



# National Transport Reform Implementation Monitoring Report

Report to the Transport and Infrastructure Council

2016

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# Abbreviations

ADG code	Australian Dangerous Goods Code
ATSB	Australian Transport Safety Bureau
COAG	Council of Australian Governments
ES	Explanatory Statement
HVNL	Heavy Vehicle National Law
IAP	Intelligent Access Program
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
ONRSR	Office of the National Rail Safety Regulator
RISSB	Rail Industry Safety and Standards Board
RSNL	Rail Safety National Law
TCA	Transport Certification Australia

# Executive summary

The National Transport Commission (NTC) is an independent statutory body tasked to provide advice to the Transport and Infrastructure Council on regulatory and operational transport reforms. The NTC, with the cooperation from key stakeholders, undertakes these reforms across road, rail and intermodal transport to improve safety, productivity, environmental and regulatory efficiency outcomes.

Each year the NTC provides a progress report to the council on the implementation status of nationally agreed reforms. The 2016 *National Transport Reform Implementation Monitoring Report* is the fourth report delivered. The reporting period is from 1 July 2015 to 30 June 2016. Any implementation progress after 30 June 2016 will be included in the 2017 monitoring report.

## Heavy vehicle regulatory reform

The heavy vehicle regulatory reform established a national regulatory system for all heavy vehicles and contains uniform laws administered by a single regulator. The Heavy Vehicle National Law (HVNL) commenced in 2014 and the National Heavy Vehicle Regulator (NHVR) fully commenced operations at that time. All but one milestone of the original reform are complete. This final milestone is due on 1 July 2018 when chapter 2 of the HVNL is due to commence.

The 4th HVNL amendment package was implemented by participating jurisdictions during 2015–16.

Analysis by the NTC shows there are currently 35 derogations from the HVNL across all participating jurisdictions.

The Northern Territory has indicated that they will not commence the HVNL until the benefits to local industry are clearly demonstrated. Western Australia is not a signatory to the reform.

## Heavy vehicle charges

Heavy vehicle charges are a combination of a fixed annual registration and fuel-based road user charges that ensures expenditure on roads allocated to heavy vehicles is recovered by governments. New charges resulting from the 2014 heavy vehicle charges determination are planned to be implemented from 1 July 2016.

## Rail safety regulation and investigation reform

The rail safety regulation and investigation reform has established a national system of rail safety regulation and investigation that includes uniform regulation and a single national rail safety regulator, complemented by a national rail safety investigator. All participating states and territories have passed enabling legislation for the application of the Rail Safety National Law (RSNL). The Office of the National Rail Safety Regulator (ONRSR) commenced operations in 2013.

Progress has been made since last year. Queensland has announced it will implement the reform and the ONRSR started operations in Western Australia in November 2015. In addition, the Australian Transport Safety Bureau has started investigating rail accidents and incidents in Western Australia.

Analysis by the ONRSR shows there are four derogations from the RSNL with medium impacts in New South Wales. The ONRSR also highlighted the mirror legislation approached used in Western Australia as a major derogation.

In addition, the 1st RSNL amendment package that was approved in November 2014 has been implemented in seven jurisdictions.

## **Australian Road Rules**

The Australian Road Rules contain the basic rules of the road for motorists, motorcyclists, cyclists, pedestrians, passengers and others.

Most jurisdictions have implemented the 9th and 10th amendment packages.

## **Australian Light Vehicle Standards Rules**

In November 2015 the council approved reforms to the Australian Light Vehicle Standards Rules. Heavy Vehicle Standards Rules are now included in the HVNL, and the Australian Light Vehicle Standards Rules, approved by the council in May 2016, will apply to light vehicles in the future.

The HVNL has incorporated the provisions of the vehicle standards that apply to heavy vehicles.

While most jurisdictions are progressing implementation there are inconsistencies in the adoption of amendment packages. However, the nature of the proposed amendments means the impact of different implementation dates should not be significant.

## **Review of Australian Road Rules and Australian Vehicle Standards Rules**

Recommendations from the Review of the Australian Road Rules and Australian Vehicle Standards Rules were approved by the council in 2013.

Four of the five recommendations were completed by the end of 2015.

## **Australian Dangerous Goods**

The Australian Dangerous Goods Model Regulations and Code set out the requirements for transporting dangerous goods by road or rail. The council approved version 7.4 of the Australian Dangerous Goods Code in May 2015.

## **Strategic Review of Australian Dangerous Goods Code**

In November 2013 ministers approved the Strategic Framework Review of the Regulation of Land Transport of Dangerous Goods, which set out six recommendations and included a supporting implementation plan. Five of the six recommendations were completed by 2014–15. The last recommendation is for the NTC to amend the model laws to include a timeline for a competent authority to make a decision once it has received an application.

## **Intelligent Access Program**

The council endorsed recommendations from the Review of the Intelligent Access Program in November 2014. Transport Certification Australia has now completed implementing all the recommendations.

# 1 Introduction

The National Transport Commission (NTC) is an independent statutory body tasked to provide advice to the Transport and Infrastructure Council on regulatory and operational transport reforms. The NTC, with the cooperation of key stakeholders, undertakes these reforms across road, rail and intermodal transport to improve safety, productivity, environmental and regulatory efficiency outcomes.

Each year the NTC provides a progress report to the council on the implementation status of nationally approved transport reforms.

The outcomes of a 2012 review of the NTC specified that the NTC should provide independent assessments of jurisdictions' progress on implementing transport reforms. The review also specified that the NTC should provide advice to the council on:

- reasons for delays
- barriers to implementation
- what is required to bring the jurisdiction back on target
- an analysis of whether variations (or derogations) were implemented that would reduce the benefits of the particular reform.

The 2016 *National Transport Reform Implementation Monitoring Report* is the fourth report delivered and covers the reporting period from 1 July 2015 to 30 June 2016. Any implementation progress after 30 June 2016 will be reported in the 2017 monitoring report.

If a milestone was achieved in the previous monitoring report, it is not reported in this or subsequent reports.

## Purpose

This report provides the council with an independent assessment of the implementation progress of national transport reforms and projects. It also provides advice on where delays have occurred, and on any corrective actions or interventions required to bring jurisdictions back on track.

This report improves transparency and enhances accountability, providing stakeholders with information to hold governments and their agencies to account for timely and consistent reform implementation. It also helps explain implementation issues, successes and departures from agreed recommendations so that national solutions can be developed and applied in future reform initiatives.

## Method

From July to August 2016, the Commonwealth, states and territories, the National Heavy Vehicle Regulator (NHVR), the Office of the National Rail Safety Regulator (ONRSR), Transport Certification Australia (TCA) and agencies regulating the transport of dangerous goods provided information and implementation progress updates to the NTC to inform this report.

The report presents progress of national reforms by using 'traffic light' indicators and brief commentaries describing achievements and impediments and recommends corrective actions where required. The report also highlights state- or territory-based variations to national laws that may affect the realisation of expected benefits of national reforms.

## Reforms and projects for monitoring

This report monitors the implementation of national transport reforms, projects and review recommendations approved by the council (or its predecessors) or the Council of Australian Governments (COAG) and work undertaken by the NTC. Annual monitoring will continue until either all participating jurisdictions have completed the final implementation milestone (note: participation in reform is subject to change), or if there is a nationally agreed direction from ministers or senior officials that reform monitoring is no longer required.

The 2012 Review of the NTC and Other Relevant Transport Bodies recommended that all future reforms are developed with an implementation plan agreed to by the council. As such, monitoring reports will only include new and current reforms being implemented where there is an agreed implementation plan that contains specific actions, accountabilities and timeframes.

The council approved five reforms during 2015–16 that are included for monitoring in this report:

- 2nd amendment package for the Rail Safety National Law (RSNL)
- 11th amendment package for the Australian Road Rules
- Australian Light Vehicle Standards Rules
- 1st amendment package for the Australian Light Vehicle Standards Rules
- 5th amendment package for the Heavy Vehicle National Law (HVNL).

## Structure of the report

This report is divided into the following three sections:

- **Heavy vehicle reforms.** This includes the heavy vehicle regulatory reform, which encompasses the HVNL and the establishment of the NHVR. This section also includes the heavy vehicle charging framework and a description of derogations.
- **Rail reforms.** This section reviews implementation of the rail safety regulation and investigation reform, which encompasses the RSNL and the National Rail Safety Regulator, as well as the expansion of the Australian Transport Safety Bureau's (ATSB) investigative arrangements. This section includes a description of derogations.
- **Maintenance of existing reforms.** This section covers implementation of the Australian Road Rules, Australian Light Vehicle Standards Rules, Australian Heavy Vehicle Standards Rules, Australian Dangerous Goods Code (ADG code) and model legislation. Additionally, this report includes monitoring of the implementation of the recommendations from the Review of the Australian Road Rules and Vehicle Standards Rules, and the Review of the Intelligent Access Program.

## Indicator of implementation status

Each Australian jurisdiction, the two national regulators and the TCA were asked to provide implementation status indicators and, where relevant, describe: implementation progress; variations to the national approach and/or implementation challenges; and possible solutions against each of the current national transport reforms and projects included in this report.

Definitions of implementation status indicators used in this report are provided below.

### Reform implementation status indicators

Implementation status indicator	Status definition	Progress comments required
 Complete	All milestones are complete	Describe: <ul style="list-style-type: none"> <li>when and how the final output was implemented</li> <li>if any local variations were implemented, describe the variation and how it impacts on the ability to realise the desired benefits of the national reform</li> </ul>
 In progress	Significant progress has been made and: <ul style="list-style-type: none"> <li>milestones are not yet due, or</li> <li>no significant risks to the output have been identified, or</li> <li>some milestones have not been met, but the output is likely to be achieved within timeframes (or no more than six months beyond final milestone)</li> </ul>	Describe: <ul style="list-style-type: none"> <li>progress made within the last 12 months</li> <li>expected time for completion</li> <li>reasons for any delays</li> </ul>
 No progress/ progress stalled	No significant progress since the last reporting period and: <ul style="list-style-type: none"> <li>key milestones have not been met (by more than six months), or</li> <li>the output (in full or in substantial part) is at risk of not being achieved without significant intervention</li> </ul>	Describe: <ul style="list-style-type: none"> <li>reasons for any delays</li> <li>barriers to implementation</li> <li>recommended solutions to achieve implementation</li> </ul>
<b>n/a</b> Not applicable	The jurisdiction is not responsible for implementing the reform	No comment required
 Not implementing	The jurisdiction has not agreed to implement the reform	Describe how non-participation will impact on the benefits of the national reform

Milestones that are completed for all parties will not be reported in future reports.

The NTC welcomes feedback that can help improve this report in the future. Please email the NTC at [enquiries@ntc.gov.au](mailto:enquiries@ntc.gov.au) or telephone (03) 9236 5000.

# 2 Heavy vehicle reforms

## 2.1 Heavy vehicle regulatory reform

### Key points

- All but one milestone of the original reform are complete.
- This final milestone is due on 1 July 2018 when chapter 2 of the HVNL is due to commence.

### About the reform

The heavy vehicle regulatory reform established a national regulatory system for all heavy vehicles weighing more than 4.5 tonnes and contains uniform laws administered by a single national regulator (COAG, 2011a).

The objectives of the reform are to provide national regulation of heavy vehicles that achieves the same outcome in the same circumstances, and for its administration to be consistent and streamlined.

The HVNL commenced on 10 February 2014. The NHVR has been established and fully commenced operations when the HVNL commenced.

The last milestone from the reform agreed by COAG in 2011 is: Commonwealth introduces legislation to cease new registrations under the Federal Interstate Registration Scheme and to repeal the scheme following passage of enabling legislation by state and territories (once chapter 2 commences in 2018).

### Implementation analysis

In line with the Intergovernmental Agreement on heavy vehicle regulatory reform, the Commonwealth has committed to repeal the Federal Interstate Registration Scheme once chapter 2 of the HVNL (national registration scheme) commences in all participating states and territories. The council agreed to delay implementation of the national registration provisions until 1 July 2018.

Western Australia is not implementing the HVNL but is developing mirror legislation.

The Northern Territory has indicated that they will not commence the HVNL until the benefits to remote Australia are clearly demonstrated. The Northern Territory is working with the NHVR and jurisdictions to ensure a seamless approach for heavy vehicle operators crossing borders and that the best interests of the Northern Territory are strongly advocated.

All participating jurisdictions have implemented the HVNL. Over time this is expected to result in a high degree of national consistency in the application of the HVNL. However, there are some jurisdictional variations in the way that the HVNL has been adopted. These derogations from the model law have the potential to affect the consistency with which the HVNL is applied nationally and to confuse or impose additional regulatory burden on any operator that operates inter-jurisdictionally.

The NTC has analysed the number, type and impact of derogations to the HVNL. Overall, there are 35 derogations from the national law across all participating jurisdictions. Of the 35 derogations there were:

- 15 enforcement-related derogations
- nine fatigue-related derogations
- six vehicle standards-related derogations
- three mass, loading and dimensions-related derogations
- two speed-related derogations.

In implementing these derogations:

- 27 were additional sections added to the national law by the adopting jurisdiction
- three were alterations of existing sections or chapters of the national law by adopting jurisdictions
- four were omissions of sections from the national law by adopting jurisdictions
- one was a reference to clarify the interpretation of related legislation.

Of the participating jurisdictions:

- New South Wales has implemented 16 derogations
- South Australia has implemented 11 derogations
- Queensland has implemented four derogations
- Victoria has implemented three derogations
- Tasmania has implemented one derogation.

In addition to the identified derogations, the Australian Capital Territory reported that it will not proclaim chapters 5, 6, 7 or 8 of the HVNL until the NHVR has the systems in place to administer, monitor and enforce those parts of the HVNL. As such, these are not technically derogations. Derogations are presented in more detail in Attachment 1.

The NTC will continue to work with the NHVR and jurisdictions on these derogations, with the goal of achieving a nationally consistent approach through the NTC and/or NHVR work programs.

## 2.2 Amendments to Heavy Vehicle National Law

### Key points

- Amendments to the HVNL were introduced into the Queensland Parliament (host jurisdiction) on 19 May 2015.
- The HVNL 4th amendment package, the *Heavy Vehicle National Law Amendment Act 2015*, commenced on 6 February 2016 following its passage by the Queensland Parliament.
- The HVNL 5th amendment package, the *Heavy Vehicle National Law Amendment Act 2016*, is anticipated to commence by proclamation in mid-2018, subject to passage of legislation by the Queensland Parliament.

In May 2015 the council approved two amendment reform packages. During 2015–16 these amendments have been implemented in participating jurisdictions.

The HVNL 4th amendment package, the *Heavy Vehicle National Law Amendment Act 2015*, was introduced into the Queensland Parliament (host jurisdiction) on 19 May 2015. The amendment package was considered by the Queensland Parliament and commenced on 6 February 2016. Key items in the 4th amendment package included:

- amended definition of ‘modification’ of heavy vehicles to ensure potentially unsafe modifications are required to be inspected and cleared by an authorised vehicle examiner
- changes to the vehicle defect notice provisions to reduce the compliance burden for operators and drivers
- amendments relating to electronic work diary policy
- revised offences and penalties.

In June 2016 the council approved amendments to the HVNL being the 5th amendment package included in the *Heavy Vehicle National Law Amendment Act 2016*. Key items in the 5th amendment package include:

- changes to the chain of responsibility
- executive officer liability obligations
- investigation and enforcement powers
- self-clearing defect notices
- display of accreditation labels
- a schedule of infringement penalties and demerit points
- heavy vehicle (vehicle standards) national regulations.

The council agreed that these specific amendments and other future amendments dealing with related matters should be implemented in a coordinated way, with a single commencement date. It is anticipated that these amendments will all commence by proclamation in mid-2018, subject to passage of legislation by the Queensland Parliament. This timeframe is expected to allow a sufficient transition period for industry and the NHVR to develop guidance, train staff and adjust to the amendments. The NTC will continue to monitor the agreed reforms and report on progress in future reports.

Although the entire bill will be presented to the Queensland Parliament later this year, chapters 2 and 3 will commence by proclamation at different times.

Chapter 2 will not commence until further changes to obligations on executive officers and changes to investigative and enforcement powers have been completed – anticipated to be mid-2018.

Chapter 3 (maintenance amendments) will likely commence in February 2017 by proclamation.

A summary of the HVNL 4th and 5th amendment packages is provided in Table 1, with comments on adopting the 4th amendment package provided in Table 2.

**Table 1. Implementation summary of Heavy Vehicle National Law amendments**

Heavy Vehicle National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Draft bill and regulations for amending the HVNL 4th amendment package for inclusion in the <i>Heavy Vehicle National Law Amendment Act 2015</i> (council approved May 2015)	✓	✓	✓	✓	●	✓	●	✓
Draft legislative provisions amending the national regulations under the HVNL 4th amendment package for inclusion in the <i>Heavy Vehicle National Law Amendment Act 2015</i> (council approved May 2015)	✓	✓	✓	✓	●	✓	●	✓
Draft bill and regulations for amending the HVNL 5th amendment package for inclusion in the <i>Heavy Vehicle National Law Amendment Act 2016</i> (council approved June 2016)	n/a	n/a	n/a	●	●	n/a	●	n/a

**Table 2. Comments on adopting the National Heavy Vehicle Law 4th amendment package**

Jurisdiction	Implementation comments
<b>QLD</b>	For the reforms approved by the council in May 2015, the draft bill and amendments were passed by the Queensland Parliament and, by proclamation, came into force on 6 February 2016.
<b>NSW</b>	For the reforms approved by the council in May 2015, these have been implemented due to the applied law approach.
<b>VIC</b>	For the reforms approved by the council in May 2015, these have been implemented due to the applied law approach.
<b>SA</b>	For the reforms approved by the council in May 2015, these have been implemented due to the applied law approach.
<b>TAS</b>	For the reforms approved by the council in May 2015, these have been implemented due to the applied law approach.
<b>ACT</b>	For the reforms approved by the council in May 2015, these have been implemented due to the applied law approach. Local arrangements require the preparation of an Explanatory Statement (ES) in relation to any regulation amendments and the tabling of the amending regulation and ES in the Legislative Assembly. These were completed prior to the commencement of the HVNL amendments on 6 February 2016.

## Implementation analysis

Queensland has passed the draft bill and amendments for the reforms approved by the council in May 2015 (the 4th amendment package). These changes have also been implemented in New South Wales, Victoria, South Australia, Tasmania and the Australian Capital Territory. As noted above, it is anticipated that these amendments will all commence by proclamation in mid-2018, subject to passage of legislation by the Queensland Parliament.

In June 2016 the council approved amendments to the HVNL, being the 5th amendment package included in the Heavy Vehicle National Law Amendment Act 2016. Key items in the 5th amendment package include changes to: the chain of responsibility, executive officer liability obligations, investigation and enforcement powers; self-clearing defect notices; display of accreditation labels; a schedule of infringement penalties and demerit points; and heavy vehicle (vehicle standards) national regulations.

The council only approved the 5th amendment package in June 2016. The next step is for Queensland to implement the changes.

Western Australia and the Northern Territory are not implementing the HVNL.

## 2.3 Heavy vehicle charges

### Key points

- In May 2014 ministers announced that new heavy vehicle charges will be implemented from 1 July 2016.

### About the heavy vehicle charges

The heavy vehicle charges aim to recover heavy-vehicle-related expenditure on roads from industry participants. This allows governments to invest in building and maintaining more productive and safer roads. Charges are a combination of a fixed annual registration fee and fuel-based road user charges.

An annual adjustment formula is automatically applied in July each year to ensure heavy vehicle charges keep pace with road spending programs.

### Charges implementation

In November 2015 the council approved the heavy vehicle charges that will apply from 1 July 2016. The council agreed that the overall revenue collected through registration and road user charges would remain at 2015–16 levels for two years (2016–17 and 2017–18). NTC forecasts show increased use of heavy vehicles is expected over the next two years. To give effect to the agreed revenue freeze a new rate of 25.9 cents per litre will be levied by the Commonwealth for road user charges in 2016–17 (down from 26.14 cents per litre).

### Implementation analysis

All jurisdictions (except the Northern Territory and Western Australia) agreed that registration charge revenues will be frozen at 2015–16 levels for the two-year period.

The Northern Territory has committed to return to the national level of charges through a staged process. This involves applying adjustments at six-monthly intervals, providing for a gradual return to the national level. The Northern Territory will continue with an annual review of the level of adjustment required.

# 3 Rail reform

## 3.1 Rail Safety Regulation and Investigation Reform

### Key points

- The council approved the RSNL in November 2011.
- South Australia (the host jurisdiction) adopted the RSNL in 2012.
- Enabling legislation has been passed in New South Wales, Tasmania, the Northern Territory, Victoria, the Australian Capital Territory and Western Australia.
- Mirror legislation has passed in Western Australia.
- The ONRSR was established in January 2013 and is fully operational in jurisdictions where the enabling legislation has commenced.

### About the reform

The rail safety regulation and investigation reform has established a national system of rail safety regulation and investigation that includes uniform regulation and a single national rail safety regulator, complemented by a national rail safety investigator (COAG, 2011b).

The reform aims to improve safety and reduce the costs and regulatory burden for Australian transport companies, export and trade. A further objective is to extend the role of the ATSB as a national investigator for rail in Australia.

Tables 3 and 4 provide an overview of progress in meeting milestones set by the Intergovernmental Agreement.

**Table 3. Implementation summary of the rail safety regulation and investigation reform**

Output	Milestone	Implementation status									
		NSW	VIC	SA	QLD	WA	TAS	NT	ACT	Cwth	ONRSR / ATSB
1 Rail Safety National Law	1.4 States and territories draft enabling legislation by <b>August 2012</b>	✓	✓	✓	●	✓	✓	✓	✓	n/a	n/a
	1.5 States and territories introduce enabling legislation into their parliaments by <b>September 2012</b>	✓	✓	✓	●	✓	✓	✓	✓	n/a	n/a
	1.6 States and territories pass enabling legislation by <b>December 2012</b>	✓	✓	✓	●	✓	✓	✓	✓	n/a	n/a
3 Transition plan	3.1 Transition plan agreed by <b>31 December 2011</b>	✓	✓	✓	●	✓	✓	✓	✓	n/a	✓ (ONRSR)
6 National arrangements	6.1 National regulator established and operational by <b>1 January 2013</b>	✓	✓	✓	●	✓	✓	✓	✓	n/a	✓ (ATSB)
	6.2 Commencement of national rail safety investigation arrangements by <b>1 January 2013</b>	✓	✓	✓	●	✓	✓	✓	✓	✓	✓ (ATSB)

**Table 4. Comments on implementing the rail safety regulation and investigation reform**

Jurisdiction	Implementation comments
QLD	In October 2015 Queensland announced that it would implement the reform. It is expected that legislation to implement this reform will be introduced into the Queensland Parliament in September 2016 and that transition will take place in the second quarter of 2017.
WA	Western Australia passed mirror legislation in the 2015 spring sitting. From 2 November 2015 the ONRSR started operations in Western Australia and the ATSB started investigating accidents and incidents there.

## Implementation analysis

Progress has been made since last year. Queensland has announced it will implement the reform and the ONRSR started operations in Western Australia in November 2015. In addition, ATSB has started investigating rail accidents and incidents in Western Australia.

The ONRSR has been undertaking a review of derogations from the national law. It has identified 80 derogations and considers most of these derogations as having little impact on safety or productivity. The ONRSR has also identified four medium-impact derogations from New South Wales: data loggers, train communications, drug and alcohol requirements, and fatigue risk management requirements.

The Rail Industry Safety and Standards Board (RISSB) has published a standard for data loggers (AS7527 Event Recorders) and is currently developing a standard for train communications. In addition, the ONRSR is currently reviewing drug and alcohol requirements and fatigue risk management requirements, with recommendations due to the council in November 2017.

Further details on these New South Wales derogations are presented in Attachment 2.

The ONRSR has also identified the mirror law approach used in Western Australia as having major safety and productivity impacts for the ONRSR and industry. This mirror law approach means any amendments to the RSNL will be delayed for up to two years, resulting in the ONRSR and industry working under slightly different legislation.

Given that the RISSB standard on data loggers has been finalised, New South Wales will proceed with removing the Compliance Code ahead of finalisation of the train communications standard, which is yet to be produced.

## 3.2 Amendments to Rail Safety National Law

### Key points

- Amendments to the RSNL, the 1st amendment package, were approved in November 2014 and have been implemented in seven jurisdictions.
- Amendments to the RSNL, the 2nd amendment package, were approved by council in November 2015.

The 1st amendment package was approved in November 2014 and the 2nd amendment package was approved in November 2015. Changes included minor amendments to improve the operation of the RSNL.

Tables 5 and 6 provide an overview of progress in implementing RSNL amendments.

**Table 5. Implementation summary of amendments to Rail Safety National Law**

Rail Safety National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
1st amendment package (council approved November 2014)	✓	✓	✓	●	●	✓	✓	✓
2nd amendment package (council approved November 2015)	n/a	n/a	●	n/a	n/a	n/a	n/a	n/a

All states and territories apart from Queensland and Western Australia had implemented the 1st amendment package in 2014–15.

**Table 6. Jurisdiction comments on amendments to Rail Safety National Law**

Jurisdiction	Implementation comments
QLD	In October 2015 Queensland announced that it would implement the reform. It is expected that legislation to implement this reform (including any amendment packages) will be passed in the Queensland Parliament in the first half of 2017.
SA	The South Australian Parliament has passed the 2nd amendment package, and these commenced on 1 August 2016. Variations to the regulations commenced on 1 July 2016.
WA	Western Australia has begun preparations to implement both the 1st and 2nd amendment packages. The legislation is unlikely to be progressed in the current parliamentary term.

### Implementation analysis

Queensland plans to implement the 1st amendment package during the second quarter of 2017.

Western Australia enacted mirror legislation and has begun preparations to implement both the 1st and 2nd amendment packages.

As the 2nd amendment package is due to commence on 1 August 2016, next year’s national transport reform implementation monitoring report will contain the status of implementation across all states and territories.

## 4 Maintenance of existing reforms

### 4.1 Australian Road Rules

#### Key points

- Most jurisdictions have implemented the 9th and 10th amendment packages.

#### About the Australian Road Rule amendment package

The Australian Road Rules set out the basic rules of the road for motorists, motorcyclists, cyclists, pedestrians, passengers and other road users. The purpose of a single national set of road rules is to provide uniformity across Australia so that people are not confronted with different requirements as they travel from one state or territory to another.

The road rules are model laws that have no legislative force of their own and need to be adopted in each jurisdiction’s laws before they can take effect. The rules have been broadly adopted and now form the basis of the road rules in each state and territory.

Tables 7 and 8 provide an overview of progress in delivering the Australian Road Rules amendment packages.

**Table 7. Implementation summary of the Australian Road Rules amendment package**

Adopt Australian Road Rule amendment packages	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Adopt the 9th amendment package (council approved December 2011)	✓	✓	✓	✓	✓	✓	●	✓
Adopt the 10th amendment package (council approved November 2013)	✓	✓	✓	✓	●	✓	●	●
Adopt the 11th amendment package (council approved November 2015)	●	●	●	●	●	●	●	●

**Table 8. Comments on implementing the Australian Road Rules amendment package**

Jurisdiction	Implementation comments
<b>NSW</b>	The 11th amendment package was approved by the Executive Council and commenced on 1 July 2016.
<b>VIC</b>	The 11th amendment package, apart from ARR 262A, will be implemented in early 2017 with the remake of the Victoria Road Safety Road Rules 2009. Victoria awaits clarification on ARR 262A because the intent of the penalty provision is unclear at this time – it seems unusual that a penalty applies to a ‘must’ but the activity is only a ‘may’.
<b>SA</b>	The 11th amendment package will be implemented by October 2016.
<b>QLD</b>	Queensland expects to adopt the required amendments from the 11th amendment package by the end of 2016. However, some of these amendments are already reflected in Queensland legislation; for example, bicycle riders are already permitted to ride on footpaths, and motorcycle riders are not required to sit astride their seat at all times.
<b>WA</b>	The Australian Road Rules 10th package has approval to draft into local Western Australian amendments. The 10th and 11th Australian Road Rules packages will be combined and progressed as a larger package, alongside outstanding minor amendments. The legislation is unlikely to be progressed in the current parliamentary term.
<b>TAS</b>	Amendments to Tasmania’s Road Rules 2009 to incorporate the 11th amendment package are progressing through parliament and will be implemented early in the 2016–17 financial year.
<b>NT</b>	The Northern Territory will implement the outstanding amendment packages as part of the new traffic safety legislation currently being drafted. Implementation is subject to government’s legislative drafting priorities.
<b>ACT</b>	The Australian Capital Territory has, to date, applied the Australian Road Rules by reference. As such, implementation of the 10th and 11th packages of amendments were dependent on an official consolidation being published. More recently the territory has been progressing to incorporate the Australian Road Rules in a stand-alone regulation and it is expected that the entirety of the 10th and 11th packages will be adopted through this mechanism in the near future.

## Implementation analysis

It is anticipated that the 10th and 11th amendment packages will be implemented by all states and territories in the first half of 2017.

The impact of variance in implementation dates is not significant.

## 4.2 Australian Light Vehicle Standards Rules

### Key points

- The HVNL has incorporated the provisions of the vehicle standards that apply to heavy vehicles.
- While most jurisdictions are progressing implementation there are inconsistencies in the adoption of amendment packages.
- However, the nature of the proposed amendments means the impact of different implementation dates should not be significant.

### About the Australian Light Vehicle Standards Rules

In November 2015 the council approved reforms to the Australian Light Vehicle Standards Rules. Heavy Vehicle Standards Rules are now included in the HVNL, and the Australian Light Vehicle Standards Rules, approved by the council in May 2016, will apply to light vehicles in the future.

Some of the earlier vehicle standards amendment packages have not been implemented in some jurisdictions (see Tables 9 and 10). The NTC will continue to monitor the implementation of these packages.

**Table 9. Implementation summary of the Australian Vehicle Standards Rules amendments package**

Adopt the Australian Vehicle Standards amendment packages	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Adopt the 5th amendment package (council approved June 2006)	●	✓	✓	✓	●	✓	●	✓
Adopt the 6th amendment package (council approved March 2009)	●	✓	✓	✓	●	✓	●	✓
Adopt the 7th amendment package (council approved May 2010)	●	✓	✓	✓	✓	✓	●	✓
Adopt the 8th amendment package (Council approved May 2014)	●	✓	●	✓	●	●	●	●
Adopt the Australian Light Vehicle Standards Rules (council approved May 2016)	●	●	●	●	●	●	●	●
Adopt 1st amendment package to the Australian Light Vehicle Standards Rules (council approved May 2016)	●	●	●	●	●	●	●	●

**Table 10. Comments on implementing the Australian Vehicle Standards Rules amendments**

Jurisdiction	Implementation comments
<b>NSW</b>	It is expected that by the end of 2016 New South Wales will adopt the 5th, 6th, 7th and 8th amendment packages, Australian Light Vehicle Standards Rules and the 1st amendment package to the Australian Light Vehicle Standards Rules.
<b>VIC</b>	VicRoads will adopt the agreed 1st light vehicle standards amendment package as part of its upcoming 'sun setting' of Victoria's Road Safety (Vehicles) Regulations 2009. These regulations will be remade by 31 March 2019.
<b>SA</b>	The Australian Light Vehicle Standards Rules and its 1st amendment package are due to be implemented later in 2016. These will include the 8th amendment package.
<b>QLD</b>	Australian Light Vehicle Standards Rules have been implemented in the Queensland Vehicle Standards and Safety Regulation 2010, which now contains only light vehicle requirements. These are mostly consistent with the Australian Light Vehicle Standards Rules, with differences being minor in nature. The 1st amendment package to the Australian Light Vehicle Standards Rules has been substantially implemented, with the remainder due to be completed before June 2017.
<b>WA</b>	Western Australia introduced update 7 of the Australian Light Vehicle Standards Rules as part of the compliance and enforcement legislation entitled Road Traffic (Vehicles) Regulations 2014. Western Australia is considering the most appropriate way to implement the remaining packages in light of recent changes to the structure of state regulations. The legislation is unlikely to be progressed in the current parliamentary term.
<b>TAS</b>	Some elements of the 8th amendment package have been implemented in Tasmania, with the remainder on the forward work program. The Australian Light Vehicle Standards Rules and 1st amendment package will be prioritised for the next financial year.
<b>NT</b>	The Northern Territory will implement the outstanding Australian Vehicle Standards Rules amendment packages and the Australian Light Vehicle Standards Rules as part of new traffic safety and heavy vehicle legislation currently being drafted. Implementation will be subject to the government's legislative drafting priorities.
<b>ACT</b>	Work to adopt the 8th package of amendments was delayed while the NHVR was being implemented, including development of the Australian Heavy Vehicle Standards Rules. The Australian Capital Territory will work to progress the 8th package, the Australian Light Vehicle Standards Rules and the 1st amendment package to those rules through 2016–17, noting that the existing standards for light vehicles in the Road Transport (Vehicle Registration) Regulation 2000 are already very similar to the requirements of the Australian Light Vehicle Standards Rules.

## Implementation analysis

At present there is inconsistency in the adoption of the various amendment packages of the vehicle standards.

The 8th amendment package was incorporated into the Heavy Vehicle (Vehicle Standards) National Regulation made under the HVNL. It was approved by ministers in November 2014;

however, while some of the 8th amendment package has been implemented, the majority of changes are yet to commence.

Ideally amendments would be implemented at the same time. However, the nature of the proposed amendments means the impact of different implementation dates should not be significant.

### 4.3 Strategic Review of the Australian Road Rules and the Australian Vehicle Standards Rules

#### Key points

- Recommendations from the Review of the Australian Road Rules and Australian Vehicle Standards Rules were approved by the council in 2013.
- Four of the five recommendations were completed by the end of 2015.

In November 2013 the council approved recommendations from the Review of the Australian Road Rules and the Australian Vehicle Standards Rules and the supporting implementation plan. Four of the five recommendations were completed by the end of 2015.

Tables 11 and 12 provide an overview of the implementation status of the review’s recommendations.

**Table 11. Implementation summary of the Strategic Review of the Australian Road Rules and Australian Vehicle Standards Rules recommendations**

Recommendations	Implementation status								
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT	NTC
2. Maintain publicly available lists outlining the difference between jurisdictions’ laws and the model laws for the road rules and vehicle standards	✓	●	✓	●	●	●	✓	✓	✓
3. Include relevant aspects of the Australian Transport Council’s national transport visions, policy objectives and principles in the road rules and vehicle standards	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	✓
4. Update the objectives of the road rules to: <ul style="list-style-type: none"> <li>• uniform rules throughout Australia for all road users</li> <li>• specify behaviour for all road users that supports the safe and efficient use of the road system</li> </ul>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	✓

**Table 12. Comments on implementing the Review of the Australian Road Rules and Australian Vehicle Standards Rules recommendations**

Jurisdiction	Implementation comments
VIC	<p>Victoria is awaiting the NTC published update of the Australian Road Rules (current version is February 2012). When the NTC has published the new rules VicRoads will provide a publicly available list of road rule variants.</p> <p>In regard to the vehicle standards, VicRoads is not aware of any deviations from the national model law, beyond minor drafting amendments. Therefore, Victoria does not propose to list this information on its website.</p>
QLD	<p>Queensland expects to have recommendation 2 completed by the end of 2016. It is anticipated that the list will include amendments to the Queensland Road Rules as a result of the 11th package amendments.</p>
WA	<p>Western Australia supports the recommendations, though implementation remains a low priority. The state will progress the publication of variations when resourcing allows.</p>
TAS	<p>Currently included on Tasmania’s work program for both Road Rules and Vehicle Standards, but not a high priority. The majority of the Tasmanian Road Rules legislation is consistent with the model law, with most deviations being contained separately in jurisdictional qualifications or local road rules.</p>
NT	<p>The Northern Territory Traffic Regulations clearly outline where modifications of certain Australian Road Rules have been made. This will be retained in the new traffic safety and heavy vehicle legislation. A list outlining where the Territory has deviated from the model law for both the Road Rules and Vehicle Standards will also be made available on the Northern Territory Government website once outstanding amendment packages have been adopted.</p>

## Implementation analysis

Following the strategic review completed in 2013, the NTC developed the 11th amendment package for the Australian Road Rules. This amendment package has implemented the recommendations of the strategic review and now includes relevant aspects of the council’s visions, policy objectives and principles.

## 4.4 Australian Dangerous Goods

### Key points

- The council approved version 7.4 of the Australian Dangerous Goods Code in May 2015.

### About the Australian Dangerous Goods Model Regulations and Code

The transport of dangerous goods laws provide a single national set of laws to reduce the risks of personal injury, death, property damage and environmental harm arising from the transport of dangerous goods by road or rail. The laws consist of a model law, model subordinate law and the Australian Code for the Transport of Dangerous Goods by Road and Rail (the code).

The model regulations and the code set out the requirements for transporting dangerous goods by road or rail. The objectives of these are to:

- ensure dangerous goods are transported safely
- ensure uniformity and consistency in technical requirements across jurisdictions for transporting dangerous goods by road and rail
- harmonise Australian regulations with international intermodal regulations
- maintain a single set of laws governing the transport of dangerous goods by road and rail.

Tables 13 and 14 provide an overview of the progress of states and territories in implementing the council's reforms.

**Table 13. Implementation summary of the model regulations and the Australian Dangerous Goods Code**

Recommendations	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Update to edition 7.4 of the Australian Dangerous Goods code ( <b>May 2015</b> )	✓	✓	✓	✓	✓	✓	✓	✓
Updated Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> ( <b>May 2015</b> )	✓	✓	●	✓	✓	●	✓	●

**Table 14. Comments on implementing the Australian Dangerous Goods Code**

<b>Jurisdiction</b>	<b>Implementation comments</b>
<b>NSW</b>	Updated Code 7.4 and New South Wales Regulation based on updated Model Subordinate Law took effect on 1 January 2016.
<b>VIC</b>	Edition 7.4 has been implemented on 1 January 2016. Model Subordinate Law update implemented on 1 January 2016.
<b>SA</b>	Edition 7.4 has been implemented on 1 January 2016. Model Subordinate Law update is progressing and expected to be implemented by the end of August 2016.
<b>QLD</b>	Edition 7.4 update commenced in Queensland on 1 January 2016. Model Law Amendment Package 3 was adopted in Queensland on 1 January 2016.
<b>WA</b>	Edition 7.4 has been implemented on 1 January 2016. Model Subordinate Law update implemented on 1 January 2016.
<b>TAS</b>	Updated Model Subordinate Law Packages 2 and 3 are progressing. Implementation is anticipated by mid-2017.
<b>ACT</b>	The ACT is working through a process to progress agreed model law amendments. It is expected that this process will progress through 2017.

## Implementation analysis

Edition 7.4 of the ADG code was approved by ministers in May 2015 and implemented by all jurisdictions on 1 January 2016. The Model Subordinate Law update was implemented on 1 January 2016 by all jurisdictions with the exception of South Australia, where implementation is expected by the end of July 2016, and the Australian Capital Territory, which has not determined a revised timeframe for implementing the Model Subordinate Law update.

A transition period will allow industry to voluntarily comply with the new code or continue to comply with the previous edition. From 1 January 2017, compliance with edition 7.4 will be mandatory.

## 4.5 Strategic Framework Review of the Regulation of Land Transport of Dangerous Goods

### Key points

- Recommendations from the Strategic Framework Review of the Regulation of Land Transport of Dangerous Goods were approved in November 2013.

In November 2013 ministers approved the Strategic Framework Review of the Regulation of Land Transport of Dangerous Goods, which set out six recommendations and included a supporting implementation plan.

Five of the six recommendations were completed by 2014–15.

The last recommendation is for the NTC to amend the model laws to include a timeline for a competent authority to make a decision once it has received an application.

### Implementation analysis

During 2014–15 the NTC sought to amend the model law to include a timeline for a competent authority to make a decision once it has received an application. However, the scope of the model law does not extend to timelines for decisions of competent authorities. During 2016–17 the NTC will seek the cooperation of the Competent Authorities Panel to amend its business rules to include a timeline for a decision.

## 4.6 Review of the Intelligent Access Program

### Key points

- The council endorsed recommendations from the Review of the Intelligent Access Program (IAP) in November 2014.
- The TCA has now completed implementing all the recommendations.

The IAP electronically monitors the location and speed of heavy vehicles, assuring road authorities that enrolled vehicles are complying with their road access conditions. Transport operators enrol in the IAP to gain better access to particular roads or to meet access conditions set by road authorities. Some transport operators may use the IAP to negotiate better road access with road authorities.

The IAP was developed by Austroads and has been in operation since 2009. The NTC had a specific task of developing the laws that underpin the privacy and security of the program.

The IAP is the first example of using telematics within the regulatory framework for managing heavy vehicles in Australia. The program has attracted considerable interest from overseas and has been used to develop international standards for telematics systems and services.

The council approved five recommendations of the review to improve the IAP. The TCA implemented three recommendations during 2015–16 (see Table 15).

**Table 15. Implementation summary of the Review of the Intelligent Access Program**

IAP review	Who	Status	Implementation comments
1. Statistical reporting of Intelligent Access Program included in Transport Certification Australia's annual report including: vehicle numbers enrolled in the Intelligent Access Program; intelligent access condition numbers; and the number of kilometres travelled by enrolled vehicles by application type.	TCA	✓	The first statistical reporting was provided in the TCA 2014–15 annual report.
2. The Transport and Infrastructure Council will approve future major changes (e.g. when a regulatory impact statement is required) from November 2014 to the Intelligent Access Program specification (with the Transport and Infrastructure Senior Officials' Committee being able to approve any minor and non-contentious changes).	TCA	✓	The TCA board approved a procedure for incorporating major changes to the IAP specification in the first half of 2016.
3. The Transport Certification Australia board makes a public version of the Intelligent Access Program specification available online.	TCA	✓	A public overview of the IAP Functional and Technical Specification has been published on the TCA's website.

## Implementation analysis

The TCA implemented three recommendations in 2015–16.

Recommendations 4 and 5 were previously implemented (during 2014–15).

The TCA has now completed implementing all the recommendations.

## 5 References

Council of Australian Governments (COAG) 2011a, *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform*, COAG, Canberra.

Council of Australian Governments (COAG) 2011b, *Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform*, COAG, Canberra.

# Attachment 1: Summary of derogations for the Heavy Vehicle National Law

NSW	Vehicle standards			
	Derogation	Type	Impact	Description
	Speed limiters deemed noncompliant if travelling at more than 115 km/h (section 93(8A))	Addition	Low	The NSW offence makes the responsible person (for example, the operator) for a vehicle liable if a vehicle is not speed-limiter compliant when the vehicle is driven on a road. In proceedings for this offence, proof that the vehicle concerned was driven at a speed of more than 115 km/h is prima facie evidence that the vehicle was not speed-limiter compliant at the time the vehicle was travelling at that speed.
	Vehicle monitoring devices (VMDs) – Requirement for a heavy vehicle (with GVMs or GCMs exceeding 13.9 tonnes) and vehicles carrying dangerous goods to have fitted a device capable of recording various operating parameters (new section 93A)	Addition	Medium	VMD requirements were introduced in NSW following major bus crashes in Kempsey and Grafton in 1989. NSW is currently undertaking a comprehensive review of its VMD requirement and the vehicles to which a VMD might apply.
	The use of warning lights and signs on buses carrying children (omits Part 6 Division 16)	Alteration	Low	This alteration reflects the fact that in NSW a 40 km zone exists around school buses that are stopped to allow children to board or disembark. Thus 40 km signage and extra flashing lights are required. Since school buses rarely cross borders this alteration has a low impact.
	Conditions on heavy vehicles being fitted with lights and reflectors (new section 7A)	Alteration	Low	This alteration prevents heavy vehicles from fitting blue lights. In NSW, blue lights may only be used by police and other emergency vehicles. This provision is required to ensure there is consistency between light and heavy vehicles in NSW being used for the same purpose.
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>
	Additional offences to which demerit points	Addition	Low	NSW has attached demerit points to six offences that do

will be applied			not attract demit points in the HVNL. This derogation ensures consistency with light vehicle offences in NSW. The additional offences are covered under section 60 of the HVNL and are: <ul style="list-style-type: none"> <li>• Use vehicle with defective brakes</li> <li>• Use vehicle with defective steering</li> <li>• Use vehicle with seatbelt missing or defective</li> <li>• Use vehicle not fitted/equipped with seatbelts/anchorages</li> <li>• Use vehicle with dangerous protrusion.</li> </ul>
<b>Speed derogations</b>			
<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>
Exemptions for emergency services from chain of responsibility requirements (new section 203A)	Addition	Low	This exempts staff of an emergency service from obligations concerning speed compliance but only in the course of undertaking work for the emergency service.
Section 27E – Evidence of speed	Addition	Low	Provides that evidence of speed obtained under Part 5.3 of the Road Transport Act 2013 may be used for an offence against the HVNL (NSW).  The NTC is currently consulting with jurisdictions over the possible inclusion of an evidentiary provision in the HVNL, similar to the evidentiary provision in the NSW offence.
<b>Fatigue derogations</b>			
<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>
Exemptions for accredited service operators and their drivers from certain application requirements when applying for accreditation (new section 222A)	Addition	Low	Derogation in place with the intention of allowing an exemption from certain bus operator requirements including medical assessment requirements.
Exemption for non-accredited buses and private hire vehicles from some fatigue requirements in the HVNL (new section 222B)	Addition	Low	This exempts private hire vehicles and buses not providing a public passenger service from some fatigue obligations.
Exemptions for emergency services from work and rest time requirements (alters section 265, new section 265A)	Alteration/ addition	Low	This exempts staff of an emergency service from obligations concerning fatigue compliance but only in the course of undertaking work for the emergency service.
Exemption from counting 15-minute periods for certain buses (section 246, new sections	Addition	Low	This exempts certain fatigue-regulated buses (undertaking a journey in accordance with a service

5)				contract) from the rounding rule, which applies to counting periods of less than 15 minutes. This was inserted to maintain the status quo for these operators that record the actual time of work for these periods.
Occupying driver's seat to count as rest time in certain circumstances (new section 248A)	Addition	Medium		This allows drivers to rest in an air-conditioned cabin and for concrete truck drivers to continue to churn concrete during a rest break.
Certain personal activities may be counted as part of rest time (section 248B)	Addition	Medium		This provides for limited personal use of a vehicle on rest days, which allows the cleaning, driving or refuelling of a fatigue-related heavy vehicle to count as 'rest' if it is done as a 'personal' activity, and is not performed at the employers direction, for reward or at the beginning or end of a mandated rest period.
Additional provision allows the NSW minister to attach conditions on Advanced Fatigue Management (AFM) accreditation (new section 462A)	Addition	Medium		This section was included to alter an AFM accreditation in those limited circumstances that the NSW minister determined it was necessary to maintain safety standards based on the available fatigue evidence base.
Requirement on the regulator to issue a replacement accreditation certificate (section 464, new subsection 2A)	Addition	Low		This section requires the regulator to issue a replacement AFM accreditation certificate if the current certificate inaccurately states the conditions applicable because of the imposition or revocation of a condition by the NSW minister (under section 462A).
<b>Enforcement derogations</b>				
<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
Power for an authorised officer to enter a vehicle if the incident involves death, injury or damage Removal of limitation on powers for authorised officers who are not police (omits section 521(6))	Omission or alteration (NSW)	Low	Omits section 521(6) of the HVNL and allows an authorised officer other than a police officer to enter a vehicle. The HVNL only provides for a police officer to enter a vehicle. NSW believes this should be extended nationally.  This provision allows an authorised officer who is not a police officer to enter a heavy vehicle and search the heavy vehicle where there is an incident involving the death or injury to a person. The HVNL only allows police officers to do this. This change was made to preserve existing powers in NSW. The NTC is currently consulting with jurisdictions on this issue as part of the investigation	

				and enforcement review.
<b>QLD</b>	<b>Vehicle standards</b>			
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>
	Police commissioner to approve use of blue flashing lights on vehicles (new sections 40–41)	Addition	Low	This alteration prevents heavy vehicles from fitting blue lights. In QLD, blue lights may only be used by police and other emergency vehicles. This provision is required to ensure there is consistency between light and heavy vehicles in QLD being used for the same purpose.
	<b>Mass, dimensions and loading</b>			
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>
	Additional consents required to grant a mass or dimension exemption permit (affects section 124)	Addition	Medium	Materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place.
Additional requirements for commissioners' consents for a mass or dimensions exemption permit (affects sections 118, 124, 127, 128) and creates new requirements on granting of permits	Addition	Medium	Materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place.	
Clarification of reviewable decisions under schedule 3. QLD sections 28–29 clarifies the scope and process for review of commissioners' decisions	Reference	Low	This derogation is tied to the additional consents required under a mass or dimension exemption permit. QLD provision provides avenue for a commissioner's response to the permit application to be reviewed if required by a particular party.	
<b>SA</b>	<b>Enforcement derogations</b>			
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>
	Additional offences constituting infringement (Schedule 1 of HVNL (SA))	Addition	Medium	SA has made all parties in the chain of responsibility liable for the contravention of mass, dimensions or load requirements. This includes the consignee, loader, loading manager and packer. This is an extension of liability from operators, prime contractors and employees currently provided for in the schedule.  SA also intends to make all parties in the chain of responsibility liable for a driver's contravention of work/rest hours requirements. The HVNL does not currently make this an infringeable offence in the chain of responsibility.

				<p>These derogations have the potential to reduce national consistency in the enforcement of the HVNL, increase the regulatory burden on, and confuse, industry (especially those parties that would become liable as a result of the derogation) and to cause increased administrative workload for the regulator.</p> <p>The 2016 HVNL Amendment Bill will remove these offences (section 183 and section 261) from the HVNL and will replace them with a primary duty of care on all parties to ensure the safety of their operations. Once this bill is in operation this derogation will no longer be an issue.</p>
	Issuance of improvement notices before an offence occurs (section 16e of the SA HVNL, alters section 572)	Alteration	Medium	<p>SA legislation enables authorised officers to issue an improvement notice where an offence is 'likely to occur'. All other jurisdictions require a breach to have occurred before an enforcement measure is taken. This derogation is likely to have implications for natural justice, may reduce national consistency, and may result in disproportionate outcomes. Notwithstanding this derogation, provisions already exist in the HVNL to issue warning notices, and the ability to enforce a penalty for a breach would continue to remain available. Conversely, should the improvement notice be issued, and the person to whom it is issued ignores it but no breach ever eventuates, that person would still remain liable for a \$10,000 penalty upon conviction.</p> <p>This matter was explored as part of the 2014 penalties review and all jurisdictions (except SA) agreed that it should not be adopted.</p>
	Exclude the requirement for enforcement officers to form a reasonable belief that evidence may be concealed or destroyed if a place is not immediately entered and searched, before they can enter without a warrant for investigation purposes (amends sections 498 and 499 of the HVNL)	Alteration	Medium	<p>This derogation removes the requirement for an authorised officer to form a reasonable belief that evidence will be destroyed before invoking warrantless entry to a place. This derogation has implications for natural justice as well as human and property rights. It is also likely to result in additional costs to, and decreased confidence in, the exercise of the national regulator's enforcement powers. Further, this derogation has been implemented following extensive discussion and</p>

				compromise by all jurisdictions to reach agreement on the balance between the intrusiveness of enforcement powers and the protections afforded by human rights charters.
	Exclude the 'reasonable steps' defence for the offence of tampering with a speed limiter (omits section 93(8))	Omission	Medium	<p>This derogation removes the ability for a person charged with tampering to use the reasonable steps defence. Under section 93(8), it is a defence against a charge of tampering if the person charged took all reasonable steps to prevent the tampering, or there were not reasonable steps that the person could have taken to prevent the tampering. This derogation has potential to cause national inconsistency in the enforcement of national law and may have implications for natural justice and procedural fairness.</p> <p>The 2016 HVNL Amendment Bill will remove the reasonable steps defence for this offence (section 93) and the 'mistake of fact' defence will be available. Once this bill is in operation this derogation will no longer be an issue.</p>
	Reverse the onus of proof for a 'reasonable excuse' defence for a number of offences	Addition	Medium	<p>This derogation reverses the onus of proof for the reasonable excuse defence in proceedings for an offence against the HVNL. This means that the onus will rest with the defendant to prove that the lawful authority or reasonable excuse exists. In the absence of such proof, it will be presumed that no authority or excuse exists. This derogation may have implications for fundamental human and legal rights and procedural fairness.</p> <p>The NTC recommends that SA clarify its position regarding the extra offences that will be amended to include the reasonable excuse defence as part of the 2016 Amendment Bill.</p>
	Additional power to enter premises where vehicles are offered for sale and inspect those vehicles	Addition	Low	<p>This derogation provides authorised officers with the power to enter a place opened for business where heavy vehicles are exhibited or kept for sale or hire and search those vehicles for defects. Provisions of this nature are generally associated with consumer protection activities</p>

				in order to protect buyers of vehicles.
	Additional powers relating to the sale or disposal of a defective vehicle	Addition	Low	This derogation provides authorised officers with the power to enter a place opened for business where heavy vehicles are exhibited or kept for sale or hire and search those vehicles for defects. Provisions of this nature are generally associated with consumer protection activities in order to protect buyers of vehicles.
	Additional power for authorised officers to direct a heavy vehicle to move if it is obstructing	Addition	Medium	This derogation allows authorised officers to direct a heavy vehicle to move if it obstructs a road, area adjacent to a road, a lawful event, or specified other areas. This derogation has potential to introduce significant complexity and cost into the operations of the national regulator. The need for these powers is unclear, as comprehensive powers already exist in this regard. This derogation may result in reduced consistency of national law.
	Additional offence for possessing a device designed for tampering with a speed limiter	Addition	Low	This derogation creates an offence for possessing a device that is designed, or is adapted, to enable tampering with a speed limiter. This includes a computer or other electronic device that is intended, or able, to be used to tamper with a speed limiter.
	Allowing the Commissioner of Police to authorise a class of police officers as well as individual officers for the purposes of issuing improvement notices	Addition	Low	This derogation provides power for the Commissioner of Police to nominate additional parties that are authorised to issue improvement notices under the HVNL.
	Section 134A of SA's Motor Vehicles Act provides power to exempt a person/class of persons or vehicle/class of vehicles from <b>any act, law or standard</b>	Omission	Low	This derogation can exempt persons/vehicles from the HVNL, and this power has not been provided for under the national HVNL model.
<b>VIC</b>	<b>Fatigue derogations</b>			
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>
	Statutory rail replacement service exemption	Addition	Low	This derogation exempts bus drivers who are responding to an emergency or replacing a rail service from fatigue management provisions.
	<b>Enforcement derogations</b>			
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	

	Disposal of unclaimed seized goods to the Crown, rather than the regulator	Addition	Low	This derogation clarifies that police have the power, under the <i>Police Regulation Act 1958</i> , to dispose of goods seized under the Heavy Vehicle HVNL, where such goods are unclaimed after three months. Victorian courts and tribunals are also empowered to offer the forfeiture of the goods to the Crown if they might be used to commit or continue an offence.
	Extension of time within which a person may challenge an evidentiary certificate	Alteration	Low	Under this derogation, a person accused of causing damage to road infrastructure will have 60 days in which to challenge an evidentiary certificate (rather than 28 days as provided under the HVNL).  The derogation operates to the benefit of the defendant. Hence there is no additional abridgement of their rights. It is limited in its application to instances where a conviction is made, so there is no change to the overall regulatory burden.
<b>TAS</b>	<b>Enforcement derogations</b>			
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	
	Regulation 4 of the Heavy Vehicle National Law (Tasmania) Regulations 2014 details sections of the Heavy Vehicle (Vehicle Standards) Regulation that do not apply in Tasmania	Omission	Low	This derogation reflects local specifications relating to the location and display of flashing lights, and the accompanying signage for school buses.  Given that this is current practice in Tasmania, adopting the national law approach would constitute a significant financial burden to refit the existing school bus fleet.

**Notes:**

1. ACT has not applied chapters 5, 6, 7 or 8.
2. No jurisdiction has proclaimed chapter 2 of the HVNL as it will not take effect until 1 July 2018.
3. In analysing the derogations, the NTC has examined the type and impact of derogations. We have used the following categories to classify derogation type:
  - **Addition:** refers to the inclusion of a new section or subsection by the adopting jurisdiction that was not included in the model law.
  - **Omission:** refers to the exclusion of a section or subsection of the model law by the adopting jurisdiction.

- **Alteration:** refers to the amendment of a specific detail in a section or subsection of the model law by the adopting jurisdiction.
- **Reference:** refers to a clarifying note that explains how a related piece of legislation is affected by the adoption of the HVNL in that jurisdiction.

# Attachment 2: Summary of derogations for the Rail Safety National Law

NSW	Enforcement derogations			
	Derogation	Type	Impact	Description
	Rail Safety (Adoption of National Law) Regulation 2012 <b>Part 2 Drug and alcohol testing</b>	Addition	Medium	Division 1 Provisions relating to drug and alcohol offences Division 2 Testing for alcohol or other drugs Division 3 Offences relating to testing for alcohol/other drugs Division 4 Admission of evidence in proceedings Division 5 Certificate evidence
	Rail Safety (Adoption of National Law) Regulation 2012 <b>Part 3 Train communications systems</b>	Addition	Medium	A rolling stock operator must ensure that each train for which the person is responsible is, at all times, fitted with a radio communications system that complies with this clause and a back-up means of communication to be used if the radio communications system fails.
	Rail Safety (Adoption of National Law) Regulation 2012 <b>Part 4 Savings and transitional provisions:</b> Data loggers	Addition	Medium	<b>Data Loggers Compliance Code</b> means the code of that name approved by the minister under section 167 of the former Act (the <i>Rail Safety Act 2008</i> ), as in force immediately before the commencement of this Regulation.  The Data Loggers Compliance Code continues to have effect and section 167 of the former Act continues to apply in respect of that code.  The required standard was completed July 2015.  In May 2012 the Standing Council on Transport and Infrastructure agreed that a regulatory impact statement would be developed following the development of this Australian Standard.
	Fatigue derogations			
	Derogation	Type	Impact	Description
	Rail Safety National Law (NSW) (2012 no. 82a) <b>Part 3: Regulation of rail safety fatigue risk management requirements</b>	Addition	Medium	A rail transport operator must prepare and implement a program, in accordance with the prescribed requirements, for the management of fatigue of rail safety workers who carry out rail safety work in relation to railway operations in respect of which the operator is required to be

				accredited that complies with the prescribed requirements relating to fatigue risk management programs.
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