HVNL that creates an offence for a person to tamper with a plate or label fitted or affixed to a heavy vehicle by an approved vehicle examiner or the NHVR. Section 87A(2) will provide a defence for a person if they can prove that the tampering was done with the written approval of the NHVR.

Proposed section 87A(2) is a potential breach of section 4(3)(d) of the LSA as it seeks to reverse the onus of proof by requiring a person to prove they have written approval to tamper with a plate or label affixed to a heavy vehicle. The explanatory notes acknowledge that the onus of proof is placed on the defendant and provides the following justification:

It could be argued that the absence of written permission of the NHVR should be an element of the offence that must be proved by the prosecution beyond a reasonable doubt. However, it can also be argued that the existence of written permission of the NHVR is an exemption from what otherwise would be an offence and it is reasonable to impose this onus of proof on the defendant. The existence of written permission can easily be proved by the defendant by producing the written permission or a copy of the written permission from the NHVR.⁷⁷

Committee comment

The committee considers the explanation for the proposed new section 87A(2) provided in the explanatory notes is adequate justification in the circumstances.

⁷⁶ Explanatory notes, p 6.

⁷⁷ Explanatory notes, p 6.

Clause 39

Clause 39(1) proposes to insert a new section 336A in the HVNL which makes it an offence for a record keeper to fail to inform the NHVR if they know, or have reasonable grounds to suspect, an EWD has been tampered with. A failure to report incurs a maximum penalty of \$6,000.

Clause 39(3) proposes that a person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence provided at section 24 of the Queensland *Criminal Code 1899* (the Criminal Code).⁷⁸ However, pursuant to section 39(4) in a proceeding for an offence against subsection (1), the person charged will have the benefit of the reasonable steps defence for the offence.

Section 16 of the HVNL specifically provides that the mistake of fact defence as set out in the Criminal Code does not apply for persons charged with an offence contained in the Act. The provisions in relation to the reasonable steps defence are at Part 10, Division 1 of the HVNL. Pursuant to the reasonable steps defence at section 618 of the HVNL, a person charged must prove the following:

- the person did not know, and could not reasonably be expected to have known, of the contravention concerned, and either
- the person took all reasonable steps to prevent the contravention, or
- that there were no steps the person could reasonably be expected to have taken to prevent the contravention.

There are several instances where the reasonable steps defence already applies to various offences throughout the HVNL. Some examples include: Keeping relevant documents while driving under vehicle standards exemption (section 82(5)); Tampering with a speed limiter fitted to a heavy vehicle (section 93(8)); Liability of employer etc. for driver's contravention of particular requirements of this Division (section 315(4)); Person must not tamper with approved electronic recording system (section 335(5)); Person using approved electronic recording system must not permit tampering with it (section 336(3)). Section 699 - Discrimination against or victimisation of employees – reverses the onus of proof pursuant to section 699(3).

In relation to EWDs, the following provisions of the HVNL allow for the reasonable steps defence: What record keeper must do if electronic work diary filled up (section 311(5)); What record keeper must do if electronic work diary destroyed, lost or stolen (section 312(5)); What record keeper must do if electronic work diary not in working order or malfunctioning (section 313(6)).

Clause 39 of the Bill proposes to insert a new section 336A which makes it an offence for a record keeper to fail to inform the NHVR if they know, or have reasonable grounds to suspect, an EWD has been tampered with.

As with similar existing offences in sections 336 and 337 of the HVNL, it is proposed that this offence cannot be defended with the mistake of fact defence (section 336A(3)). Also consistent with existing provisions, proposed section 336A(4) provides that the reasonable steps defence applies to the offence. Pursuant to this defence a person in the chain of responsibility charged with an offence bears the responsibility for proving the elements of the reasonable steps defence, that is, that the person

⁷⁸ *Criminal Code 1899*, section 24 (Mistake of fact) - A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.

did not know and could not reasonably be expected to have known of the contravention and took all reasonable steps to prevent the contravention. This reverses the onus of proof by placing the burden on the person charged to disprove the offence.

Pursuant to section 4(3)(d) of the LSA, legislation should not reverse the onus of proof in criminal matters without adequate justification, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence: 'For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt'.⁷⁹ Generally, the former Scrutiny of Legislation Committee opposed reversal of the onus of proof.⁸⁰

While the explanatory notes acknowledge the exclusion of mistake of fact defence reverses the onus of proof in a criminal proceeding they purport that the potential breach is justified on that basis that it is relatively easy for the accused to prove they took reasonable steps to prevent the contravention of the HVNL.⁸¹

Following a request from the committee, the department provided the following advice on how the reasonable steps defence may work in practice.

All EWD systems will have to meet the requirements of the EWD Functional and Technical Specification before being approved by the NHVR.

A key element of the specification developed by Transport Certification Australia, is that the EWD system must have tamper-evident alarms that signal to the record keeper that the system has been tampered with. Record keepers will be expected to inform the NHVR of tampering of which they become aware through alarms generated by the system. They will also be expected to inform the NHVR of tampering of which they become aware through other means, for example, by actually observing tampering to components of the system or being informed of such tampering by other people. Moreover, record keepers will be expected to make inquiries with drivers and operators if they become aware of irregularities and discrepancies in relation to information being reported by EWD systems, and will be expected to have mechanisms in place to ensure such irregularities and discrepancies are brought to their attention. Depending on the circumstances of the matter, the reasonable steps defence may require all of the abovementioned things to be done by a record keeper.⁸²

Committee comment

The committee has noted the advice from the department on how the reasonable steps defence may work in practice and has also noted that the issues surrounding the mistake of fact defence were dealt with when the HVNL was considered by the Legislative Assembly of the 54th Parliament.

The committee considers that in light of the reasonable steps defence being available for several other matters involving EWDs, for the purposes of consistency, the reversal of the onus of proof in proposed section 336A is, on balance, appropriate in the circumstances.

Clause 59

Clause 59 proposes to insert a new subsection 725(2)(a) in the HVNL which provides that a document reported as being made by the approved electronic recording system is presumed to have been

⁷⁹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

⁸⁰ Alert Digest 2002/4, p 27, para 10.

⁸¹ Explanatory notes, p 7.

⁸² Department of Transport and Main Roads, correspondence dated 13 August 2015, p 2.

properly made by the system and to be a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system, unless the contrary is proved.

Clause 59 reverses the onus of proof and is a potential breach of section 4(3)(d) of the LSA by presuming that electronic data is correct. It is up to the person charged with the offence to prove that the data from the electronic device is incorrect.

The explanatory notes argue that while this amendment reverses the onus of proof in criminal proceedings, it is considered reasonable from technical, operational and regulatory perspectives to presume that information collected by the technology is correct unless the contrary is proved.

This reversal of the onus of proof is considered necessary to facilitate prosecutions for breaching work and rest hour requirements while allowing for the evidence to be overturned if further evidence subsequently reveals a problem with the accuracy of the EWD data. The amendment is also consistent with a corresponding provision in section 724 for approved intelligent transport systems used for intelligent access conditions.⁸³

As noted above, section 724 of the HVNL already provides that reports and statements made by an approved intelligent transport system are presumed (unless the contrary is proved):

- to have been properly made by the system, and
- to be a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system.

The committee requested advice from the department on how this provision would take into account the scenario where a device used to collect this data may produce incorrect information due to a technical fault and also on the operation of section 724 since the HVNL was enacted and whether evidence has been overturned, and if so, why? The department advised that it is part of the Functional and Technical Specification for the EWD that the EWD system identifies malfunctions and generates reports to the record keeper when a system is not functioning properly.

If a system malfunctions, for whatever reason, the system will automatically generate an error report which will identify the time that the system stopped working.

In this case, it would be a simple matter for a person charged to produce a system-generated report to show that the system was not working properly at a particular time. In reality, error reports will be uncovered by investigators during an investigation and a document produced by a system which, according to an error report, was not working properly would not be relied on to support a charge.⁸⁴

The department also advised that clause 59 provides an opportunity for a person charged in a proceeding to challenge that an EWD report has been properly made or that the report is a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system.

Importantly, a document purported to be made by the system is not conclusive evidence. A person charged must, however, provide a notice stating the grounds on which the defendant intends to rely to challenge the matter.⁸⁵

The department advised there have been no matters brought before Queensland courts that have relied on section 724 of the HVNL since its introduction in February 2014. Also, that a similar evidential

⁸³ Explanatory notes, p 6.

⁸⁴ Department of Transport and Main Roads, correspondence dated 13 August 2015, pp 2-3.

⁸⁵ Ibid, p 3.

provision included in the *Transport Operations (Road Use Management Act) 1995* regarding information generated by an approved intelligent transport system (section 61G repealed) was first introduced in 2009 and, since that time, no challenges as to the accuracy of the information generated by an approved intelligent transport system have been made.⁸⁶

Committee comment

The committee considers the justification provided in the explanatory notes is sufficient to warrant the reversal of the onus of proof in this instance. The committee notes that a similar provision already exists at section 724 of the HVNL and that no challenges to the accuracy of the information generated by an approved intelligent transport system were made in relation to similar evidential provisions contained in the *Transport Operations (Road Use Management Act) 1995*.

3.1.2 Executive liability

Executive liability in the HVNL

Schedule 4 of the HVNL imposes a deemed liability on executive officers of a corporation who knowingly authorise or permit an offence to be committed by the corporation. An executive officer of a corporation is defined at section 5 of the HVNL as a director of the corporation or any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

Section 636 of the HVNL provides:

If a corporation commits an offence against a provision of this Law specified in column 2 of Schedule 4, each executive officer of the corporation who knowingly authorised or permitted the conduct constituting the offence also commits an offence against the provision.

Section 636(2) provides:

If a corporation commits an offence against a provision of this Law specified in column 3 of Schedule 4, each executive officer of the corporation who knew or ought reasonably to have known:

- of the conduct constituting the offence
- or
- that there was a substantial risk that the offence would be committed,

also commits an offence against the provision.

Pursuant to section 636(3), it is a defence for the executive officer to prove:

- the officer exercised reasonable diligence to ensure the corporation complied with the provision
- or
- the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Executive liability in the amendment Bill

Clause 66 of the Bill proposes to amend sections 313(3), 347, 728A and 729A of the HVNL and provides that they be listed in Schedule 4 and subject to executive liability. The following clauses amend the aforementioned sections and impose a liability on executive officers.

⁸⁶ Ibid.

Clause 31

Clause 31 proposes amendments to section 313 to provide for what a record keeper who is not a driver must do to notify the driver when they become aware, or have reason to suspect, that the EWD is not in working order or is malfunctioning.

Pursuant to clause 31(3) a record keeper must, as soon as reasonably practicable after becoming aware of the matter or having reason to suspect the matter, inform the driver about the matter, unless the driver informed the record keeper about the matter under section 309.

The record keeper must also notify the NHVR in the approved form about the fault with the EWD and ensure the EWD is brought into working order and is not malfunctioning within the period required by the NHVR. The maximum penalty is \$6,000.

Clause 43

Clause 43 proposes to insert a new Subdivision 2 (Using unapproved electronic recording system) to prescribe a single offence for a person using a device as an approved electronic recording system if the person knows, or ought reasonably know, that the electronic recording system is not an approved electronic recording system.

Clauses 62 and 63

Clause 62 proposes to insert a new section 728A whereby a person who is using, or has used an EWD, must not disclose its information to another person. The duty does not apply if the disclosure is to an entity for EWD authorised use or the disclosure is made to, or with the agreement of, the person to whom the information relates. The maximum penalty is \$20,000.

Clause 63 proposes to insert new sections 729A and 729B to provide that a person must not use EWD protected information other than for EWD authorised use. Section 729A(2) proposes that a person to whom EWD protected information is disclosed under section 728A(2)(a) must not use the information other than for the authorised use for which it was disclosed to the person. The maximum penalty is \$20,000.

Potential FLP Issues

The extended use of executive liability by way of clause 66 to include EWD and electronic devices is a potential breach of section 4(3)(d) of the LSA in relation to the reversal of the onus of proof and its effect on the rights and liberties of individuals. The onus is placed on executive officers in relation to the operation of EWD and electronic devices and the release of the information they contain.

The explanatory notes acknowledge that the amendment of these sections will reverse the onus of proof. They provide the following justification for the inclusion of the provisions in Schedule 4:

The inclusion of these offences in Schedule 4 can be seen as limiting the rights and liberties of individuals by reversing the onus of proof. However, extending liability for offences to executive officers is intended to ensure parties in a position to control, influence, prevent or encourage on-road breaches are discouraged from such behaviour, and more importantly take active steps to prevent on-road breaches. Offences corresponding to or similar to the new offences already exist in Schedule 4.⁸⁷

⁸⁷ Explanatory notes, p 6.

Clause 31(3) will require a record keeper to report a breach as soon as 'reasonably practicable' while clause 43 provides that a person must not use an electronic device if they 'ought reasonably know' the electronic recording system is not an approved electronic recording system.

The former Scrutiny of Legislation Committee referred to Parliament the question of whether clauses creating liability on the basis of 'knows or ought reasonably to have known' had sufficient regard to the rights and liberties of individuals.⁸⁸ It may be the case that the use of the term 'ought reasonably know' can lead to a situation where an offence is committed without any element of intent or where the behaviour is simply negligent.

However, section 632 of the HVNL has a specific section in relation to what a person 'ought reasonably' know. Pursuant to section 632(2) a court, in deciding whether a person ought reasonably have known a thing, may consider the following:

- the person's abilities, experience, expertise, knowledge, qualifications and training
- the circumstances of the offence
- any other relevant matter prescribed by the national regulations for the purposes of this section.

The use of the term 'reasonably practicable' at clause 31(3) is also consistent with its use throughout the HVNL, although there is no definition provided at section 5, which is unlike the terms 'reasonably believes', 'reasonably satisfied' and 'reasonably suspects'.

Consideration by former committee

In considering these clauses, the committee noted that the issue of executive liability has been considered previously when the original heavy vehicle legislation was introduced into the 54th Parliament by way of Reports 4 and 16 of the former Transport, Housing and Local Government Committee (THLGC). These reports considered the Heavy Vehicle National Law Bill 2012 (Report No. 4) and the Heavy Vehicle National Law Amendment Bill 2012 (Report No. 16).

In relation to executive liability generally, Report No. 16 of the THLGC states:

The Committee sought clarification from TMR (the Department of Transport and Main Roads) about whether the Bill is consistent with the Council of Australian Governments' (COAGs) principles and guidelines for directors' liability while noting that section 636 of the Bill has been drafted to comply 'as far as practicable' with the COAG guidelines.

TMR advised the Committee that the drafting of section 636 is the result of extensive consultation and negotiation with industry, the NTC, the NHVR Project Office, State and Territory Governments and the Federal Government. This drafting also reflects amendments recommended in legal advice obtained from the Australian Government Solicitors Office.⁸⁹

Committee comment

The committee notes that clauses 31, 43, 62 and 63 would extend the liability for executive officers in relation to EWDs or an electronic recording device. The committee considers that the use of the term 'ought reasonably know' in clause 43 is adequately covered by section 632 of the HVNL. The committee further notes the use of 'reasonably practicable' in clause 31 is a term used consistently throughout the HVNL which will be understood by those persons subject to executive liability.

⁸⁸ Alert Digest 2008/11, p 12 (re Coroners and Other Acts Amendment Bill 2008, proposed new s 16A).

⁸⁹ Transport, Housing and Local Government Committee, *Heavy Vehicle National Law Amendment Bill 2012*, report, p 35.

The committee considers that adequate justification has been provided for reversing the onus of proof and extending executive liability in these instances.

3.2 Proposed new and amended offence provisions

The following table details the proposed new and amended offence provisions.

Clause	Offence	Proposed maximum penalty
7	New s 87A (1) A person must not tamper with a plate or label fitted or affixed to a heavy vehicle under section 86(2) or 87(3).	\$3,000
14	New s 153A(1) A person must not use a restricted access vehicle, or permit a restricted access vehicle to be used, on a road, unless the road is one on which the vehicle is allowed to be used under a mass or dimension authority applying to the vehicle.	\$6,000
17	Amended s 191(3) If the freight container is to be transported by another carrier, an operator of a heavy vehicle must not give the freight container to the carrier unless the carrier has been provided with— (a) a complying container weight declaration for the freight container containing information in the form required under section 192A; or (b) the prescribed particulars contained in a complying container weight declaration for the freight container.	\$6,000
28	New s 307(3) Within a period required by the Regulator, the driver must ensure the electronic work diary is examined and brought into working order.	\$3,000
30	Amended s 312(2) The record keeper must, as soon as reasonably practicable after becoming aware of the matter or having reason to suspect the matter— (a) inform the driver that the electronic work diary has been destroyed, lost or stolen unless the driver informed the record keeper about the fault under section 309; and (b) give the driver an electronic work diary that is in working order; and (c) give the driver any information, in a way that makes the information readily available to the driver, that was in the destroyed, lost or stolen electronic work diary that— (i) is accessible to the record keeper; and (ii) relates to any period during the last 28 days; and (iii) is not stored in the new electronic work diary.	\$6,000
	Amended s 312(3) The record keeper must, within 2 business days, notify the Regulator in the approved form that the electronic work diary has been destroyed, lost or stolen.	\$6,000

Clause	Offence	Proposed maximum penalty
31	<p>Amended s 313(2)</p> <p>The record keeper must, as soon as reasonably practicable after becoming aware of the matter or having reason to suspect the matter, inform the driver about the matter unless the driver informed the record keeper about the matter under section 309.</p>	\$6,000
	<p>Amended s 313(3)</p> <p>The record keeper must, after becoming aware of the matter or having reason to suspect the matter—</p> <p>(a) as soon as reasonably practicable, direct the driver in the approved form to use a supplementary record in compliance with section 305; and</p> <p>(b) as soon as reasonably practicable, give the driver information that was in the electronic work diary, in a way that makes the information readily available to the driver, that—</p> <p>(i) is accessible to the record keeper; and</p> <p>(ii) relates to any period during the last 28 days; and</p> <p>(iii) is not stored in the electronic work diary because the electronic work diary is not in working order or is malfunctioning or has malfunctioned; and</p> <p>(c) within 2 business days, notify the Regulator in the approved form that the electronic work diary is not in working order or is malfunctioning or has malfunctioned; and</p> <p>(d) within a period required by the Regulator, ensure the electronic work diary is examined and brought into working order and is not malfunctioning.</p>	\$6,000
37	<p>New s 324A(2)</p> <p>The driver's record keeper must, as soon as reasonably practicable—</p> <p>(a) give the driver a copy of the record, or make the record available to the driver; or</p> <p>(b) if the information is recorded in an electronic work diary—give the driver, in a way that makes the information readily available to the driver, the information recorded in the work diary.</p>	\$1,500
39	<p>New s 336A(1)</p> <p>If the record keeper for the driver of a fatigue-regulated heavy vehicle knows, or has reasonable grounds to suspect, an electronic work diary has been tampered with, the record keeper must report the matter to the Regulator—</p> <p>(a) within 2 business days; and</p> <p>(b) in the approved form.</p>	\$6,000
40	<p>New s 341(7)</p> <p>If the driver's work diary is an electronic work diary, the driver's record keeper must maintain a record of the information that is recorded in the work diary in a way complying with—</p> <p>(a) if the Regulator has, when approving the electronic recording system constituting the work diary, or of which the work diary is a part,</p>	\$1,500

Clause	Offence	Proposed maximum penalty
	<p>imposed any conditions in relation to the way information must be recorded in the work diary—those conditions; and</p> <p>(b) the manufacturer’s instructions, if any, for recording information in the electronic work diary, to the extent the instructions are consistent with the conditions mentioned in paragraph (a).</p>	
43	<p>Replacement s 347</p> <p>A person must not use as an electronic work diary for the purposes of this Law, an electronic recording system constituting an electronic work diary, or of which an electronic work diary is a part, if the person knows, or ought reasonably to know, the electronic recording system is not an approved electronic recording system.</p>	\$10,000
44	<p>Amended s 355(2)</p> <p>If the electronic recording system constitutes an electronic work diary, or if part of the electronic recording system is an electronic work diary, the holder of the approval must, within the period stated by the Regulator in the notification, remove any electronic message on the system’s visual display stating the system is, or includes, an electronic work diary.</p> <p>Amended s 355(6) If, under subsection (4), the holder of the approval gives a person a notice that the approval has been cancelled, the person must give a notice, to each other person to whom the person has supplied an electronic recording system the subject of the approval that constitutes an electronic work diary, or of which an electronic work diary is a part, stating that the approval has been cancelled.</p> <p><i>Example for the purposes of subsection (6)—</i></p> <p>The holder of an approval is a service provider who has supplied to the operator of a fatigue-regulated heavy vehicle an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part. If, under subsection (4), the service provider gives the operator a notice stating the approval has been cancelled, the operator must give the driver of the vehicle a notice stating the approval has been cancelled.</p>	\$6,000
56	<p>New s 531(4)</p> <p>If the person given the notice of amendment or withdrawal is not the operator of the vehicle, the person must, as soon as reasonably practicable, give the notice to the operator.</p>	\$3,000
58	<p>Amended s 704(1) A person must not represent—</p> <p>(a) that the person has been granted a heavy vehicle authority the person has not been granted; or</p> <p>(b) that a heavy vehicle authority has been granted in relation to a thing for which it has not been granted; or</p> <p>(c) that the person is operating under a heavy vehicle authority that the person is not entitled to operate under; or</p> <p>(d) that a thing is operating under a heavy vehicle authority that the thing is not authorised to operate under.</p>	\$10,000
62	<p>New s 728A(1)</p> <p>A person who is, or has been, a person exercising functions under this Law must not disclose electronic work diary protected information to another person.</p>	\$20,000

Clause	Offence	Proposed maximum penalty
63	New s 729A(1) A person who is, or has been, a person exercising functions under this Law must not use electronic work diary protected information other than for an electronic work diary authorised use.	\$20,000
	New s729A(2) A person to whom electronic work diary protected information is disclosed under section 728A(2)(a) must not use the information other than for the electronic work diary authorised use for which it was disclosed to the person.	\$20,000

Further to these penalties, clause 67 proposes that each provision mentioned in column 1 of the schedule is amended by omitting the amount mentioned in column 2 of the schedule and inserting the amount mentioned in column 3 of the schedule. Clause 67 is set out as follows:

Column 1 Provision	Column 2 Omitted penalty	Column 3 Inserted penalty
Section 81(1)	\$3,000	\$4,000
Section 81(2)	\$3,000	\$4,000
Section 81(3)	\$3,000	\$4,000
Section 208(1)	\$4,000	\$6,000
Section 213	\$6,000	\$10,000
Section 233(1)	\$6,000	\$10,000
Section 297(2)	\$3,000	\$6,000
Section 309(2)	\$6,000	\$3,000
Section 412	\$6,000	\$20,000
Section 416	\$6,000	\$20,000
Section 428	\$6,000	\$20,000
Section 432	\$6,000	\$20,000
Section 442	\$6,000	\$20,000
Section 446	\$6,000	\$20,000
Section 488	\$3,000	\$4,000
Section 529	\$3,000	\$6,000

In some instances, the penalty increases from \$6,000 to \$20,000 where the offence relates to the unauthorised disclosure of information. This includes: Protecting intelligent access information (section 412); General restriction on use and disclosure of intelligent access information (section 416); Protecting intelligent access information collected (section 428); General restriction on use and disclosure of intelligent access information (section 432); Protecting intelligent access information collected (section 442); General restriction on use and disclosure of intelligent access information (section 446).

The explanatory notes state:

In 2013-2014, the National Transport Commission (NTC) undertook a national review of the penalties contained in the HVNL and developed a national penalties framework. The national penalties framework established the underpinning principles for establishing the appropriate penalty level for offences, taking into account comparable state and territory penalties and identified anomalies with

the current penalty levels for some offences within the HVNL. The Bill includes a number of amendments to penalties to address the identified inconsistencies.

The NTC has developed a penalties matrix to help ensure that any future penalties for offences set in the HVNL will be justifiable and consistent with existing penalties.⁹⁰

Committee comment

The committee notes the national approach taken with respect to the amended penalties in order to achieve consistency across jurisdictions. In light of the development of this national framework, the committee considers that adequate justification has been provided for the new and amended penalties proposed in the Bill.

3.3 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

The explanatory notes tabled with the Bill are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee considers it would be helpful if the explanatory notes identified the specific clauses of the Bill being discussed when identifying the fundamental legislative principles.

⁹⁰ Explanatory notes, p 3.

Appendices

Appendix A – List of submitters

Sub #	Name
1	Local Government Association of Queensland
2	Australian Trucking Association
3	Queensland Trucking Association Ltd

Appendix B – List of witnesses at the public briefing held on Wednesday 13 June 2015

Witnesses	
1	Mr Marcus Burke, Program Director, Heavy Vehicle Compliance and Technology, National Transport Commission
2	Ms Kelli Cumming, Senior Manager, Heavy Vehicle Industry, Department of Transport and Main Roads
3	Mr Graham Fraine, Deputy Director-General, Customer Services, Safety and Regulation, Department of Transport and Main Roads
4	Mr Jeremy Wolter, Manager, National Law, National Transport Commission