



Speech By  
**Hon. Mark Bailey**


**MEMBER FOR MILLER**

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## **HEAVY VEHICLE NATIONAL LAW AMENDMENT BILL**

### **Introduction**

 **Hon. MC BAILEY** (Miller—ALP) (Minister for Transport and Main Roads) (11.20 am): I present a bill for an act to amend the Heavy Vehicle National Law Act 2012 for particular purposes. I table the bill and the explanatory notes. I nominate the Transport and Public Works Committee to consider the bill.

*Tabled paper:* Heavy Vehicle National Law Amendment Bill 2018 [\[537\]](#).

*Tabled paper:* Heavy Vehicle National Law Amendment Bill 2018, explanatory notes [\[538\]](#).

I am pleased to introduce the Heavy Vehicle National Law Amendment Bill 2018, which is not to be confused of course with the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 that is currently before the House. This bill amends the Heavy Vehicle National Law Act 2012. The Heavy Vehicle National Law, commonly referred to as the HVNL, provides a single—

**Mr SPEAKER:** Order, members. I am having difficulty hearing the minister. If you are going to be leaving the chamber, please do so quietly.

**Mr BAILEY:** People usually get very excited about the Heavy Vehicle National Law; it is understandable. The Heavy Vehicle National Law, commonly referred to as the HVNL, provides a single national law for the consistent regulation of heavy vehicle operations across most of Australia. Operational provisions of the HVNL commenced on 10 February 2014. The HVNL regulates matters relating to mass, dimension and loading, fatigue management, vehicle standards, accreditation and enforcement. The HVNL also established the National Heavy Vehicle Regulator, or the NHVR, to administer the law.

The proposed bill amends the HVNL to implement nationally agreed reforms that include strengthening investigative and enforcement powers for authorised officers, increasing freight volumes where mass is not a constraint and transferring load restraint performance standards from guidance material to the HVNL. Some minor amendments are also made to help ensure the HVNL remains contemporary and fit for purpose.

The approach taken to implement national heavy vehicle reform is through adoption of national scheme legislation enacted first by Queensland as host jurisdiction and then applied by participating jurisdictions. All Australian states and territories except for Western Australia and the Northern Territory participate in the reform and have applied the HVNL as a law of their jurisdiction. The proposed amendments were unanimously endorsed by the Transport and Infrastructure Council in November 2017 after being jointly developed by the National Transport Commission and the NHVR in consultation with state and territory transport authorities, enforcement agencies and heavy vehicle industry associations.

While Western Australia and the Northern Territory are not participating jurisdictions, they were consulted during development of the amendments. The investigative and enforcement powers amendments in the bill are the third and final stages of the HVNL chain-of-responsibility reforms that

were approved by the Transport and Infrastructure Council in November 2015. Reforming chain of responsibility, or CoR, will improve safety outcomes in the heavy vehicle industry by aligning the responsibilities of chain-of-responsibility parties and executive officers more closely with national safety legislation such as the Work Health and Safety Act.

The first phase of amendments changed existing HVNL obligations on all current chain-of-responsibility parties from a reverse onus of proof approach to a positive due diligence obligation to ensure parties to the chain of responsibility comply with their primary duty of care. This means the prosecution will bear a greater evidentiary burden to prove chain-of-responsibility offences. As a result, the prosecution will need sufficient power to gather evidence to prove a breach beyond reasonable doubt, including from third parties who have relevant information. The investigative and enforcement powers amendments contained within the bill will assist the prosecution with this heavier burden of proof by providing authorised officers additional powers to gather information from a person who is not an executive officer. It should be noted that these additional information-gathering powers will be confined to information that is relevant to chain-of-responsibility offences.

Other elements of the investigative and enforcement powers amendments will allow a fleet or class of vehicles to be presented for inspection where an authorised officer has a reasonable belief that the fleet or class of vehicles does not comply with the HVNL or is defective. This approach will address those situations where there is a reasonable belief that a fleet of vehicles may be defective but the authorised officer has not physically sighted each individual vehicle. The proposed amendment allows serious safety concerns to be addressed appropriately and quick action taken to remedy serious systemic roadworthiness problems. Authorised officers will be able to issue a prohibition notice to a person where they reasonably believe there is an activity occurring involving a heavy vehicle that could involve an immediate or imminent serious risk to a person. These amendments will ensure that agencies enforcing the HVNL have sufficient and appropriate investigative and enforcement powers, including sanctions, to achieve the objectives of the HVNL.

Throughout development of the chain-of-responsibility reforms, there has been firm support across industry and jurisdictions for introducing a positive duty on all parties in the chain of responsibility to improve the safety of road transport operations. I believe I may speak on behalf of my colleagues when I say that the Transport and Infrastructure Council is committed to ensuring that the implementation of these reforms is a smooth transition for industry. That is why the investigative and enforcement powers amendments in this bill, if passed, plan to commence with the first two phases of the chain-of-responsibility reforms as one cohesive package later this year. The NHVR has assured me that it is ready and able to support the successful implementation of chain-of-responsibility reforms, particularly in providing additional support to address concerns that have been voiced by the agricultural sector and primary producers. I am convinced that these reforms will bring significant improvements for chain-of-responsibility parties managing their obligations.

Another amendment to help improve road transport safety relates to the *Load Restraint Guide*. First published in 2004, the *Load Restraint Guide*, or LRG, provides drivers, operators and other participants in the chain of responsibility with basic safety principles that should be followed for the safe carriage of loads on road vehicles. The LRG is, for the most part, a guidance document or instruction manual for safely securing and transporting loads. However, operators are currently required to comply with enforceable load restraint performance standards detailed in the LRG and referenced in the HVNL. These performance standards are designed so that, under expected driving conditions, a load will not dislodge from a vehicle and will not move in such a way as to be unsafe. To clarify obligations for industry, the Transport and Infrastructure Council agreed to remove the enforceable load restraint performance standards from the LRG and place them in the HVNL. This will provide clear information for industry about precisely what is a load restraint obligation by ensuring that the LRG is exclusively guidance only.

A new policy recently agreed by the Transport and Infrastructure Council is to grant improved road access to heavy vehicles with increased volumetric load capacity but with no increase in mass. Heavy vehicles operating under the performance based standards scheme, or PBS, may be carrying lighter weight loads that are currently operating at less than their maximum mass limit. There exists an opportunity to permit these PBS vehicles to be physically larger and so increase their freight volume but still remain under their legal mass limit. Currently, PBS level 1 heavy vehicles like this are restricted in their access and require individual permits to operate so operators may opt for poorer-performing, less productive heavy vehicles. The Transport and Infrastructure Council approved a policy to grant access to specified PBS vehicles without the need for a permit. This will allow these vehicles to access the same road network as heavy vehicles operating under general mass limits. This general access approach will be of particular benefit for PBS level 1 vehicles that may be travelling unladen on a return journey. This increase in productivity will not be at the expense of road safety or road infrastructure.

A Queensland specific amendment has been included in this bill to address the peculiar situation that arises due to heavy vehicle fatigue offences being heard in several courts due to the fact that heavy vehicle drivers often journey through multiple districts. If a fatigue offence is detected after inspecting a driver's work diary, the current law requires that each offence be brought in the Magistrates Court district in which the offence occurred irrespective of where the driver's work diary was inspected. If a person has committed fatigue offences while driving a heavy vehicle on a journey between, for example, Cairns and Brisbane, then the charges must be brought, and the defendant is obliged to appear, at each of the courthouses in the districts in which an offence has been committed. This could, for example, include Cairns, Innisfail, Townsville, Bowen, Mackay, Rockhampton, Gladstone, Bundaberg, Gympie, Maroochydore, Caboolture and Brisbane.

If convicted, the defendant must pay an offender levy, currently at \$118.80, and filing fees, currently at \$92.55, for each matter. This means that, if the defendant has offences in six courts, as has happened in a recent matter, the defendant would have to pay over \$1,200 even before a fine is imposed.

The proposed amendment will allow the Queensland prosecution to commence proceedings for a fatigue offence in a Magistrates Court district in which an offence occurred or in the Magistrates Court district in which the offence was detected. Multiple offences that would otherwise be heard in multiple locations will be heard in a single Magistrates Court. The choice of which court will be at the Queensland prosecution's election. This amendment will bring Queensland into line with the approach already taken in some other jurisdictions as their courts have a greater discretion to determine the location of proceedings.

Proposed maintenance amendments have also been included in this bill. These are minor in nature or simply clarify a range of existing provisions, such as removing the NHVR's obligation to advertise in national newspapers when amending notices and ensuring that the annual indexation of penalties is able to operate as intended. The bill being considered today highlights the determination of industry and all jurisdictions to make the heavy vehicle transport industry safer for all parties. I commend the bill to the House.

### **First Reading**

**Hon. MC BAILEY** (Miller—ALP) (Minister for Transport and Main Roads) (11.31 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to Transport and Public Works Committee**

**Mr DEPUTY SPEAKER** (Mr Whiting): In accordance with standing order 131, the bill is now referred to the Transport and Public Works Committee.