# Report outline

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<tr>
<th><strong>Title</strong></th>
<th>Primary Duties for Chain of Responsibility Parties and Executive Officer Liability</th>
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<tr>
<td><strong>Type of report</strong></td>
<td>Discussion Paper</td>
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<tr>
<td><strong>Purpose</strong></td>
<td>To seek stakeholder feedback on the construction of primary and specific duties, consolidation of CoR provisions and the impacts of these proposed changes on other parts of the HVNL.</td>
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<tr>
<td><strong>Abstract</strong></td>
<td>The discussion paper sets out further details of the proposed HVNL primary duties regime, including possible approaches to the key remaining policy issues and proposes questions for stakeholder consideration.</td>
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<tr>
<td><strong>Submission Details</strong></td>
<td>Submissions will be accepted until 7 August 2015 online at <a href="http://www.ntc.gov.au">www.ntc.gov.au</a> or by mail to:</td>
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| | Att: Heavy Vehicle Compliance and Technology Team  
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| **Key words** | Chain of Responsibility, CoR, Heavy Vehicle National Law, HVNL, Primary Duties, Executive Officers |
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| **ISBN** | 978-1-921604-81-2 |
Foreword

To better align with Australia’s national safety laws, improve compliance and simplify enforcement, Australia’s transport ministers have agreed the Heavy Vehicle National Law chain of responsibility obligations should be reformed to provide a more outcomes based approach, focused on primary duties.

These proposed reforms are limited to the existing regulatory framework of the Heavy Vehicle National Law and to current chain of responsibility parties, including executive officers. The intention of these reforms is not to extend the scope of duties but to restructure and consolidate existing obligations to ensure current parties in the chain of responsibility take a performance based approach to their responsibilities.

These reforms also provide an opportunity to remove existing more prescriptive obligations and to better clarify the roles and responsibilities of all parties in the chain of responsibility, and executive officers.

This discussion paper therefore sets out the proposed details of these reforms, including the introduction of a primary duty on operators, prime contractors and employers to ensure the safety of their transport operations, as well as establishing role specific duties on other chain of responsibility parties. This discussion paper also assesses the burden of proof for executive officers.

Stakeholder feedback on these more detailed draft policy proposals is now sought to help improve the Heavy Vehicle National Law chain of responsibility regime.

The NTC is an independent statutory body established by the National Transport Commission Act 2003 (Cth). The NTC has ongoing responsibilities to develop and maintain uniform or nationally consistent road, rail and intermodal reforms to improve safety, productivity and environmental outcomes.

I would like to thank Marcus Burke, Anna Beesley, Ben Baker and Jane Naughtin for their work in preparing this discussion paper.

Paul Retter AM
Chief Executive and Commissioner
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Executive summary

In May 2015 transport ministers endorsed the recommendations of the NTC Chain of Responsibilities Duties Review (NTC, 2014) and Executive Officer Liability Assessment (NTC, 2015). Ministers also agreed that the NTC develop detailed policy recommendations for ministerial consideration in November 2015 on the formulation of primary duties on current Chain of Responsibility (CoR) parties, and including executive officers, limited to the existing framework of the HVNL. In particular, ministers endorsed that:

a) the development of primary duties in the Heavy Vehicle National Law (HVNL) on CoR parties would improve consistency, clarity, alignment with National Safety Laws and provide appropriate coverage of all key parties that influence heavy vehicle road safety;
b) the current provisions on executive officer liability in the HVNL are inconsistent with COAG principles and guidelines on directors liability; and
c) the outcomes should be addressed as a single, integrated reform initiative.

This discussion paper therefore provides draft proposals on how the existing HVNL CoR obligations could be restructured and consolidated to include a primary duty on operators, prime contractors and employers, with specific role based duties on other CoR parties. Draft proposals are also included regarding the consequences of failing to discharge the primary duties, the standard of care to be applied, the relationship of primary duties to existing CoR offences, and the penalties and general principles to be applied.

These draft proposals are intended to:

- ensure the HVNL retains an effective CoR regime;
- promote greater understanding by CoR parties of their obligations and responsibilities;
- promote a culture of safety;
- promote proactive enforcement;
- simplify and improve the accessibility of the CoR regime;
- minimise complexity and difficulty in the interpretation CoR obligations; and
- ensure executive officer liability is consistent with the COAG principles and guidelines on directors liability.

The draft proposals contained in this paper aim to clarify and simplify existing CoR obligations and are not intended to impose a greater burden on either CoR parties or regulators. Rather, these draft proposals are intended to assist both industry and regulators to better understand and apply the existing CoR regime.

The NTC considers that greater understanding of the CoR regime and within that, greater understanding of CoR obligations, will result in improved compliance by off-road parties and improved enforcement by regulators, by more effectively targeting those parties in the CoR who are in the best position to control, influence or encourage on-road behaviour.

Stakeholder feedback is sought on these draft proposals. Submissions will be accepted until 7 August 2015 online at www.ntc.gov.au or by mail to:
   Att: Heavy Vehicle Compliance and Technology
   National Transport Commission
   L15/628 Bourke Street
   Melbourne VIC 3000

Following receipt of stakeholder submissions, a policy position paper will be prepared for ministerial consideration in November 2015. Subject to ministers’ agreement, a Bill to amend the HVNL will then be prepared for ministers consideration in May 2016.
1 Context

Key points

- The NTC Chain of Responsibilities Duties Review (2014) and Executive Officer Liability Assessment (2015) and current Heavy Vehicle Roadworthiness Review seek to improve road safety and compliance and encourage a proactive culture of safety by clarifying and restructuring current obligations.
- In May 2015 ministers endorsed the recommendations of the CoR Review and EoL Assessment and agreed these matters be addressed as a single reform package.
- This discussion paper seeks stakeholder views on key issues relating to the proposed policy approach endorsed by ministers in May 2015.
- Detailed policy recommendations arising from this discussion paper and the Roadworthiness Review will be considered by ministers in November 2015.

1.1 Objectives

This discussion paper represents the next steps for the NTC Chain of Responsibilities Duties Review (2014) and Executive Officer Liability Assessment (2015).

In accordance with the decision of ministers in May 2015, this discussion paper seeks to progress the objectives of CoR by clarifying and restructuring current obligations to ensure that the HVNL:

- improves road safety and compliance and encourages a proactive culture of safety;
- retains an effective CoR regime, capable of holding current identified parties, including executive officers, accountable for the control and influence they have over the compliance and safety of the transport task, and – more broadly - the safety of the general public;
- is more consistent with the Model Work Health Safety Act (Model WHS), Marine Safety (Domestic Commercial Vessel) National Law (MSNL) and the Rail Safety National Law (RSNL);
- promotes a greater understanding of obligations and responsibilities and reduces complexities within the current structure;
- promotes proactive enforcement so that obligations are not dependent upon some harm or incident or injury having had occurred before action can be taken; and
- provisions regarding executive officer liability are consistent with the COAG Principles and Guidelines.

The purpose of this discussion paper is to seek stakeholder views on key issues relating to the proposed policy approach endorsed by ministers in May 2015.

Detailed policy recommendations arising from this discussion paper and the Roadworthiness Review will be considered by ministers in November 2015.

1.2 Background

Since 1997, Australia’s heavy vehicle laws have included the concept of CoR. CoR is designed to ensure that any party in a position to control and influence on-road behaviour is identified and held
accountable. In simple terms, CoR recognises the on-road effects of the actions, inactions and demands of off-road parties in the transport and supply chain and provides for their accountability.

Initially, CoR was included in the Heavy Vehicle Model Laws. The drafting of the model laws occurred at different times and in different ways, and incorporated CoR provisions particular to specific regulatory areas, such as speed and fatigue. In 2012 the model laws were consolidated into the HVNL as separate chapters and were not, at the time, reviewed for consistency. As a result, the HVNL contains a number of differing constructions and approaches to CoR.

**Industry Request for Review of the CoR provisions and the Taskforce Review**

On 14 September 2012, the Australian Trucking Association (ATA), the Australian Logistics Council (ALC) and the Australian Livestock and Rural Transporters Association (ALRTA) jointly wrote to Commonwealth and State ministers, requesting that CoR and executive officer liability provisions in the HVNL be re-drafted based on affirmative duties, consistent with the Work Health and Safety approach. In November 2012 the then Standing Council on Transport and Infrastructure established the Chain of Responsibility Taskforce to review the HVNL CoR provisions (the Taskforce Review). The taskforce, comprising representatives from industry, regulators, the Transport Workers Union and Safe Work Australia reported to ministers in May 2014 (Chain of Responsibility Taskforce, 2014). The Taskforce Review recommended there be further investigation of both the existing duties regime and executive officer liability. This recommendation was accepted by ministers in May 2014 and the NTC was requested to undertake this further investigation.

**CoR Duties Review**

In November 2014, the NTC released the *Chain of Responsibility: Duties Review Discussion Paper* for public consultation. The paper acknowledged the view of stakeholders that although CoR is achieving its objectives, there was opportunity to improve the regime to remove inconsistencies and ensure that regulators can target all behaviours that may adversely influence road safety. Twenty-five submissions were received in response to 2014 Discussion Paper.

The 2014 Discussion Paper proposed four options to remove inconsistencies and ensure that off-road behaviours are appropriately managed:

- **Option 1:** Primary (general) duty of care – an overarching duty applicable across the HVNL and to all parties in the chain.
- **Option 2:** Chapter-based duties – the placement of an overarching duty applicable to all chain parties within the relevant chapters.
- **Option 3:** Additional specific obligations – duties applicable to identified and defined chain parties (similar to what currently exists within the HVNL).
- **Option 4:** No legislative change - focus on operational/policy components.

Option 4 was not supported by the ATA and a number of state police agencies on the basis CoR objectives would not be progressed and inconsistencies within the HVNL would not be resolved. These stakeholders also considered that, without amendment, the HVNL would remain inconsistent with the proactive and outcomes based regulatory approach adopted in other national safety laws, as the current prescriptive standards of the HVNL would remain unchanged.

Transport for NSW (TfNSW) strongly supported the adoption of a primary duties approach, with the ATA also championing this option (Options 1 and 2) from an industry perspective. The adoption of a primary duty of care was also given qualified support by a number of other parties (including Transport Safety Victoria, CVIAQ (only for existing chain parties), NACAP Australia Pty Ltd and SA Freight Council), with some parties withholding a view until more detailed policy proposals were developed.
However, and in contrast, the Australian Logistics Council (ALC) in its submission did not support any change to the HVNL on the basis that in its view the CoR laws contained in the HVNL are generally operating satisfactorily.

In addition, Queensland Department of Transport and Main Roads, SA Police, Victoria Police, NSW Police Service and industry groups such as ATA, CVIAQ, Australian Forestry Contractors Association and Gas Energy Australia supported the development of further guidance materials to assist parties in understanding their CoR obligations irrespective of the option adopted. In this context, the ALC also supported there being more emphasis on explaining the current legislation.

Based on the stakeholder feedback, the NTC recommended to ministers the development of a primary duties regime on the basis this option would best clarify existing responsibilities and would ensure that behaviours that may adversely influence road safety could be better targeted by regulators. In May 2015 transport ministers endorsed this recommendation and agreed the NTC develop detailed policy recommendations for ministerial consideration in November 2015 on the formulation of primary duties on current CoR parties, and including executive officers, limited to the existing framework of the HVNL.

**Executive Officer Liability Review**

In 2014 the NTC undertook an assessment of the HVNL’s executive officer liability provisions in section 636 and Schedule 4 of the HVNL to ensure consistency with the COAG Personal Liability for Corporate Fault Principles and Guidelines (COAG, 2012).

The NTC found the HVNL was not consistent with principle 4 which provides that the imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:

- there are compelling public policy reasons for doing so;
- liability of the corporation is not likely on its own to sufficiently promote compliance; and
- it is reasonable in all the circumstances for the director to be liable.

In particular the NTC assessment found that many of the underlying offences provided for in schedule 4 of the HVNL did not appear to have been assessed against all of the elements of principle 4 and the guidelines as required by COAG.

In addition the NTC found that the HVNL was not consistent with principles 5 and 6 which provide that where principle 4 is satisfied and directors’ liability is appropriate:

- directors could be liable where they have encouraged or assisted in the commission of the offence or have been negligent or reckless in relation to the corporations offending
- in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporations offending if they are not to be personally liable.

In May 2015 ministers agreed that 58 of 129 offences currently attracting EoL under section 636 of the HVNL should be retained including key safety offences in the area of vehicle standards, mass dimension and loading (MDL), speeding and driver fatigue where executive officers may have direct responsibility. A table identifying these offences to be retained is provided at Appendix A. Ministers also agreed in principle that these offences should require a burden of proof consistent with the COAG principles and guidelines, that is, they should attract type 1 liability (i.e. that the onus of proof will rest with the prosecution).

**Roadworthiness Review**

In October 2013, the New South Wales Minister for Roads and Ports wrote to the NHVR and the NTC, requesting consideration of a national approach to heavy vehicle maintenance and roadworthiness and a review the NHVAS, with a view to improving the effectiveness of roadworthiness assurance
systems. In response to this request, the NHVR and NTC jointly established the Heavy Vehicle Roadworthiness Program (Roadworthiness Review). In January 2015 a consultation regulatory impact statement was released and 29 submissions received. The consultation regulatory impact statement identified the extension of COR to vehicle standards as one of several options for improving heavy vehicle roadworthiness.

A decision regulatory impact statement and final recommendations from the Roadworthiness Review, including the proposed extension of chain of responsibility obligations for employers, operators and prime contractors will be considered by ministers in the second half of 2015.

1.3 Statement of problem

Key points
Stakeholders have identified a number of key issues with the current CoR regime. These are:
- Inconsistencies between the HVNL and other national safety laws;
- Increased cost and burden to industry in complying with the HVNL;
- Inconsistencies of obligations within the HVNL;
- Reliance on individual offences to prosecute; and
- Insufficient maximum penalties.

The road transport industry is large and diverse, with the size of operations ranging from Australia’s largest companies, to small or one vehicle operations which account for approximately 60 per cent of the industry (Chain of Responsibility Taskforce, 2014, p. 3). Despite significant improvements in road safety since the 1960s, the transport industry remains hazardous (Chain of Responsibility Taskforce, 2014, p. 3). The diversity of the industry, the range of activities undertaken by parties, the lines of accountability and authority, and the variety of contractual arrangements all pose significant challenges to the development of effective compliance and enforcement systems (Chain of Responsibility Taskforce, 2014, p. 3).

The Bureau of Infrastructure, Transport and Regional Economics provides the most current Australian data on road trauma involving heavy vehicles. Crashes involving heavy vehicles resulted in 220 deaths in 2014, 189 deaths in 2013, 256 deaths in 2012 and 230 deaths in 2011 (Bureau of Infrastructure, 2014).

However, over the last decade total annual deaths from fatal crashes involving heavy vehicles decreased on average by 3.2 per cent per year. Taking into account the increase in heavy vehicle numbers the rate of fatal crashes per 10,000 heavy vehicle registrations has dropped even more significantly over this period (Bureau of Infrastructure, 2014).

Heavy vehicle crashes impose significant costs on society through road users’ pain and suffering and medical treatment, road asset damage, and the cost of traffic congestion due to crashes and breakdowns. Reducing the incidence of heavy vehicle crashes could lead to significant savings. Factors that can reduce risks of crashes include improvements in heavy vehicle roadworthiness, improvements in fatigue management, improved speed limit compliance and improvements in vehicle construction and road design (Bureau of Infrastructure, 2014).

General consensus from the stakeholder consultation conducted by the NTC is that the limitations within the current CoR regime encountered by industry and regulators stem directly from the way in
which the HVNL is drafted. Further, significant risks to road safety exist because the law does not encourage CoR parties to focus on proactively identifying and preventing risks, and does not provide appropriate penalties.

Although the current approach to CoR has had a significant impact on increasing compliance and ensuring safety across the transport and logistics industry, industry, regulatory stakeholders and the NTC have identified a number of potential limitations within the current CoR regime. These limitations represent opportunities to improve the regime which could further enhance compliance and result in a greater focus on road transport safety.

Inconsistency with national safety laws

While of the intention of CoR may be to promote a proactive approach to compliance, the current construction of the COR provisions within the HVNL are not conducive to achieving this. The prescriptive nature of the HVNL currently does not allow for a flexible approach to managing risk. While flexibility may exist in the standard of ‘all reasonable steps’, parties must address each obligation applicable to them on a provision by provision, and chapter by chapter basis, rather than an outcomes-based approach in line with the national safety laws.

Likewise, a large percentage of offences under the HVNL are dependent upon some harm or incident or injury having had occurred (i.e. permitting the use of an unsafe vehicle), rather than a proactive approach to enforcement where failing to ensure that a vehicle is safe triggers the offence. This is inconsistent with the best practice approach undertaken in other coexisting legislation such as the Model WH&S Act that impose positive obligations on duty holders.

Cost to industry

Harmonisation would result in a more conducive, efficient and effective compliance. All businesses are required to comply with the Model WH&S Act, and many road transport companies interface with rail operations. From an industry perspective, being required to comply with detailed requirements and prescriptive legislation under the HVNL, and determining one’s own risk management approach based on a range of hazards and risks under the national safety laws places an unnecessary regulatory burden on business potentially resulting in higher compliance costs. Greater integration between the HVNL, Model WH&S Act and other transport laws would enable organisations to tailor their HVNL compliance to match the approach they take to compliance other national laws. It would also provide for better integration of transport related compliance systems, making them more effective and less costly.

The following case study illustrates that the current approach to CoR poses risks to road safety because does not provide for a preventative approach to safety or allow a flexible approach to managing risk.

**Case Study 1**

On 10 July 2012, a heavy vehicle was transporting shipping containers from a yard to a sea port in the greater Sydney metropolitan area. One of the shipping containers contained a 6 tonne cylindrical roll of sheet metal and the other contained pressed sheet metal, both for sale overseas. As the combination rounded a bend on the approach onto a bridge, the rear trailer collided with the side of the bridge causing considerable damage to the bridge’s structure. The container split open releasing a roll of steel which travelled by itself along a 50 metre length of the bridge before stopping, causing several hundred thousand dollars’ worth of damage.

The investigation revealed that there were two alternative causes for the crash. One theory was that the driver was travelling too fast around the bend on the approach to the bridge and the container simply tipped over, striking the road infrastructure. The other theory was that the roll of
steel was not adequately restrained inside the container; and as the combination rounded the bend the restraint failed completely, unbalancing the trailer and directly causing it to tip over and strike the road infrastructure. Under the existing CoR regime, there is no obligation on the loader to identify the risks of load restraints failing or the combination being unstable. Instead that HVNL deems the loader automatically liable for the driver's breach and the loader must prove that they took all reasonable steps to ensure the breach did not occur.

Internal inconsistency within the HVNL

The HVNL is founded upon previous models of national heavy vehicle regulation (the model laws). As a result of the amalgamation of the state and territory model laws, which were drafted at different times and in different ways, the chapters of the HVNL dealing with fatigue, speed, mass, dimension and loading, and vehicle standards contain various duty types and constructions. These generally relate to specific identified risks contained within each area. As a result, safety is not dealt with in an integrated way that accounts for all the risks that may endanger safety in the industry (Hatcher, 2008). This results in gaps in the obligations which apply to parties in the CoR.

The following case study illustrates that the current structure of many CoR offences impedes the identification and investigation of parties who have a role in ensuring road safety.

**Case Study 2**

A steel girder slid off the side of a truck travelling along a highway through Bathurst in NSW. The girder struck a light vehicle coming the other way, killing the driver. The vehicle was transporting the steel beams for a construction project at a mine.

The investigation identified six parties involved in the transport of these goods. However, the offences relating to four of those parties were prescriptive to the extent that evidence of their behaviour contributing to the offence could not be demonstrated. Only the consignor and driver were charged.

Difficulties may arise from the fact that industry parties must attempt to comply with multiple duties concerning separate subject matters such as speed and fatigue, found within different chapters rather than focusing at a higher level on the minimisation of safety risks. For example, both the speed and fatigue chapters contain similar duties on the operator to ensure that business practices do not cause breaches of speed or fatigue. However, the MDL and vehicle standards chapters do not adopt this duty structure. Instead operators are deemed liable for a driver's breach of MDL requirements (Queensland Government, 2014, p. 222) and are covered under the definition of 'a person' for permitting breaches of vehicle standards requirement (Queensland Government, 2014, p. 121). This may also lead to confusion and misunderstanding about which parties are responsible for particular obligations, how different obligations are related, and how these obligations need to be met (NTC, 2011, p. 113).

**Reliance on individual offences to prosecute**

There are limited options available under the HVNL to effectively deal with the most serious safety failures. Due to the prescriptive nature of the HVNL, it is often unavoidable for regulators to prosecute many smaller offences, each with relatively low penalties, rather than with a breach of a duty which carries a higher penalty. Queensland and NSW have provided examples of instances where prosecutors have had to charge hundreds of offences to ensure the Court has an appropriate picture of the defendant's conduct. This places an unreasonable burden on regulators to prepare cases, courts to hear them and transport companies to defend them.

The following case study illustrates the CoR regime’s focus on a party’s compliance with prescriptive requirements rather than the overall safety of their operations.
Case Study 3
On 24 March 2010, a heavy vehicle collided with a light vehicle that had pulled over in a breakdown lane on the M7 in Sydney. The driver of the light vehicle was killed. The driver of the heavy vehicle was charged with a range of offences, including dangerous driving occasioning death. On 10 April 2010, another driver of a heavy vehicle operated by the same company collided with four cyclists riding in the breakdown lane of the M4 in Sydney. One of the cyclists was killed as a result of the crash. The driver was charged with 14 offences, including manslaughter.

The investigation into both incidents found that the directors and scheduler of the company had actively managed work schedules in a way that resulted in drivers driving while impaired by fatigue. NSW Roads and Maritime Services (RMS) identified over applicable 500 offences. Of these, 112 (or 34 per cent) were identified as critical risk offences. In order to deal with the seriousness of both incidents, and given the technical prescriptive nature of the HVNL requirements, RMS charged the company, directors and scheduler with 72 individual offences. However on hearing the matter, the court reduced the number of charges by half.

Quantum of penalties
The maximum penalties prescribed by the HVNL are considerably lower than those for other safety-based legislation, such as the Model WHS Act and RSNL. This may lead to mixed messages, potentially misleading industry and the courts about the seriousness of the risk of non-compliance with the HVNL (NTC, 2011, p. 118).

Conclusion
As the above case studies illustrate, the limitations and difficulties of the current CoR regime encountered by industry and regulators stem directly from the way in which the HVNL is drafted. Significant risks to road safety remain because the way the law is structured does not encourage CoR parties to proactively identify and prevent risks, and does not provide sufficient deterrent effect because appropriate penalties are not provided for.

1.4 Consultation
There has been extensive stakeholder consultation on COR, executive officer liability and related matters, beginning with the COR Review Taskforce in 2012 and as has been continued by the NTC from 2014.

The following table summarises the consultation and processes undertaken to date:

**COR Taskforce**
- July 2013  Issues Paper released
- Feb 2014  CoR Assessment of Options Paper released (18 submissions received)
  - Regulators Survey conducted
- Mar 2014  Workshop held for regulatory agencies and police
- May 2014  CoR Review Taskforce Report provided to ministers

**NTC**
- July 2014  Assessment of executive officer liability undertaken in conjunction with jurisdictions and industry stakeholders
- Nov 2014  CoR Discussion Paper released (25 submissions received)
1.5 Questions to consider

**Primary duty on operators, prime contractors and employers (NTC draft proposal 1)**

1) How should the term ‘road transport operations’ be defined?
2) If a primary duty was introduced what would be the impact on:
   a) operators, prime contractors and employers?
   b) enforcement and regulators?
3) What would be the likely safety impacts if a primary duty was introduced?

**Role-specific duties on other CoR parties (NTC draft proposals 2-7)**

4) If role-specific duties were introduced what would be the impact on:
   a) current CoR parties
   b) enforcement and regulators
5) What would be the likely safety impacts if role-specific duties were introduced?
6) Are there any current CoR parties on whom no role-specific duty should be imposed? Please provide reasons for your response.
7) Are there any issues in limiting role-specific duties to only current CoR parties?

**Standard of care to apply (NTC draft proposal 9)**

8) If primary duties were to be introduced? Should the existing HVNL standard of ‘all reasonable steps’ continue to be used? Alternatively, should the national safety laws standard of ‘reasonable practicability’ be adopted? Please explain what safety benefit your position would have.
9) How would a change in the standard of care impact your business/ agency or the way you conduct your operations?

**Relationship of primary duties to existing CoR offences (NTC draft proposal 10)**

10) Irrespective of the standard of care adopted, should the HVNL retain s.623 deemed compliance? If yes, what safety benefits would this have? In what circumstances should deemed compliance apply (primary duty/ role-specific duties)?

**Principles applicable to the primary duties (NTC draft proposal 12)**

11) If primary duties were to be introduced, should the HVNL specify principles that are to apply to the duties (for example that the duties are a shared responsibility, are not transferrable, and that a person may have more than one duty and more than one person may have a duty)?

**Executive officers – application of the proposed primary duties regime (NTC draft proposal 13)**

12) Should the existing s.636 mechanism be used to apply the proposed primary duties regime to executive officers?
13) What would the safety and compliance impact be if primary duties obligations were to be applied to executive officers?
Executive officers – existing liability offences and burden of proof (NTC draft proposal 14)

14) Should the burden of proof for executive officer liability rest with the prosecution to prove that the executive officer failed to take reasonable steps to prevent the commission of the offence? Alternatively, should the existing executive officer burden of proof provisions be retained? Please provide reasons for your position.

15) What would be the impact on your business or operations if the burden for executive officer liability was to change to a type 1 provision with the onus of proof resting with the prosecution?

16) What would be the likely impact for safety and compliance if the evidentiary burden was to change to rest with the prosecution?

Implementation and review

17) What support and assistance would be required for your business/agency or operations to implement these proposed changes to CoR and executive officer liability provisions of the HVNL?

1.6 How to make submissions

Submissions on this discussion paper will be accepted by the NTC until 7 August 2015.

Any individual or organisation can make a submission to the NTC.

To make an online submission, please visit www.ntc.gov.au and select ‘Submissions’ from the top navigation menu. Alternatively, you can mail your comments to:

Att: Heavy Vehicle Compliance and Technology Team
National Transport Commission
L15/628 Bourke Street
Melbourne VIC 3000

Where possible, you should provide evidence, such as data and documents, to support your views.

Unless you clearly ask us not to, we will publish all submissions online. However, we will not publish submissions that contain defamatory or offensive content.

The Freedom of Information Act 1982 (Cth) applies to the NTC.
2 Primary duties

Key points
- Include a primary duty on operators, prime contractors and employers (Primary Duty), to ensure safety, limited to the existing regulatory framework of the HVNL
- Include role-specific duties for other CoR parties (Role-specific Duties), reflecting their differing roles, responsibilities and spheres of control and influence
- Extend the primary duty to also apply to executive officers of operators, prime contractors and employers

The adoption of primary duties will reduce the complexity and duplication of the existing law, help improve consistency and clarity of CoR parties obligations, and be more closely aligned with the Model Work Health and Safety Act, Rail Safety National Law and Marine Safety (Domestic Commercial Vessel) National Law (together referred to as ‘national safety laws’). In May 2015 ministers noted the proposed primary duties regime should also apply to executive officers. It is therefore proposed that the HVNL be amended to include a primary duty on operators, prime contractors and employers (Primary Duty), with role-specific duties for other CoR parties (Role-specific Duties), reflecting their differing roles, responsibilities and spheres of control and influence (together these are referred to as ‘Primary Duties’). These primary duties will not increase the compliance burden on these parties, but instead seek to clarify the intent of existing obligations and ensure a more flexible outcomes-based approach to compliance.

It is also proposed that the primary duties also apply to executive officers of operators, prime contractors and employers and is therefore also considered as part of this discussion paper.

2.1 Benefit of primary duties

Primary duties are sometimes known as ‘general duties’, ‘principle based duties’ or ‘effects-based duties’ (Gunningham, N and Bluff, E, 2004). The inclusion of primary duties in the HVNL would have significant benefits such as being:

- outcomes focused – in accordance with regulatory best practice and reflecting the positive duties that currently exist in the Model WHS Act, the MSNL and the RSNL
- preventative - in that failing to discharge the primary duty is sufficient for it to be determined that an offence has occurred, as an offence does not require there to be the occurrence of some harm, injury or incident).

Primary duties define the duty holders (who have responsibility) and the broad scope of their responsibilities. Primary duties also require duty holders to consider a wider range of considerations than if a prescriptive regulatory approach was to be adopted, and permit alternative preventive measures to be taken to address them. Primary duties are concerned with influencing attitudes and creating an overall safety culture by requiring duty holders to consider a wide range of hazards and risk in complying with their statutory obligations.

The flexibility inherent in a primary duties approach allows for innovation and adaptation in risk management, tailored to the circumstances of the party to whom the duty applies, their role within the chain of responsibility, the nature of the risk to be addressed, and the reasonableness of the party’s
use of resources to meet the risk. Indeed, this was the primary rationale behind the use of primary
duties as the fundamental basis for occupational, health and safety (now WHS) and rail safety
legislation (Robens, 1972).

**Primary duties under the Model WHS Act**

The Model WHS Act is organised around primary duties of care intended to cover a range of persons,
including persons conducting a business or undertaking (PCBU), officers, workers and other persons
(Safework Australia, 2012). There are also specific duties of care for various identified types of PCBUs
(including designers, manufacturers, suppliers, importers of plant, substances or structures), which
require ensuring the health and safety of specified persons *as far as reasonably practicable* who may
be affected by the business or undertaking (Safework Australia, 2012). Officers also have a positive
duty to exercise due diligence and ensure compliance with obligations created by the Model WH&S
Act.

**Primary duties under the Rail Safety National Law**

The keystone of the RSNL is that rail transport operators have an affirmative and overarching duty to
ensure, *as far as is reasonably practicable, the safety of the operator’s railway operations*. This duty is
applied when or where:

- the defendant was a rail transport operator at the relevant time
- there was a risk to the safety of the operator’s railway operations
- there is a causal relationship between an identified failure by the operator and a safety risk.

The duty applies to rail infrastructure managers and rolling stock operators. The RSNL is designed to
capture various broad groups and to ensure that they comply with a general concept of safety within a
limited sphere of operations that is dealt with within the RSNL’s regulatory framework. Hence the
concept of safety is defined broadly but also restricted to a defined sphere of ‘railway operations’.

**2.2 Primary duty on operators, prime contractors and employers**

The introduction of a primary duty on operators, prime contractors and employers is intended to better
clarify existing obligations, separating the specific obligations of operators, prime contractors and
employers from obligations on other parties such as ‘persons’ and moving away from offences that
rely on the occurrence of some harm or breach of a prescriptive requirements.

A primary duty is not intended to impose any greater regulatory burden that the obligations they
currently have under the HVNL or the national safety laws.

Stakeholders consider that introducing a primary duty on operators, prime contractors and employers
that is limited to pre-existing matters in the HVNL’s regulatory framework will promote a greater
understanding of CoR obligations, and result in an improved focus on road safety by those in a
position to control, influence or encourage safe on-road behaviour.

The introduction of a primary duty on operators, prime contractors and employers is the best way to
encourage greater compliance and to improve safety outcomes (Stewart Crompton, R., Mayman, S.,
Sherriff, B., 2008, p. 5). It is therefore appropriate that primary duties capture parties who may
effectively have direct control over the safety of the driver and the vehicle and who may influence the
way the road task is performed to ensure it is undertaken safely. This is consistent with the approach
of the RSNL and MSNL. Like these other laws, it is envisaged that the HVNL’s primary duty will clearly
identify the duty holder (i.e. the operator, prime contractor and employer), the duty owed by them and
how they must comply with the duty.
It is proposed the key obligation of a primary duty holder should be to ensure the safety of road transport operations, vehicles, drivers and the general public. In addition it is proposed that a primary duty holder should also have an obligation to address the specific safety risks posed by breaches of speed, fatigue, MDL, vehicle standards and maintenance requirements. Consistent with the Model WHS and RSNL, the focus on specific safety risks such as speed and fatigue should not limit the measures the primary duty holder can take steps to ensure the safety of their road transport operations. However, it should again be noted that the primary duty will not impose any greater regulatory burden that the obligations they currently have under the HVNL and will not cover areas of regulation not currently covered under the HVNL such as drugs and drink driving.

It is considered that a primary duty on operators, prime contractors and employers should cover the following existing offences, to the extent they apply to operators, prime contractors and employers:

- 60(1)(a) Compliance with heavy vehicle standards;
- 60(1)(b) Compliance with heavy vehicle standards;
- 89(1) Safety requirement;
- 183(2) Liability of employer etc. for driver's contravention of mass, dimension or loading requirement;
- 204(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit;
- 205 Duty of employer not to cause driver to drive if particular requirements not complied with;
- 206(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with;
- 219(1) Liability of employer etc. for speeding offence;
- 229(1) Duty of party in the chain of responsibility to prevent driver driving while fatigued;
- 230(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued;
- 231 Duty of employer not to cause driver to drive if particular requirements not complied with;
- 232(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with; and
- 261(2) Liability of employer etc. for driver's contravention of maximum work requirement or minimum rest requirement.

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1. This offence covers the behaviour of ‘a person’.
2. This offence covers the behaviour of ‘a person’.
3. This offence covers the behaviour of ‘a person’.
4. This is a deemed liability offence.
5. This is a general duty that covers ‘parties in the CoR’.
6. This is a deemed liability offence.
Primary duties for Chain of Responsibility Parties and Executive Officer Liability

**NTC draft proposal 1 - Primary duty on operators, prime contractors and employers**

- Operators, prime contractors and employers should have a duty to ensure the safety of their road transport operations (primary duty) limited to the existing regulatory framework of the HVNL;

- The primary duty should not increase compliance burden but instead clarify existing obligations and enable a more flexible outcomes-based approach;

- To the extent possible, the primary duty should:
  - replace existing CoR requirements on operators, prime contractors and employers;
  - include the obligation for operators, prime contractors and employers to ensure the safety of their vehicles, drivers, and the public;
  - address the specific safety risks posed to road transport operations by speed, fatigue, MDL, vehicle standards requirements; and

- The standard of care to apply to discharge the primary duty should be **either**:
  - ‘so far as reasonably practicable’, consistent with the standard applied in the national safety laws; **OR**
  - ‘all reasonable steps’, as is currently used in the HVNL.
3  Role-specific duties

Key points
Role-specific duties recognise that the following parties have specific CoR roles and responsibilities:
- Schedulers;
- Consignors and consignees;
- Loading managers;
- Loaders and packers; and
- Unloaders.

These role-specific duties will not increase compliance burden but instead clarify existing obligations and enable a more flexible outcomes based approach.

This section considers the role of schedulers, consignors, consignees, loading managers, loaders, packers, and unloaders and seeks input on specific issues, for example where duplications exist or duties are not sufficiently clarified. Appendix B lists the existing role specific obligations of the HVNL applicable to COR parties and identifies the parties to whom each existing duty applies.

3.1  Schedulers

The HVNL currently imposes specific obligations on schedulers relating to speed and fatigue. The law recognises their influence over the setting or developing of schedules for driver’s work and rest times and the transport of passengers and goods.

The HVNL defines a scheduler as ‘a person who schedules the transport of any goods or passengers by the vehicle; or who schedules the work times and rest times of the vehicle’s driver’ (Queensland Government, 2014, p. 37) Schedulers must ensure that the driver’s schedule will not cause the driver to exceed speed limits or drive while fatigued. In addition to their direct obligations, schedulers are also deemed liable under section 261 of the HVNL if a driver contravenes a maximum work requirement or minimum rest requirement.

To comply with their speed and fatigue obligations, schedulers must ensure that timeframes for drivers are realistic, and will not contribute to or cause on-road breaches, for example by:
- allowing for required rest breaks and providing flexibility so as to make allowance for traffic conditions and unexpected delays;
- ensuring schedules are safe and achievable for drivers and do not put pressure on them to breach speed or fatigue requirements; and
- consulting with drivers when developing schedules and ensuring that any scheduling problems are reported.

Although the scheduler has obligations under the speed and fatigue chapters, the HVNL acknowledges that schedulers have limited influence over the load of the vehicle. Accordingly, the HVNL does not impose direct obligations and schedulers are not subject to deemed liability for mass, dimension and loading requirements under Chapter 4.

There are currently similar HVNL obligations for schedulers relating to speed and fatigue. Under section 207 of the HVNL, the scheduler must ensure that the driver’s schedule will not cause the driver to exceed speed limits. Likewise, under section 233, the scheduler must ensure that the driver’s
Primary Duties for Chain of Responsibility Parties and Executive Officer Liability - Discussion Paper July 2015

schedule will not cause the driver to drive while fatigued. Although these provisions deal with two separate key risk areas the primary obligation is the same, to ensure that the driver’s schedule does not result in safety breaches relating to either speed or fatigue.

In order to reduce complexity the NTC proposes that obligations for schedulers are clarified by consolidating them into a single duty that imposes an obligation on schedulers to ensure that drivers’ schedules do not result in speed or fatigue safety breaches.

It is considered that a role-specific duty on the scheduler would cover the behaviour of the following existing offences to the extent they apply:

- 207(1) Duty to ensure driver’s schedule will not cause driver to exceed speed limit;
- 208(1) Duty not to cause driver to drive if particular requirements not complied with; and
- 233(1) Duty to ensure driver’s schedule will not cause driver to drive while fatigued.

### NTC draft proposal 2 - Role-specific duties for schedulers

It is proposed that a role-specific duty for schedulers should comprise the following:

- **Schedulers** – to ensure safety by scheduling:
  - the transport of goods and/or passengers such that it will not result in, encourage or provide incentive to breach speed requirements by the driver, and
  - driver’s work and rest times such that it will not result in, encourage or provide incentive to breach fatigue requirements by the driver.

### 3.2 Consignors and consignees

Under the HVNL, a consignor is a ‘person who engages an operator of the vehicle to transport the goods by road’ (Queensland Government, 2014, p. 37). The primary obligations for consignors require them to ensure that the terms of consignment will not cause the driver to speed or breach fatigue requirements. In addition, they must ensure that information provided in transport documentation or on the container or safety approval plate relating to the mass, dimension or load of the goods is incorrect and not false or misleading.

Consignors of goods are often end customers who engage third parties to carry goods on their behalf. Consignors therefore possess a level of control that can directly influence both the mass of a heavy vehicle and the timing of the transport task. Consignors therefore have a number of obligations relating to fatigue, speed, and mass dimension and loading and influence the setting of slot times for the delivery of goods.

The HVNL recognises that being the customers in the transaction, both consignors and consignees have no influence over vehicle compliance with vehicle standard requirements, nor are there any reasonable steps consignors and consignees could take to ensure compliance with these requirements. Therefore the HVNL, although recognising the role of consignors and consignees in the chain of responsibility, limits their obligations.

The HVNL defines a consignee as ‘a person who receives the goods after completion of their road transport’. The principal obligations for consignees require them to ensure that the terms of consignment will not cause the driver to speed or breach fatigue requirements. In addition, the consignee must ensure that they do not induce or reward a contravention of a mass, dimension or load requirement.
In addition to the direct obligations, both the consignor and consignee are deemed liable under section 261 if a driver contravenes a maximum work requirement or minimum rest requirement. The consignor is also deemed liable under section 183 if a person drives a heavy vehicle that does not comply with mass, dimension or loading requirements.

To comply with their obligations, consignors and consignees must ensure that the terms of consignment will not result in breaches of the law, for example by:

- ensuring contractual arrangements and documentation for the consignment and delivery of goods enable compliance with the HVNL;
- contingency planning concerning consignments and delivery times;
- requesting information about what systems and controls are in place to ensure compliance; and
- ensuring there are no arrangements which encourage or reward non-compliance.

C onsignors and consignees have similar obligations under the speed and fatigue chapters of the HVNL. Under section 212(1),(2) and 213, a commercial consignor or consignee must ensure that the terms of consignment and any demands do not cause the relevant driver or a relevant party for the relevant driver to cause the driver to exceed a speed limit. Likewise under section 235 (1),(2) and 237, a consignor or consignee must ensure that the terms of consignment or any demands do not result in, encourage or provide an incentive to the vehicle’s driver or to a relevant party for the vehicle’s driver. Although these provisions deal will separate key risk areas (i.e. speed and fatigue) the primary obligation to ensure that the driver or a relevant party does not breach speed and fatigue requirements, is the same.

In order to reduce complexity the NTC proposes that obligations for consignors and consignees are clarified by consolidating them into a single duty that imposes an obligation on these parties to ensure safety by ensuring that the terms of consignment do not cause, result in, encourage or provide an incentive to the driver or a relevant party to breach speed and fatigue requirements.

It is considered that role-specific duties on the consignor and consignee would cover the behaviour of the following existing offences to the extent they apply:

- 183(2) Liability of employer etc. for driver’s contravention of mass, dimension or loading requirement;\(^7\)
- 194(1) Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement;
- 212(1) Duty to ensure terms of consignment will not cause driver to exceed speed limit;
- 212(2) Duty to ensure terms of consignment will not cause driver to exceed speed limit;
- 213 Duty not to make a demand that may result in driver exceeding the speed limit;
- 229(1) Duty of party in the chain of responsibility to prevent driver driving while fatigued;\(^8\)
- 235(1) Duty to ensure terms of consignment will not cause driver to drive while fatigued;
- 235(2) Duty to ensure terms of consignment will not cause driver to drive while fatigued;
- 236(1) Duty not to cause driver to drive if particular requirements not complied with;
- 237(1) Duty not to make a demand that may result in driver driving while fatigued; and
- 261(2) Liability of employer etc. for driver’s contravention of maximum work requirement or minimum rest requirement.\(^9\)

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\(^7\) This is a deemed liability offence.

\(^8\) This is a general duty that covers ‘parties in the CoR’.

\(^9\) This is a deemed liability offence and its removal would require further consideration.
NTC draft proposal 3 - Role-specific duties for consignors and consignees

It is proposed that role-specific duties for consignors and consignees should comprise the following:

- **consignors and consignees** – to ensure safety by specifying terms of consignment for delivery of goods and passengers such that it will not result in, encourage or provide incentive to breach:
  - the vehicle’s mass, dimension and load restraint requirements; and/or
  - speed or fatigue requirements by the driver.

### 3.3 Loading managers

Loading managers control, supervise and manage the sites where goods are loaded or unloaded and as such are directly involved in on-road operations of heavy vehicles that transport goods.

The HVNL defines a loading manager as the ‘person who is responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of goods at the premises’ (Queensland Government, 2014, p. 37) Their primary obligations are to ensure that the loading arrangements will not cause the driver to breach speed or fatigue requirements. In addition, the loading manager is deemed liable under section 183 if a person drives a heavy vehicle that does not comply with mass, dimension or loading requirements and under section 261 if a driver contravenes a maximum work or minimum rest requirement.

Examples of how loading managers can comply with their obligations include:

- working with other off-road parties to make reasonable arrangements to manage loading and unloading timeslots;
- ensuring that vehicles are loaded/unloaded as quickly and efficiently as possible; and
- putting systems in place for unexpected jobs – for example where there have been unexpected road delays.

Obligations for loading managers are similar under both the speed and fatigue chapters of the HVNL. Under section 209, the loading manager must ensure loading arrangements will not cause the driver to exceed speed limits. Likewise, under section 238, the loading manager must ensure loading arrangements will not cause the driver to drive whilst fatigued. Although these two provisions deal with separate key risk areas (i.e. speed and fatigue) the primary obligation is the same, to ensure loading arrangements do not result in safety breaches.

Section 239 imposes a duty on loading managers to ensure that the driver is able to rest whilst waiting during loading and unloading. It could be argued that the obligation under section 239 is a ‘reasonable step’ that can be taken by the loading manager to ensure that the driver complies with fatigue requirements and therefore should not be considered an offence.

In addition, a consolidated provision which includes the above provisions could be extended to incorporate mass, dimension and loading. At present, liability is only extended to loading managers for breaches of mass, dimension and loading requirements through deemed liability under section 183. This provision places the onus of proof on the loading manager to prove that they took all reasonable steps to ensure a breach did not occur.

The NTC proposes that obligations be clarified and consolidated though the creation of a single duty that imposes an obligation for loading managers to ensure safety by managing the arrangements for loading and unloading such that it will not result in, encourage, or provide incentive to breach the
vehicle’s mass, dimension and load restraint requirements; or for the driver to breach speed or fatigue requirements by the driver.

It is considered that a role-specific duty on the loading manager would cover the behaviour of the following existing offences to the extent they apply:

- 183(2) Liability of employer etc. for driver’s contravention of mass, dimension or loading requirement;[^10]
- 209(1) Duty to ensure loading arrangements will not cause driver to exceed speed limit;
- 229(1) Duty of party in the chain of responsibility to prevent driver driving while fatigued;[^11]
- 238(1) Duty to ensure loading arrangements will not cause driver to drive while fatigued;
- 239(2) Duty to ensure drivers can rest in particular circumstances; and
- 261(2) Liability of employer etc. for driver’s contravention of maximum work requirement or minimum rest requirement.^[12]

### NTC draft proposal 4 - Role-specific duty for loading managers

It is proposed that a role-specific duty for loading managers should comprise the following:

- **loading managers** – to ensure safety by managing the arrangements for loading and unloading such that it will not result in, encourage or provide incentive to breach:
  - the vehicle’s mass, dimension and load restraint requirements; and
  - speed; and
  - fatigue requirements.

### 3.4 Loaders and packers

Like loading managers, loaders and packers are directly involved in on-road operations of heavy vehicles that transport goods.

The HVNL defines a loader as a ‘person who loads the vehicle or container with the goods for road transport or who loads the vehicle with a freight container’ (Queensland Government, 2014, p. 37). The HVNL defines a packer as a ‘person who puts the goods in packaging or who assembles the goods as packaged goods in an outer packaging’ (Queensland Government, 2014, p. 37)

The loader and packer are deemed liable under section 183 if a person drives a heavy vehicle that does not comply with mass, dimension or loading requirements.

In addition, the loader is liable under section 229 for not taking all reasonable steps to ensure a driver does not drive whilst fatigue and under section 261 if a driver contravenes a maximum work or minimum rest requirement. The packer also commits an offence if the weight of the container exceeds the maximum gross weight marked on the container or the container’s safety approval plate or if the transport documentation relating to the mass, dimension or loading of the goods is false or misleading.

Examples of how loaders could comply with their obligations include:

- ensuring a vehicle’s load does not exceed vehicle mass or dimension limits;
- ensuring a vehicle’s load is placed in a way so it does not become unstable, move or fall off the vehicle; and

[^10]: This is a deemed liability offence.
[^11]: This is a general duty that covers ‘parties in the CoR’.
[^12]: This is a deemed liability offence.
• ensuring vehicles are loaded as quickly and efficiently as possible.

Examples of how packers could comply with their obligations include:
• ensuring documentation about the vehicle’s load is not false or misleading; and
• ensuring any goods packed in a freight container do not cause the container’s gross weight or safety approval rating to be exceeded.

Although loaders and packers have a limited range of responsibilities that are covered through the various deemed liability provisions, their roles could be clarified by introducing a role-specific duty.

The NTC proposes that obligations for loaders be clarified by creating an obligation for loaders to ensure safety by loading the vehicle so that the driver does not breach MDL or fatigue requirements. In regards to the packer, this duty could be to ensure safety by packing goods such that it will not result in breaches of the mass, dimension and loading sections of the HVNL.

It is considered that role-specific duties on the loading and packer would cover the behaviour of the following existing offences to the extent they apply:
• 183(2) Liability of employer etc. for driver’s contravention of mass, dimension or loading requirement;\(^\text{13}\)
• 229(1) Duty of party in the chain of responsibility to prevent driver driving while fatigued;\(^\text{14}\) and
• 261(2) Liability of employer etc. for driver’s contravention of maximum work requirement or minimum rest requirement.\(^\text{15}\)

### NTC draft proposal 5 – Role-specific duties for loaders and packers

It is proposed that a role-specific duties for loaders and packers should comprise the following:

- **loaders** – to ensure safety by loading and/or packing a heavy vehicle such that it will not result in or encourage breach of:
  - the vehicle’s mass, dimension and load restraint requirements; and
  - fatigue requirements by the driver;
- **packers** – to ensure safety by packing goods such that it will not result in, encourage or provide incentive to breach of the vehicle’s mass, dimension and load restraint requirements.

### 3.5 Unloaders

Unloaders of goods from heavy vehicles can cause or contribute to breaches of fatigue requirements by delaying the unloading of a heavy vehicle. Delays in unloading a heavy vehicle, especially if the vehicle is queued, can cause the driver to breach work and rest requirements or cause the driver to become fatigued (NTC, 2011, p. 84).

The HVNL defines an unloader as a ‘person who unloads goods from a heavy vehicle or container on a heavy vehicle’ (Queensland Government, 2014, p. 37). The unloader is liable under section 229 for not taking all reasonable steps to ensure a driver does not drive whilst fatigued and they are also deemed liable under section 261 if a driver contravenes a maximum work requirement or minimum rest requirement.

\(^{13}\) This is a deemed liability offence.

\(^{14}\) This is a general duty that covers ‘parties in the CoR’.

\(^{15}\) This is a deemed liability offence.
Unloaders can comply with their obligations by ensuring that vehicles are loaded/unloaded as quickly and efficiently as possible.

Although unloaders have a limited range of responsibilities that are covered through the deemed liability provisions, the NTC proposes that their role be clarified by introducing a role-specific duty to ensure safety by unloading a heavy vehicle such that it will not result in breaches of driver fatigue requirements.

It is considered that a role-specific duty on the unloading would cover the behaviour of the following existing offences to the extent they apply:

- 229(1) Duty of party in the chain of responsibility to prevent driver driving while fatigued;\(^\text{16}\) and
- 261(2) Liability of employer etc. for driver’s contravention of maximum work requirement or minimum rest requirement.\(^\text{17}\)

**NTC draft proposal 6 – Role-specific duties for unloaders**

It is proposed that a role-specific duty for unloaders should comprise the following:

- **unloaders** – to ensure safety by unloading a heavy vehicle such that it will not result in, encourage or provide incentive to breach fatigue requirements by the driver.

### 3.6 General considerations for role-specific duties

Outlined below are a number of general considerations relevant to the role specific duties proposed. In addition, should role specific duties be adopted, consideration will need to be given to the treatment of the existing offences relating to a person making particular requests or entering into particular contracts (see sections 215, 216, 240 and 241 of the HVNL).

**NTC draft proposal 7 – general considerations for role specific duties**

- Schedulers, consignors and consignees, loading managers, loaders and packers, and unloaders should all have role specific duties to ensure safety that are tailored to their roles and responsibilities;
- The role specific duties should not increase compliance burden but instead clarify existing obligations and enable a more flexible outcomes based approach;
- To the extent possible, the role specific duties should replace existing CoR requirements on schedulers, consignors and consignees, loading managers, loaders and packers, and unloaders; and
- The standard of care to apply to discharge the role specific duties should be the same standard of care to apply to discharge the primary duty.

\(^{16}\) This is a general duty that covers ‘parties in the CoR’. Its removal would require further consideration.

\(^{17}\) This is a deemed liability offence and its removal would require further consideration.
4 General considerations

Key points
The adoption of a primary duties regime within the HVNL requires further consideration of the following matters:

- Consequence of failing to discharge a duty
- The standard of care to apply
- Relationship of Primary Duties to Existing CoR Offences
- Maximum penalties
- General principles applicable to the primary duties

4.1 Consequence of failure to discharge duty

Unlike many of the current prescriptive requirements under the HVNL, a failure to discharge primary duties should be considered a breach of the law in itself that is not dependent on the occurrence of some harm, incident or injury having already occurred. Accordingly it is considered that the failure to discharge (or breach) the primary duties should be an offence under the HVNL.

NTC draft proposal 8 - Consequence of failure to discharge duty

- failure to discharge the primary duties should be an offence.

4.2 Standard of care to apply

To satisfy their statutory obligations, duty holders must meet a necessary standard of care. Currently, the HVNL adopts the standard of ‘all reasonable steps’, whereas the standard of ‘so far as is reasonably practicable’ is applied under the Model WHS Act, RSNL and MSNL (the MSNL actually uses ‘so far as reasonably practicable’). In both law and practice these standards are broadly the same (Hatcher, 2008, pp. 37-40), as both require a duty holder to take into account matters such as:

- their role and capacity;
- the likelihood of the contravention, hazard or the risk occurring;
- the degree of harm that might result from the hazard or the risk; and
- the availability of avenues to eliminate or minimise the risk (Safework Australia, 2011:1).

Options: Standard of care

There are two options regarding the standard to apply to the primary duty on operator, prime contractor and employer

1. Continue use of the ‘all reasonable steps’ standard within the HVNL, and extend to the primary duty; or
2. Adopt the ‘so far as is reasonably practicable’ standard throughout the entire HVNL.

The NTC does not consider changes to the HVNL’s standard of care will impose any greater regulatory burden on parties, due to the fact that both standards aim to ensure that duty holders eliminate risks which are within their power.
All reasonable steps

The ‘all reasonable steps’ standard has been a component of road transport law since 1999. It is used under the HVNL for both CoR and non CoR offences. Any change will require consideration to the effect on all HVNL offences. The following table illustrates the use of ‘all reasonable steps’ under the HVNL.

Table 1 Use of ‘all reasonable steps’ in HVNL

<table>
<thead>
<tr>
<th>Total use of ‘all reasonable steps’ in offences</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of reasonable steps as a defence (All reasonable steps defence)</td>
<td>88</td>
</tr>
<tr>
<td>Use of reasonable steps as an element of the offence (must take all reasonable steps)</td>
<td>62</td>
</tr>
<tr>
<td>Number of CoR offences that use ‘all reasonable steps’</td>
<td>29</td>
</tr>
<tr>
<td>Number of the 29 CoR offences that use ‘all reasonable steps’ that are documentation offences (deemed liability on relevant party for driver not keeping documents)</td>
<td>11</td>
</tr>
<tr>
<td>Non-offence uses of ‘all reasonable steps’</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

Parties subject to the ‘all reasonable steps’ standard

| A person | Responsible entity for the freight container | Consignor |
| Driver | A party in the chain of responsibility | Packer |
| Solo driver | Employer | Loading manager |
| Owner | Prime contractor | Loader |
| Relevant party | Operator of the vehicle | Receiver |
|  |  | Unloader |
|  |  | TCA |
|  |  | Intelligent access auditor |
|  |  | Record keeper & another person under a contract for services |
|  |  | Operator of an intelligent access vehicle |
|  |  | Intelligent access service provider |

For CoR offences, the ‘all reasonable steps’ standard is used in two ways, as both:

- an element of the defence where the onus of proof is on the prosecution, and
- as an available defence where the defendant has the onus of proving that they took all reasonable steps.

So far as is reasonably practicable

The WHS Act, RSNL and MSNL standard of ‘so far as is reasonably practicable’ is used only as an element of the duty with the effect that the prosecution bears the onus of proof. Extensive guidance material is provided to help parties to understand and to meet this standard and a detailed definition is provided within the Model WH&S Act itself. The alignment of the HVNL standard of care with that of the national safety laws would allow duty holders to utilise current operating policies and procedures for managing safety with WHS duties, to comply with their obligations under the HVNL.

Several stakeholders, for example NSW Police, TMR (Qld), TfNSW and the ATA have stated that they are in favour of adopting the ‘as far as is reasonably practicable’ standard or care, while the ALC expressed their preference for retention of the status quo.
A change of standard would require consideration as to the treatment of offences where the standard is used as a defence (i.e. deemed liability provisions).

**Implications of a change in standard of care**

If ‘all reasonable steps’ is retained, consideration of Section 623 is required. Section 623 provides matters that will be regarded as reasonable steps if a person executes all factors. Although the matters are sufficiently broad to permit different interpretations of reasonable steps, it effectively allows parties to meet their obligations by ticking off tasks. This may limit the approach towards risk identification, assessment and management sought by the primary duty and may result in a standard of responsibility that is less than that required under the Model WHS Act.

**NTC draft proposal 9 - Standard of care to apply**

- The standard of care to be applied to discharge the primary duties could be either:
  - ‘so far as reasonably practicable’, consistent with the standard applied in the national safety laws; OR
  - ‘all reasonable steps’, as currently used in the HVNL;
- If ‘all reasonable steps’ is retained as the standard in the HVNL, the term should be defined to better assist CoR parties in understanding their obligations;
- If ‘reasonably practicable’ is adopted as the standard to be applied to discharge the primary duties, then similarly to the national safety laws, the term ‘reasonably practicable’ should be defined in the HVNL consistent with the definition used in the national safety laws;
- For consistency and to reduce complexity in compliance and enforcement, all offences in the HVNL should apply the same standard of care. This would mean that if the ‘so far as reasonably practicable’ standard is to be adopted, then it could be included as either an element of:
  - the offence only (this approach would be more consistent with national safety laws and would minimise compliance and enforcement complexity but may require some existing CoR offences to be redrafted, where the current standard of ‘all reasonable steps’ is used as an element of the defence) OR
  - the offence or defence (reflecting the existing application of the ‘all reasonable steps’ standard in the HVNL).

**4.3 Relationship of primary duties to existing CoR offences**

Adopting a primary duties approach requires consideration on certain matters to ensure alignment with the existing CoR regime and to reduce complexity for when understanding current obligations, including:

- how to transfer existing CoR offences where the subject matter is similar to the primary duty;
- the form and structure that existing CoR offences with take if kept;
- the deemed compliance provision under section 623;
- the standard of care to apply; and
- the burden of proof that should apply and whom the onus should rest.

To address these issues, the NTC makes the following proposals.
NTC draft proposal 10 - Relationship of primary duties to existing CoR offenses

- To reduce complexity and duplication, primary duties should replace existing CoR offences where the subject matter of the offence is covered by the primary duties and there is not a clear policy rationale for retaining the existing offence;
- Where existing CoR offences are to remain these could be either:
  - reframed as positive specific duties; OR
  - retained as is (subject to further detailed analysis, it may be appropriate for some deemed liability offences to be retained in the HVNL);
- The s.623 deemed compliance provision should be removed, on the basis deemed compliance provisions are prescriptive, encourage a 'tick-a-box' mentality, and are incompatible with a positive duty and outcomes based approach to the management of safety risks;
- Where existing CoR offences are to be retained, the applicable standard of care should be consistent with the standard of care for the primary duties.

4.4 Maximum penalties

A primary duties approach requires appropriate penalties. Maximum penalties seek to punish undesirable behaviour and promote desirable behaviour. The setting of maximum penalties requires a balance between policy objectives and legal principles.

The NTC’s *Penalty Matrix* (NTC, 2015), endorsed by ministers in May 2015, is used by the NTC to assist in determining penalties for new and amended offences. The penalty matrix establishes the following principles for setting maximum penalties:

- maximum penalty levels should be set at a level that gives courts the ability to tailor a particular penalty to a level that will deter and punish a worst case offence, including repeat offences;
- maximum penalty levels should aim to provide an effective deterrent to the commission of the offence, and should reflect the seriousness of the offence within the relevant legislative scheme;
- maximum penalties should reflect the degree of seriousness of the violation in safety, equity and infrastructure degradation terms;
- a higher maximum penalty will be justified where there are strong incentives to commit the offence, or where the consequences of the commission of the offence are particularly dangerous or damaging. Safety risks should attract the most serious penalties; and
- a maximum penalty should be consistent with penalties for existing offences of a similar kind or of a similar seriousness.

Model WHS and Rail Safety National Law

The primary duties under the Model WHS and RSNL cover similar ground to HVNL obligations and extended liability offences in that they seek to address high risk conduct and impose a duty on workers, operators and other parties in the chain, to ensure safety (and health in the case of the Model WHS) in specific circumstances. In relation to the HVNL, the aim is to ensure the safety of the public and the driver of the vehicle (ie, the worker).

The Model WHS and RSNL include three offence categories for breaching health and safety duties, with maximum court-imposable fines of up to $600,000 for an individual and $3,000,000 for a body corporate for the most serious offences. Penalties and the possibility of imprisonment in the most...
serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action e.g. issuing inspector notices (NTC, 2015, p. 21). The maximum penalties reflect the level of seriousness of the offences and have been set at levels high enough to cover the most egregious examples (NTC, 2015, p. 21). The RSNL aligned its penalty framework with the framework in the Model WHS Act to avoid inconsistencies between the two overlapping areas of law (NTC, 2015, p. viii).

The following table outlines the offence categories and maximum penalties for breaches under the Model WHS Act and Rail Safety National Law.

### Table 2 Offence categories and maximum penalties

<table>
<thead>
<tr>
<th>Category 1 – Risk of death or serious injury or illness (Reckless)</th>
<th>Category 2 – Risk of death or serious injury or illness</th>
<th>Category 3 – No Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conduct</strong></td>
<td><strong>Fault element (intent)</strong></td>
<td><strong>Burden of proof</strong></td>
</tr>
<tr>
<td>A person engages in conduct that exposes an individual to whom the duty is owed to a risk of death or serious injury without a reasonable excuse</td>
<td>The person is reckless as to the risk to an individual of death or serious injury or illness</td>
<td>The prosecution must prove: (a) the person had a safety duty; and (b) the person, without reasonable excuse, engaged in conduct that exposed an individual to whom that duty is owed to a risk of death or serious injury or illness; and (c) the person was reckless as to the risk to an individual of death or serious injury or illness.</td>
</tr>
<tr>
<td></td>
<td>N/A (strict liability)</td>
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<td>N/A (strict liability)</td>
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</tbody>
</table>
### Current HVNL Penalties

The offences under the HVNL, are currently more specifically defined than the WHS’s and RSNL’s primary duty of care offences and closely resemble intermediate obligations provided under the Model WHS Act and Regulations.

Under the WHS regime, regulations set out detailed requirements to support the duties contained in the Act and impose penalties ranging between $1,250 and $6,000 for an individual. This range is reflective of the range of penalties for a significant percentage of offences under the HVNL. The maximum court-imposable fines under the HVNL ($20,000 for an individual) are significantly lower than the maximum court-imposable fines under the Model WHS Act. It should be noted that a HVNL Penalties Review has recently been completed which resulted in only minor changes to CoR penalties in order to ensure consistency with other CoR offences.

### Penalty for primary duties

When determining the maximum penalties for primary duties it is important to keep in mind that the duty will be limited to the current areas covered by CoR regulatory framework of the HVNL.

As the proposed primary duties cover the majority of existing behaviours of parties in the CoR without imposing greater obligations, consideration is required as to how the penalties should be set in relation to the existing penalty levels under the HVNL.

The NTC recognises that agreement on a final maximum penalty amount cannot be made until the structure of the primary duties has been determined.

### NTC draft proposal 11 - Maximum penalties

*Maximum penalties for breaching the primary duties could be amended to be better aligned with the maximum penalties available under the national safety laws, including adoption of a hierarchy of penalties based on the nature of the actual harm or damage caused.*

### 4.5 Principles applicable to the primary duties and interaction with national safety laws

The Model WHS Act and RSNL set out common principles to guide duty holders, regulators and the courts on the interpretation and application of the duties of care. Section 13-16 of the Model WHS Act and section 51 of the RSNL both provide the following principles:

- A duty under this Law cannot be transferred to another person.
- A person can have more than 1 duty under this Law by virtue of being in more than 1 class of duty holder.
More than 1 person can concurrently have the same duty under this Law and each duty holder must comply with that duty to the standard required by this Law even if another duty holder has the same duty.

If more than 1 person has a duty for the same matter, each person—(a) retains responsibility for the person's duty in relation to the matter; and (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter (or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity)

Section 50 of the RSNL also includes 'Principles of shared responsibility, accountability, integrated risk management', which makes it clear that rail safety is the shared responsibility of everyone who has a role at any point in the rail system. Under these principles, each party has a duty to work with others to ensure that everything reasonably practicable is done to ensure the safety of assets throughout their lifecycle. However, the degree to which a person is accountable for rail safety is dependent on the nature of the risk their activities might pose to rail safety. Thus, the management of risks associated with railway operations is predominantly the responsibility of the person best able to control them. The principles are as follows:

(1) Rail safety is the shared responsibility of—
   (a) rail transport operators; and
   (b) rail safety workers; and
   (c) other persons who—
      (i) design, commission, construct, manufacture, supply, install, erect, maintain, repair, modify or decommission rail infrastructure or rolling stock; or
      (ii) supply rail infrastructure operations or rolling stock operations to rail operators; or
      (iii) in relation to the transport of freight by railway—load or unload freight on or from rolling stock; and
   (d) the Regulator; and
   (e) ONRSR; and
   (f) the public.

(2) The level and nature of responsibility that a person referred to in subsection (1), or falling within a class of person referred to in that subsection, has for rail safety is dependent on the nature of the risk to rail safety that the person creates from the carrying out of an activity (or the making of a decision) and the capacity that person has to control, eliminate or mitigate those risks.

(3) The persons and classes of persons referred to in subsection (1) should—
   (a) participate in or be able to participate in; and
   (b) be consulted on; and
   (c) be involved in the formulation and implementation of, measures to manage risks to safety associated with railway operations.

(4) Managing risks associated with the carrying out of rail infrastructure operations or rolling stock operations is the responsibility of the person best able to control those risks.

(5) If approaches to managing risks associated with any particular railway have potential impacts on any other railway or a railway network of which the railway is a part, the best practicable rail safety outcome should be sought.

In contrast, the HVNL does not include any such principles, with section 634 of the HVNL instead providing that 'a person may be punished only once in relation to the same contravention of this Law by the person or a heavy vehicle, even if the person is liable in more than 1 capacity'.

Relationship between the HVNL and Model WHS Act

Section 18 of the HVNL addresses the interaction of the HVNL and Model WHS and provides that compliance with the HVNL is not, in itself, evidence of compliance with the primary WHS Law. Section 18 provides obligations may co-exist under the HVNL and the primary WHS Law. Section 18 of the HVNL states:

(1) This Law does not limit the application of the primary WHS Law or any regulations made under that Law.

(2) Evidence of a relevant contravention of this Law is admissible in any proceeding for an offence against the primary WHS Law.

(3) Compliance with this Law, or with any requirement imposed under this Law, is not, in itself, evidence that a person has complied with the primary WHS Law or any regulations made under that Law or with a common law duty of care.

(4) In this section—primary WHS Law, for a participating jurisdiction, means the law that is declared by a law of that jurisdiction to be the primary WHS Law for the purposes of this Law.

Note—‘WHS’ stands for workplace health and safety.

Ideally the CoR provisions should be coherent, both internally and in the broader regulatory context, including in relation to relevant WHS obligations. If legal obligations and standards are sufficiently aligned it is easier for regulated parties to develop compliance and management systems to comply with a wider range of obligations under different pieces of legislation. In contrast with the HVNL, both the RSNL and MSNL are subordinate to the Model WHS Act and both the RSNL and MSNL provide that if a provision is inconsistent with a provision of the Model WH&S Act, then the Model WH&S Act prevails to the extent of the inconsistency.

**NTC draft proposal 12 – Principles applicable to the primary duties and interaction with national safety laws**

- The HVNL should include general principles applicable to the primary duties, similarly to the principles set out in the Model Work Health Safety Bill, and include principles of shared responsibility and accountability similarly to the Rail Safety National Law;
- The primary duties should complement existing work health safety duties, but focus specifically on the safety of road transport operations, including the safety of vehicles, drivers and the public;
- The relationship between the HVNL and work health safety legislation should be further clarified to expressly address:
  - inconsistencies between the HVNL and work health safety legislation;
  - double jeopardy.
5 Executive officer liability

5.1 Background

In 2008, COAG agreed to implement regulation and competition reforms under the National Partnership Agreement to Deliver a Seamless National Economy. This includes agreement that the jurisdictions would implement a coordinated national approach for directors’ liability by auditing their legislation against the Personal Liability for Corporate Fault Principles.

In June 2012, the Queensland Department of Transport and Main Roads raised concerns that the directors’ liability provisions under the HVNL may be inconsistent with the COAG principles and advised that these concerns were sufficiently serious to compromise Cabinet support for and the introduction into parliament of the HVNL Bill 2. It was agreed by the Project Implementation Board that the NTC would undertake a comprehensive assessment of the HVNL directors’ liability provisions against the COAG principles as part of the forward work program – this project fulfils that undertaking.

In May 2014, ministers considered the Chain of Responsibility Taskforce Final Report and resolved:

To ask the NTC to provide advice to the Council by November 2014 on the consistency of the executive officer liability provisions in the national law with the COAG Principles and Guidelines relating to duties of company directors.

Consistent with this agreement, in July 2013, the NTC undertook an assessment of the HVNL’s executive officer liability provisions under section 636 and Schedule 4 against the COAG Principles and Guidelines (COAG, 2012). The NTC found that these provisions did not satisfy the COAG Principles and Guidelines as the analysis required to justify their inclusion was not conducted as part of the development of the HVNL.

Following consultation with jurisdictions, in May 2015 ministers agreed that 58 (from 129) offences attracting executive officer liability under section 636 should be retained in the HVNL and that these offences should require a burden of proof consistent with the COAG Principles and Guidelines (i.e. that the onus of proof will rest with the prosecution). Ministers also agreed that the proposed primary duties would apply to executive officers. The following section considers the available options for furthering these agreements.

5.2 Application of the proposed primary duties regime

Key points

Extending liability for the proposed primary duties to executive officers could be achieved either by:

- using the existing s.636 executive officer liability provision or
- through a new obligation on executive officers to exercise due diligence to ensure corporate compliance with the HVNL.

The NTC proposes that the existing executive officer liability regime be retained and that the introduction of a due diligence obligation for executive officers is an issue that be separately considered.
Extending liability for the proposed primary duties to executive officers could be achieved either by using the existing s.636 executive officer liability provision or alternatively through a new obligation on executive officers to exercise due diligence to ensure corporate compliance with the HVNL. As changing the HVNL’s executive officer liability regime requires consideration as to the impact it would have on many non-CoR offences, the NTC recommends that the existing executive officer liability regime be retained and that the introduction of a due diligence obligation for executive officers is an issue that needs further consideration.

**Section 636 mechanism**

The executive officer liability provisions within the HVNL are found at section 636. This section extends liability for some HVNL offences to executive officers for a breach by the corporation. Specifically, section 636 sets out two provisions:

**Section 636(1)** is a normal form of accessorial liability and maintains an ordinary onus of proof. As such, it raises no concerns and is not subject to assessment under the COAG Principles and Guidelines. Under this provision, in order for an executive officer to be held liable for an offence the prosecution must prove that the executive officer has actively authorised or permitted the offence.

**Section 636(2)** is a form of modified type 3 liability in that the defendant must prove their defence but the prosecution must first adduce evidence, and prove beyond reasonable doubt, that:

1. the executive officer knew or ought reasonably to have known of the conduct constituting the offence; or
2. the executive officer knew or ought reasonably to have known that there was a substantial risk that the offence would be committed.

Schedule 4 of the HVNL contains two columns listing the range of offences for which liability is extended under the section 636 provisions. Column 2 contains 170 offences which are the subject of section 636(1) (accessorial liability) while column 3 contains 133 offences which are the subject of section 636(2) and attract type 3 liability.

The existing executive officer liability regime could be used to extend liability to the executive officer for a corporation’s breach of the primary duties. The current executive officer liability regime has been an integral component of road transport legislation since 1997. It is known and understood by industry and guidance material has been available for some time to assist in clarifying obligations. This proposal would not require the development of a regulatory impact statement and it could be achieved in a relatively short period of time. Should this proposal be adopted the issue of the type of liability that should extend to executive officers will be need to be considered (see discussion below).

**Due diligence duty mechanism**

The adoption of a due diligence approach would reflect the approach taken in the Model WHS Act and RSNL with the RSNL providing a broad example of how a primary duty on executive officers could be drafted:

‘If a person has a duty or obligation under this Law, an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation’.

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18 The Model Laws imposed absolute blanket liability across the entire Act. This was changed to a type 3 provision under the HVNL. Both structures place the burden of proof on the defendant.
A due diligence duty would hold officers and senior managers accountable for managing and influencing behaviour without the corporation first having to commit an offence as is the current requirement under the HVNL. The due diligence duty would also provide clarity to executive officers as to their responsibility to be aware of the hazards and risks associated with the business and provide safe work practices, ongoing compliance and continual improvement.

However, having two separate regimes concurrently covering the behaviour of executive officers under the HVNL (i.e. the existing regime and a new due diligence duty) would not be appropriate as it would duplicate obligation resulting in confusion. As such, a due diligence duty on executive officers would require the existing executive officer liability regime to be removed which would fundamentally change the structure of the current approach to executive officer liability.

A due diligence duty on executive officers may unnecessarily replicate the due diligence duty already provided for under the Model WHS Act. Although CoR and EoL are linked, the regimes are also separate and there are a number of the current offences that extend liability to executive officers which are not chain of responsibility offences. The impact upon these non-CoR offences would need to be considered. This proposal would also extend the liability of executive officers to areas of the HVNL that are not currently covered by the executive officer liability regime.

**NTC draft proposal 13: Application of the proposed primary duties regime to executive officers**

- The application of the proposed primary duties regime to executive officers should be addressed using the existing s.636 executive officer liability regime to extend liability to executive officers for a corporation’s breach of the primary duties.

### 5.3 Existing EOL offences and burden of proof

In May 2015, ministers endorsed, in-principle, the following recommendation:

> ‘that these 58 executive officer liability offences in section 636 of the HVNL will require a burden of proof consistent with COAG principles, that is, that they will attract Type 1 liability, unless evidence is provided for Type 3’.

The NTC’s proposal is to use the existing executive officer liability regime to extend liability to executive officers for a breach of the primary duty on operators, prime contractors and employers. If agreed to by ministers, the issue of consistency between the type of liability under section 636 and the COAG Principles and Guidelines will need to be resolved.

**COAG Principles & Guidelines**

To promote consistency, in December 2009 COAG agreed that jurisdictions would audit their legislation against the *Personal Liability for Corporate Fault Principles* (COAG, 2012). The Principles are as follows:

1. Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.

2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.

3. A “designated officer” approach to liability is not suitable for general application.
4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:

   (a) there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending);

   (b) liability of the corporation is not likely on its own to sufficiently promote compliance; and

   (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:

      i. the obligation on the corporation, and in turn the director, is clear;

      ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and

      iii. there are steps that a reasonable director might take to ensure a corporation’s compliance with the legislative obligation.

5. Where principle 4 is satisfied and directors’ liability is appropriate, directors could be liable where they:

   (a) have encouraged or assisted in the commission of the offence; or

   (b) have been negligent or reckless in relation to the corporation’s offending.

6. In addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation’s offending if they are not to be personally liable.

In 2011 COAG tasked the Business Regulation and Competition Working Group with auditing the jurisdictional assessments of their director’s liability provisions. Due to concerns regarding the inconsistent application of the COAG Principles, the Business Regulation and Competition Working Group developed guidelines to assist jurisdictions in auditing their legislation and to provide a practical guide on how the Principles should be applied.

**Type of liability**

The COAG Principles and Guidelines present three types of director’s liability that may be applied to directors.

A type 1 directors’ liability provision is the default position, unless type 2 or 3 liabilities can be justified. This means that the 58 underlying offences agreed by ministers to attract executive officer liability under section 636 have been justified as Type 1 directors’ liability provisions only.

**Table 3 Type of liability**

<table>
<thead>
<tr>
<th>Liability type</th>
<th>Example provision</th>
</tr>
</thead>
</table>
| Type 1 liability, which is the least onerous, places the onus on the prosecution to prove that the director failed to take reasonable steps to prevent the commission of the offence. This is the default position unless type 2 or 3 liabilities can be justified for each underlying offence (i.e. on a case-by-case basis). | An executive officer of a corporation commits an offence if—
   (a) the corporation commits an offence against a stated executive liability provision; and
   (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence. In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps, a court must have regard to—
   (a) whether the officer knew, or ought reasonably to have known, of the corporation’s conduct constituting the offence; and
   (b) whether the officer was in a position to influence the
<table>
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<tr>
<th>Type 2 liability deems the director liable for the corporation’s criminal conduct.</th>
<th>If a corporation commits an offence against a stated executive liability provision, each executive officer of the corporation is taken to have also committed an offence against the provision.</th>
</tr>
</thead>
</table>
| However, directors have a defence if they have taken reasonable steps to avoid the contravention. | However, the executive officer is not taken to have also committed an offence if—
| While directors bear the onus of bringing evidence to show that they did take reasonable steps, the prosecution is required to prove beyond reasonable doubt that either those reasonable steps were not taken, or other steps should have been taken. | (a) the officer satisfies the evidential burden of showing that—
| | (i) the officer did not know, and could not reasonably have been expected to have known, of the corporation’s conduct constituting its offence; or
| | (ii) the officer took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence; and
| | (b) the officer having complied with paragraph (a), the prosecution does not prove the contrary beyond reasonable doubt (Queensland Government, 2012, p. 4). |
| Type 3 liability deems a director criminally liable for a corporate breach, thereby reversing the onus of proof. | If a corporation commits an offence against a stated executive liability provision, each executive officer of the corporation is taken to have also committed an offence against the provision. |
| This liability type requires directors to prove that they exercised due diligence, were not in a position to influence the corporation’s conduct or took reasonable steps to prevent the commission of the offence by the corporation. | However, it is a defence for the executive officer to prove that—
| Unlike a type 2 liability, the prosecution is not required to disprove the application of the defence. | (a) the officer did not know, and could not reasonably have been expected to have known, of the corporation’s conduct constituting its offence; or
| | (b) the officer took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence (Queensland Government, 2012, p. 4). |

As currently drafted, section 636(2) of the HVNL is a form of modified type 3 liability. It requires that the defendant must prove their defence, but the prosecution must first adduce evidence, and prove beyond reasonable doubt, that:

i. the executive officer knew or ought reasonably to have known of the conduct constituting the offence; or

ii. the executive officer knew or ought reasonably to have known that there was a substantial risk that the offence would be committed.

This type 3 liability is inconsistent with the COAG Principles and Guidelines as the ‘rigorous and transparent analysis’ (COAG, 2012, p. 9), required by principles 5 and 6 to justify the inclusion of a reverse onus, type 3 liability provision, was not conducted as part of the development of the HVNL. This analysis should have been undertaken on an offence-by-offence basis for all underlying offences. As such, all 133 underlying offences currently listed in column 3 of schedule 4 should have been
assessed against all six criteria provided at 4.1.5 of the COAG Principles and Guidelines (COAG, 2012, p. 9).

The COAG Principles and Guidelines require that where a type 2 or 3 directors’ liability provision is proposed, a rigorous and transparent assessment must be undertaken so as to clearly demonstrate why this type of liability is justified from a public policy perspective (COAG, 2012, p. 9). The type of provision affects the procedural requirements that apply when enforcement action is taken because the relevant substantive standard has not been met.

Imposing a type 2 or 3 provision does not increase the substantive standard of behaviour expected of directors and should not be applied merely as an attempt to do so. For this reason, and in accordance with the COAG Guidelines, the justification for imposing a type 2 or 3 provision needs to be transparently documented – including against the considerations set out below. This ensures those provisions are subject to appropriate public scrutiny by affected stakeholders, parliamentary committees and independent review bodies.

The Guidelines state that types 2 or 3 should only apply in exceptional circumstances and each offence needs to be considered against all the following factors:

- the nature and seriousness of the particular public policy reasons that justify the imposition of a Directors’ Liability Provision;
- all of the other elements of the offence that the prosecution is required to prove, both in respect of the underlying offence and under the directors’ liability provision; the particular matter that is being considered as something the director (rather than the prosecution) might be required to bring evidence about, or to actually prove or disprove;
- the evidence that is likely to be available in respect of that matter, who will readily have access to that evidence, and the difficulty of adducing evidence and/or proving or disproving that matter (COAG, 2012, p. 13);
- the difference between requiring a director to meet an evidential onus as opposed to a legal onus of proof (see section 2 of the COAG Guidelines);
- the different standards of proof that apply depending on which party bears the legal onus (see section 2 of the COAG Guidelines for applying the COAG Principles); and
- fairness to the accused person – noting in particular that accused persons should not bear the burden of proving (or disproving) a matter if it is a matter which is not peculiarly within their own knowledge or in respect of which evidence would not readily be available to them (COAG, 2012, p. 13).

**NTC draft proposal 14 - evidentiary burden of proof**

- Consistent with COAG principles, the evidentiary burden of proof for all executive officer liability offences under s.636 should rest with the prosecution (Type 1 offence) and not the defendant.
6 Implementation

The changes being proposed are about clarifying existing duties rather than imposing new duties on parties. Therefore, by and large, the focus of implementation will be around communicating the changes to those who are regularly exposed to the HVNL – that is, those who are responsible for enforcing the HVNL, NHVR and authorised officers from transport and road agencies, and those who need to comply, transport operators, as well as the logistics and related industries. Considerations for implementation include a number of steps as outlined below.

The legislative process

It is proposed a draft bill be considered by ministers in May 2016. If approved, it will be considered by the Qld Parliament (in their capacity as host jurisdiction for the HVNL), then adopted by other governments who are parties to the HVNL. It is anticipated that amendments to the HVNL will commence in late 2016 or early 2017.

Communication with industry and government

The NHVR will have a role to play in promoting awareness among those parties who, through the nature of their business or operations, have most of a stake in the HVNL. Transport operators, and those in the logistics industry will, while not being affected with regard to new responsibilities or roles, will need to be made aware of the new structure and location of the sections in the law with which they must comply (for example, if a consolidated COR chapter is the chosen option).

Equally important are those service providers to the NHVR: this is, road and transport agencies, who through the authorised officers undertake compliance and enforcement activities, including both police and road and authorised heavy vehicle inspectors

- Who will do this, NTC or NHVR
- Industry media (for example, ATN, COR and Big Rigs magazines etc)
- NTC or joint NTC/NHVR communication.

Issuing of guidance material for industry

Following on from simply communicating to industry that changes are occurring, guidance material will also need to be issued by the NHVR, to enable industry to effectively communicate changes to those in their supply chain.

Training for authorised officers

- Guidance material developed by NHVR or third party training organisation.
- Training delivered potentially by NHVR or third party training organisation.
Appendix A: Executive Officer Liability

Offences

In May 2015, Ministers endorsed the following recommendation, that:

58 offences attracting executive officer liability should be retained under section 636 of the Heavy Vehicle National Law (including two new offences).

These offences include:

- 47 existing offences specified in Column 3 Schedule 4 of the HVNL, assessed as being consistent with the COAG principles
- two new offences (in regard to tampering with speed limiters) to be added to the Schedule
- 9 vehicle standards and roadworthiness offences to be retained pending the outcomes of the Heavy Vehicle Roadworthiness Review.

The 58 offences include key safety offences in the areas of vehicle standards, mass, dimension and loading, speeding and driver fatigue where executives may have direct responsibility and are provided below.

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<tr>
<th>Ref</th>
<th>Chapter</th>
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<tbody>
<tr>
<td>1</td>
<td>Chapter 2: Registration</td>
<td>30(1) Registration requirement</td>
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<td>2</td>
<td>Chapter 3: Vehicle Operations – standards and safety</td>
<td>89 (1) Safety requirement – A person must not use, or permit to be used, on a road a heavy vehicle that is unsafe.</td>
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<td>93 (1) Person must not tamper with speed limiter fitted to heavy vehicle</td>
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<td>93 (2) Person must not tamper with speed limiter fitted to heavy vehicle*</td>
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<td>93 (3) Person must not tamper with speed limiter fitted to heavy vehicle*</td>
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<td>6</td>
<td>Chapter 4: Vehicle Operations – mass, dimension and loading</td>
<td>129(1) Contravening condition of mass or dimension exemption generally</td>
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<td>129 (2) Contravening condition of mass or dimension exemption generally</td>
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<td>129 (3) Contravening condition of mass or dimension exemption generally</td>
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<td>137 Using class 2 heavy vehicle</td>
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<td>150(1) Contravening condition of class 2 heavy vehicle authorisation</td>
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<td>183 (2) Liability of employer etc. for driver’s contravention of mass, dimension or loading requirement</td>
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<td>186(2) False or misleading transport documentation for goods</td>
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<td>186(3) False or misleading transport documentation for goods</td>
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<td>186(4) False or misleading transport documentation for goods</td>
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<td>186(5) False or misleading transport documentation for goods</td>
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<td>187(2) False or misleading information in container weight declaration</td>
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<td>187(3) False or misleading information in container weight declaration</td>
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<td>194 (1) Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement</td>
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<td>19</td>
<td>Chapter 5: Vehicle</td>
<td>204 (1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit</td>
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<td><strong>operations - speeding</strong></td>
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<td>207(1) Duty to ensure driver's schedule will not cause driver to exceed speed limit</td>
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<td>209(1) Duty to ensure loading arrangements will not cause driver to exceed speed limit</td>
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<td>212(1) Duty to ensure terms of consignment will not cause driver to exceed speed limit</td>
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<td>212(2) Duty to ensure terms of consignment will not cause driver to exceed speed limit</td>
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<td>215 Particular requests etc. prohibited</td>
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<td>216 (1) Particular contracts etc. prohibited</td>
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<td>216 (2) Particular contracts etc. prohibited</td>
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<td>219 (1) Liability of employer etc. for speeding offence</td>
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<th><strong>Chapter 6: Vehicle operations – driver fatigue</strong></th>
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<td>229 (1) Duty of party in the chain of responsibility to prevent driver driving while fatigued</td>
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<td>29</td>
<td>230 (1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued</td>
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<td>233 (1) Duty to ensure driver’s schedule will not cause driver to drive while fatigued</td>
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<td>235 (1) Duty to ensure terms of consignment will not cause driver to drive while fatigued</td>
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<td>235 (2) Duty to ensure terms of consignment will not cause driver to drive while fatigued</td>
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<td>237(1) Duty not to make a demand that may result in driver driving while fatigued</td>
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<td>238 (1) Duty to ensure loading arrangements will not cause driver to drive while fatigued</td>
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<td>240 Particular requests prohibited</td>
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<td>241 (1) Particular contracts prohibited</td>
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<td>241 (2) Particular contracts prohibited</td>
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<td>261(2) Liability of employer etc. for driver’s contravention of maximum work requirement or minimum rest requirement</td>
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<td>335 (1) Person must not tamper with approved electronic recording system</td>
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<td>336 (1) Person using approved electronic recording system must not permit tampering with it</td>
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<td>337 (2) Intelligent access reporting entity must not permit tampering with approved electronic recording system</td>
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<th><strong>Chapter 7: Intelligent access</strong></th>
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<td>42</td>
<td>454 (1) Offence to tamper with approved intelligent transport System</td>
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<td>43</td>
<td>454 (2) Offence to tamper with approved intelligent transport system</td>
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<td>44</td>
<td>467 Compliance with conditions of BFM accreditation or AFM Accreditation</td>
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<td>45</td>
<td>470 (2) General requirements applying to operator with heavy vehicle accreditation</td>
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<td>46</td>
<td>470 (3) General requirements applying to operator with heavy vehicle accreditation</td>
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vehicle accreditation
470 (4) General requirements applying to operator with heavy vehicle accreditation

Chapter 9: Sanctions and provisions about liability for offences

604 Contravention of supervisory intervention order - A person to whom a supervisory intervention order applies must comply with the order, unless the person has a reasonable excuse.

610 Contravention of prohibition order - A person to whom a prohibition order applies must comply with the order, unless the person has a reasonable excuse.

* Column 3, schedule 4 of the HVNL currently only extends executive officer liability to section 93(1) 'Tamper with a speed limiter' and not to sections 93(2) or (3). All jurisdictions consider that sections 93(2) and (3) satisfy all the elements of principle 4 as identified in the COAG Guideline criteria.

Offences to be retained for assessment based on the outcomes of the Roadworthiness Review**

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<tbody>
<tr>
<td>1</td>
<td>Chapter 3: Vehicle Operations – standards and safety</td>
<td>60(1)(a) Compliance with heavy vehicle standards</td>
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<td>2</td>
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<td>60(1)(b) Compliance with heavy vehicle standards</td>
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<td>Chapter 4: Vehicle Operations – mass, dimension and loading</td>
<td>81 (1) Contravening condition of vehicle standards exemption</td>
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<td>4</td>
<td>Chapter 4: Vehicle Operations – mass, dimension and loading</td>
<td>81(2) Contravening condition of vehicle standards exemption</td>
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<td>5</td>
<td>Chapter 4: Vehicle Operations – mass, dimension and loading</td>
<td>81(3) Contravening condition of vehicle standards</td>
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<td>6</td>
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<td>85 (1) Modifying heavy vehicle requires approval</td>
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<td>85 (2) Modifying heavy vehicle requires approval</td>
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<td>8</td>
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<td>185(2) Requirements about coupling trailers</td>
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<tr>
<td>9</td>
<td>Chapter 9: Enforcement</td>
<td>529 Using defective heavy vehicles contrary to defect vehicle Notice</td>
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</table>

**Note: S. 85 (1) (‘Modifying heavy vehicle requires approval’) does not currently attract executive officer liability, but should be reviewed with the above offences for potential inclusion.
The following table lists the existing role specific obligations of the HVNL applicable to COR parties and identifies the parties to whom each existing duty applies:

# Chain of responsibility offences

* Deemed liability offences

<table>
<thead>
<tr>
<th>Section Number and Provision</th>
<th>Executing Officer</th>
<th>Operator</th>
<th>Prime Contractor</th>
<th>Employer</th>
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<td>Chapter 2: Registration</td>
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<td>Chapter 3: Vehicle Operations – standards and safety</td>
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<td>82(3) Keeping relevant document while driving under vehicle standards exemption (notice) – If the driver of a heavy vehicle commits an offence against subsection (2), each relevant party for the driver is taken to have committed an offence against this subsection. # *</td>
<td>Operator</td>
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<td>83(3) Keeping copy of permit while driving under vehicle standards exemption (permit) – If the driver of a heavy vehicle commits an offence against subsection (1), each relevant party for the driver is taken to have committed an offence against this subsection. # *</td>
<td>Operator</td>
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<td>Chapter 4: Vehicle Operations – mass, dimension and loading</td>
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<td>132(3) Keeping relevant document while driving under mass or dimension exemption (notice) If the driver of a class 1 heavy vehicle or class 3 heavy vehicle commits an offence against subsection (2), each relevant party for the driver is taken to have committed an offence against this subsection. # *</td>
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<td>Consignor</td>
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<tr>
<td>133(3) Keeping copy of permit while driving under mass or dimension exemption (permit) – If the driver of a class 1 heavy vehicle or class 3 heavy vehicle commits an offence against subsection (1), each relevant party for the driver is taken to have committed an offence against this subsection.</td>
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<td>151(3) Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice) – If the driver of a class 2 heavy vehicle commits an offence against subsection (2), each relevant party for the driver is taken to have committed an offence against this subsection.</td>
<td>Operator</td>
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<td>152(3) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit) – If the driver of a class 2 heavy vehicle commits an offence against subsection (1), each relevant party for the driver is taken to have committed an offence against this subsection.</td>
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<td>153(2) Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation – If the driver of a class 2 heavy vehicle commits an offence against subsection (1), each relevant party for the driver is taken to have committed an offence against this subsection.</td>
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<td>Executive Officer</td>
<td>Operator</td>
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<td>Employer</td>
<td>Schedules</td>
<td>Consignor</td>
<td>Consignee</td>
<td>Receiver</td>
<td>Loading Manager</td>
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<td>183(2) Liability of employer etc. for driver’s contravention of mass, dimension or loading requirement – (1)</td>
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<td>Operator</td>
<td>Prime Contractor</td>
<td>Employer</td>
<td>Consignor</td>
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<td>This section applies to an offence against section 96, 102 or 111 (a relevant offence). (2) If a relevant offence is committed in relation to a heavy vehicle, each of the following persons is taken to have committed an offence against this subsection— (a) an employer of the driver of the vehicle if the driver is an employed driver; (b) a prime contractor of the driver of the vehicle if the driver is a self-employed driver; (c) an operator of the vehicle or, if it is a combination, an operator of a vehicle in the combination; (d) a consignor of any goods for road transport using the vehicle that are in the vehicle; (e) a packer of any goods in the vehicle; (f) a loading manager for any goods in the vehicle; (g) a loader of any goods in the vehicle.</td>
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<p>| 186(2) False or misleading transport documentation for goods – Each consignor of the goods commits an offence if the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular. | Executive Officer | Consignor | | | | | | | | | | | | |
| 186(3) False or misleading transport documentation for goods – Each packer of the goods commits an offence if— (a) the goods are packed in Australia in a freight container or other container, or in a package or on a pallet, for road transport; and (b) the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular. | Executive Officer | | | | | | | | | | | | | |</p>
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<thead>
<tr>
<th>Section Number and Provision</th>
<th>Executive Officer</th>
<th>Operator</th>
<th>Prime Contractor</th>
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<th>Scheduler</th>
<th>Consignor</th>
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<th>Unloader</th>
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<tr>
<td>186(4) False or misleading transport documentation for goods – Each loading manager for, or loader of, the goods commits an offence if— (a) the goods are loaded onto a heavy vehicle for road transport; and (b) the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular</td>
<td>Executive Officer</td>
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<td>Loading Manager</td>
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<td>186(5) False or misleading transport documentation for goods – Each receiver of the goods in Australia commits an offence if— (a) the goods are packed outside Australia in a freight container or other container, or in a package or on a pallet, for road transport; and (b) the transport documentation for the consignment in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular</td>
<td>Executive Officer</td>
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<td>187(2) False or misleading information in container weight declaration – The responsible entity for the freight container commits an offence if— (a) the responsible entity gives the container to an operator of a heavy vehicle; And (b) the container weight declaration for the container contains information that is false or misleading in a material particular.</td>
<td>Executive Officer</td>
<td>Operator</td>
<td>Prime Contractor</td>
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<td>Operator</td>
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<td>Schedules</td>
<td>Consignor</td>
<td>Consignee</td>
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<td>187(3) False or misleading information in container weight declaration – An operator of a heavy vehicle commits an offence if— (a) the operator arranges for the freight container to be transported by road using the vehicle; and (b) the container weight declaration for the container given to the vehicle’s driver contains information that is false or misleading in a material particular.</td>
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<td>190(1) Duty of responsible entity – The responsible entity for the freight container must not permit an operator or driver of a heavy vehicle to transport the freight container by road using the vehicle unless the operator or driver has been provided with a complying container weight declaration for the freight container.</td>
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<td>191(1) Duty of operator – An operator of a heavy vehicle must not permit the vehicle’s driver to transport the freight container by road using the vehicle unless the driver has been provided with a complying container weight declaration for the freight container.</td>
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<td>191(3) Duty of operator – (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.</td>
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<td>193(2) Weight of freight container exceeding weight stated on container or safety approval plate – Each consignor or packer of the goods commits an offence if the weight of the container exceeds the maximum gross weight marked on the container or the container’s safety approval plate.</td>
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<td>194(1) Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement – A person who is a consignee of goods consigned for road transport using a heavy vehicle commits an offence if— (a) the person does an act or makes an omission; and (b) the doing of the act or making of the omission results, or is likely to result, in inducing or rewarding a contravention of a mass, dimension or loading requirement; and (c) the person— (i) intends that result; or (ii) is reckless or negligent as to the matter mentioned in paragraph (b).</td>
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Chapter 5: Vehicle operations – speeding

204(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit – A relevant party for the driver of a heavy vehicle must take all reasonable steps to ensure the relevant party’s business practices will not cause the driver to exceed a speed limit applying to the driver. | Executive Officer | Operator | Prime Contractor | Employer |          |           |           |          |                |        |        |          |        |        |
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<tr>
<td>205 Duty of employer not to cause driver to drive if particular requirements not complied with – An employer of an employed driver of a heavy vehicle must not cause the driver to drive the heavy vehicle unless the employer has complied with section 204; and the employer is reasonably satisfied each scheduler for the vehicle has complied with sections 207 and 208.</td>
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<td>206(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with – The prime contractor, or operator, must not cause the driver to drive the heavy vehicle unless the prime contractor, or operator, has complied with section 204; and the prime contractor, or operator, is reasonably satisfied each scheduler for the vehicle has complied with sections 207 and 208.</td>
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<td>207(1) Duty to ensure driver’s schedule will not cause driver to exceed speed limit – A scheduler for a heavy vehicle must take all reasonable steps to ensure the schedule for the vehicle’s driver will not cause the driver to exceed a speed limit applying to the driver.</td>
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<td>208(1) Duty not to cause driver to drive if particular requirements not complied with – A scheduler for a heavy vehicle must not cause the vehicle’s driver to drive the vehicle unless— the scheduler has complied with section 207; and the driver’s schedule for driving the vehicle allows— for compliance with all speed limits; and for the driver to take all required rest in compliance with all laws regulating the driver’s work times and rest times; and for traffic conditions and other delays that could reasonably be expected.</td>
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### Primary Duties for Chain of Responsibility Parties and Executive Officer Liability

#### Discussion Paper

July 2015

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<th>Section Number and Provision</th>
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<th>Operator</th>
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<tbody>
<tr>
<td>209(1) Duty to ensure loading arrangements will not cause driver to exceed speed limit – A loading manager must take all reasonable steps to ensure the arrangements for loading goods onto and unloading goods from heavy vehicles will not cause the driver of a heavy vehicle to exceed a speed limit applying to the driver.</td>
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<td>212(1) Duty to ensure terms of consignment will not cause driver to exceed speed limit – A commercial consignor or a consignee of goods must take all reasonable steps to ensure the terms of consignment will not cause the relevant driver to exceed a speed limit applying to the driver.</td>
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<td>212(2) Duty to ensure terms of consignment will not cause driver to exceed speed limit A commercial consignor or a consignee of goods must take all reasonable steps to ensure the terms of consignment will not cause a relevant party for the relevant driver to cause the driver to exceed a speed limit applying to the driver.</td>
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<td>213 Duty not to make a demand that may result in driver exceeding the speed limit – A commercial consignor or a consignee of goods must not make a demand that affects, or may affect, a time in a schedule for the transport of the consigned goods unless—the consignor or consignee has complied with section 212; and the consignor or consignee is reasonably satisfied the making of the demand will not cause a person to contravene section 207 or 208.</td>
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<td>215 Particular requests etc. prohibited – A person must not ask, direct or require, directly or indirectly, the driver of a heavy vehicle, or a party in the chain of responsibility for a heavy vehicle, to do something the person knows, or ought reasonably to know, would have the effect of causing the driver to exceed a speed limit applying to the driver.</td>
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<td>216(1) Particular contracts etc. prohibited – A person must not enter into a contract or other agreement with the driver of a heavy vehicle, or with a party in the chain of responsibility for a heavy vehicle, that the person knows, or ought reasonably to know, would have the effect of causing the vehicle’s driver to exceed a speed limit applying to the driver.</td>
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<td>216(2) Particular contracts etc. prohibited – A person must not enter into a contract or other agreement with the driver of a heavy vehicle, or with a party in the chain of responsibility for a heavy vehicle, that the person knows, or ought reasonably to know, would encourage or provide an incentive for the vehicle’s driver, or a party in the chain of responsibility for the vehicle to cause the vehicle’s driver, to exceed a speed limit applying to the driver.</td>
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<td>219(1) Liability of employer etc. for speeding offence – If a speeding offence is committed in relation to a heavy vehicle, an employer of the driver if the driver is an employed driver, a prime contractor of the driver if the driver is a self-employed driver or an operator of the vehicle if the driver is making a journey for the operator, is taken to have committed an offence# *</td>
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<td>Chapter 6: Vehicle operations – driver fatigue</td>
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<td>228 Duty of driver to avoid driving while fatigued – A person must not drive a fatigue-regulated heavy vehicle on a road while the person is impaired by fatigue.</td>
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<td>229(1) Duty of party in the chain of responsibility to prevent driver driving while fatigued – A party in the chain of responsibility (a party) for a fatigue-regulated heavy vehicle must take all reasonable steps to ensure a person (the other person) does not drive the vehicle on a road while the other person is impaired by fatigue.</td>
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<td>230(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued – A relevant party for the driver of a fatigue-regulated heavy vehicle must take all reasonable steps to ensure the relevant party’s business practices will not cause the driver to— (a) drive while impaired by fatigue; or (b) drive while in breach of the driver’s work and rest hours option; or (c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</td>
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<td>231 Duty of employer not to cause driver to drive if particular requirements not complied with – An employer of an employed driver of a fatigue-regulated heavy vehicle must not cause the driver to drive the vehicle unless— the employer has complied with section 230; and the employer, after making reasonable inquiries, is satisfied each scheduler for the vehicle has complied with Division 4.</td>
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<table>
<thead>
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<th>Section Number and Provision</th>
<th>Executi ve Officer</th>
<th>Operato r</th>
<th>Prime Contract or</th>
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<tr>
<td>232(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with - The prime contractor or operator must not cause the driver to drive the fatigue-regulated heavy vehicle, or enter into a contract or other agreement with the driver to that effect, unless - the prime contractor or operator has complied with section 230; and the prime contractor or operator, after making reasonable inquiries, is satisfied each scheduler for the vehicle has complied with Division 4.</td>
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<td>233(1) Duty to ensure driver's schedule will not cause driver to drive while fatigued - A scheduler for a fatigue-regulated heavy vehicle must take all reasonable steps to ensure the schedule for the vehicle's driver will not cause the driver to - drive while impaired by fatigue; or drive while in breach of the driver's work and rest hours option; or drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.</td>
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<td>234(1) Duty not to cause driver to drive if particular requirements not complied with - A scheduler for a fatigue-regulated heavy vehicle must not cause the vehicle's driver to drive the vehicle unless - the scheduler has complied with section 233; and the schedule for the vehicle's driver allows for - the driver to have the rest time required under the driver's work and rest hours option; and traffic conditions and other delays that could reasonably be expected.</td>
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<td>235(1) Duty to ensure terms of consignment will not cause driver to drive while fatigued — A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must take all reasonable steps to ensure the terms of consignment will not result in, encourage or provide an incentive to the vehicle’s driver to drive while impaired by fatigue; or drive while in breach of the driver’s work and rest hours option; or drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</td>
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<td>235(2) Duty to ensure terms of consignment will not cause driver to drive while fatigued — A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must take all reasonable steps to ensure the terms of consignment will not result in, encourage or provide an incentive to a relevant party for the vehicle’s driver to cause the driver to— (a) drive while impaired by fatigue; or (b) drive while in breach of the driver’s work and rest hours option; or (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</td>
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<td>236(1) Duty not to cause driver to drive if particular requirements not complied with – A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must not cause the vehicle’s driver to drive the vehicle, or enter into a contract or other agreement to that effect, the consignor or consignee has complied with section 235; and the consignor or consignee, after making reasonable inquiries, is satisfied each relevant party for the driver has complied with Division 3; and each scheduler for the vehicle has complied with Division 4. #</td>
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<td>237(1) Duty not to make a demand that may result in driver driving while fatigued – A consignor or consignee of goods for transport by a fatigue-regulated heavy vehicle must not make a demand that affects, or may affect, a time in a schedule for the transport of the consigned goods and that may cause the vehicle’s driver to— (a) drive while impaired by fatigue; or (b) drive while in breach of the driver’s work and rest hours option; or (c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option. #</td>
<td>Executive Officer</td>
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</table>
### Section Number and Provision

<table>
<thead>
<tr>
<th>Section Number and Provision</th>
<th>Executive Officer</th>
<th>Operator</th>
<th>Prime Contractor</th>
<th>Employer</th>
<th>Scheduling</th>
<th>Consignor</th>
<th>Consignee</th>
<th>Receiver</th>
<th>Loading Manager</th>
<th>Loader</th>
<th>Packer</th>
<th>Unloader</th>
<th>Driver</th>
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<tbody>
<tr>
<td>238(1) Duty to ensure loading arrangements will not cause driver to drive while fatigued — A loading manager must take all reasonable steps to ensure the arrangements for loading goods onto and unloading goods from fatigue-regulated heavy vehicles at or from the premises in relation to which the person is a loading manager will not cause the driver of a fatigue-regulated heavy vehicle to— (a) drive while impaired by fatigue; or (b) drive while in breach of the driver’s work and rest hours option; or (c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</td>
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<td>239(2) Duty to ensure drivers can rest in particular Circumstances — The loading manager must take all reasonable steps to ensure the driver is able to rest while waiting for the goods to be loaded onto or unloaded from the fatigue-regulated heavy vehicle.</td>
<td>Executive Officer</td>
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<tr>
<td>240 Particular requests prohibited — A person must not ask, direct or require, directly or indirectly, the driver of a fatigue-regulated heavy vehicle, or a party in the chain of responsibility for a fatigue-regulated heavy vehicle, to do or not do something the person knows, or ought reasonably to know, would have the effect of causing the vehicle’s driver to— (a) drive while impaired by fatigue; or (b) drive while in breach of the driver’s work and rest hours option; or (c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</td>
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<td>Section Number and Provision</td>
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<td>241(1) Particular contracts prohibited – A person must not enter into a contract or other agreement with the driver of a fatigue-regulated heavy vehicle, or with a party in the chain of responsibility for a fatigue-regulated heavy vehicle, that the person knows, or ought reasonably to know, would have the effect of causing the vehicle’s driver to— (a) drive while impaired by fatigue; or (b) drive while in breach of the driver’s work and rest hours option; or (c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</td>
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<td>241(2) Particular contracts prohibited – A person must not enter into a contract or other agreement with the driver of a fatigue-regulated heavy vehicle, or with a party in the chain of responsibility for a fatigue-regulated heavy vehicle that the person knows, or ought reasonably to know, would encourage or provide an incentive for the vehicle’s driver, or a party in the chain of responsibility for the vehicle to cause the vehicle’s driver, to— (a) drive while impaired by fatigue; or (b) drive while in breach of the driver’s work and rest hours option; or (c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver’s work and rest hours option.</td>
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<td>Section Number and Provision</td>
<td>Executive Officer</td>
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<td>Employer</td>
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<td>261(2) Liability of employer etc. for driver’s contravention of maximum work requirement or minimum rest requirement – If the driver of a fatigue-regulated heavy vehicle is convicted of an offence involving a contravention of a maximum work requirement or minimum rest requirement applying to the driver under Division 2, 3, 4 or 5 (the relevant offence), each of the following persons is also taken to have committed the offence against this subsection— (a) an employer of the driver if the driver is an employed driver; (b) a prime contractor of the driver if the driver is a self-employed driver; (c) an operator of the vehicle; (d) a scheduler for the vehicle; (e) a consignor of any goods for transport by the vehicle that are in the vehicle; (f) a consignee of any goods in the vehicle; (g) a loading manager for any goods in the vehicle; (h) a loader of any goods in the vehicle; (i) an unloader of goods in the vehicle.</td>
<td>Executive Officer</td>
<td>Operator</td>
<td>Prime Contractor</td>
<td>Employer</td>
<td>Schedule</td>
<td>Consignor</td>
<td>Consignee</td>
<td>Receiver</td>
<td>Loading Manager</td>
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<td>Driver</td>
<td>Person</td>
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<td>264(2) Duty of employer, prime contractor, operator and scheduler to ensure driver compliance – A relevant party for the driver must— ensure the driver does not drive a fatigue-regulated heavy vehicle after making the change unless the driver has complied with section 263; and take whatever action is necessary to ensure the driver can comply with his or her obligations in relation to the change.</td>
<td>Executive Officer</td>
<td>Operator</td>
<td>Prime Contractor</td>
<td>Employer</td>
<td>Schedule</td>
<td>Consignor</td>
<td>Consignee</td>
<td>Receiver</td>
<td>Loading Manager</td>
<td>Loader</td>
<td>Packer</td>
<td>Unloader</td>
<td>Driver</td>
<td>Person</td>
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<td>287(3) Keeping relevant document while operating under work and rest hours exemption (notice) – If the driver of a fatigue-regulated heavy vehicle commits an offence against subsection (2), each relevant party for the driver is also taken to have committed the offence.</td>
<td>Operator</td>
<td>Prime Contractor</td>
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<td>Section Number and Provision</td>
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<td>Consignee</td>
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<td>Loading Manager</td>
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<td>288(3) Keeping copy of permit while driving under work and rest hours exemption (permit) – If the driver commits an offence against subsection (1), each relevant party for the driver is also taken to have committed the offence. # *</td>
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<td>Operator</td>
<td>Prime Contract or</td>
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<td>315(2) Liability of employer etc. for driver’s contravention of particular requirements of this Division – (1) This section applies to an offence committed because the driver of a fatigue regulated heavy vehicle contravened a provision of Subdivision 1, 2, 3 or 4 (a relevant offence), (2) If a relevant offence is committed involving the driver of a fatigue-regulated heavy vehicle, each of the following persons is taken to have committed an offence against this subsection. # *</td>
<td>Executive Officer</td>
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<td>376(3) Keeping relevant document while operating under work diary exemption (notice) – If an offence is committed against subsection (2) involving the driver of a fatigue-regulated heavy vehicle, each relevant party for the driver is taken to have committed an offence against this subsection. # *</td>
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<td>Operator</td>
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**Chapter 7: Intelligent access**

**Chapter 8: Accreditation**

| 468(3) Driver must carry accreditation details – If an offence is committed against subsection (1) involving the driver of a heavy vehicle, the operator of the vehicle is taken to have committed an offence against this subsection. # * | Operator | | | | | | | | | | | | | |

**Chapter 9: Enforcement**
<table>
<thead>
<tr>
<th>Section Number and Provision</th>
<th>Executing Officer</th>
<th>Operator</th>
<th>Prime Contractor</th>
<th>Employer</th>
<th>Scheduler</th>
<th>Consignor</th>
<th>Consignee</th>
<th>Receiver</th>
<th>Loading Manager</th>
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<tr>
<td>Chapter 10: Sanctions and provisions about liability for offences</td>
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<td>Chapter 12: Administration</td>
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<td>Chapter 13: General</td>
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<td>703(1) False or misleading information given by responsible person to another responsible person – A responsible person for a heavy vehicle (the information giver) must not give another responsible person for a heavy vehicle (the affected person) information the information giver knows, or ought reasonably to know, is false or misleading in a material particular.</td>
<td>Operator</td>
<td>Prime Contractor</td>
<td>Employer</td>
<td>Scheduler</td>
<td>Consignor</td>
<td>Consignee</td>
<td>Receiver</td>
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<td>Packer</td>
<td>Unloader</td>
<td>Driver</td>
<td>Person</td>
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<tr>
<td>703(2) False or misleading information given by responsible person to another responsible person – A responsible person for a heavy vehicle (also the information giver) must not give another responsible person for a heavy vehicle (the affected person) information that is false or misleading in a material particular if the information giver does so recklessly as to whether the information is false or misleading in the material particular.</td>
<td>Operator</td>
<td>Prime Contractor</td>
<td>Employer</td>
<td>Scheduler</td>
<td>Consignor</td>
<td>Consignee</td>
<td>Receiver</td>
<td>Loading Manager</td>
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### Appendix C: Acronyms, abbreviations and glossary

<table>
<thead>
<tr>
<th>Acronym / abbreviation</th>
<th>Expanded term</th>
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<tbody>
<tr>
<td>ALRTA</td>
<td>Australian Livestock &amp; Rural Transporters Association</td>
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<td>ANZPAA</td>
<td>Australia New Zealand Police Advisory Agency</td>
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<tr>
<td>ATA</td>
<td>Australian Trucking Association</td>
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<tr>
<td>COAG</td>
<td>Council of Australian Governments</td>
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<tr>
<td>Consign and consignor</td>
<td>A person consigns goods, and is a consignor of goods, for road transport using a heavy vehicle, if— (a) the person has consented to being, and is, named or otherwise identified as a consignor of the goods in the transport documentation relating to the road transport of the goods; or (b) there is no person as described in paragraph (a) and— (i) the person engages an operator of the vehicle, either directly or indirectly or through an agent or other intermediary, to transport the goods by road; or (ii) there is no person as described in subparagraph (i) and the person has possession of, or control over, the goods immediately before the goods are transported by road; or (iii) there is no person as described in subparagraph (i) or (ii) and the person loads a vehicle with the goods, for road transport, at a place— (A) where goods in bulk are stored, temporarily held or otherwise held waiting collection; And (B) that is usually unattended, other than by the vehicle’s driver or someone else necessary for the normal use of the vehicle, during loading; or (c) there is no person as described in paragraph (a) or (b) and the goods are imported into Australia and the person is the importer of the goods (Queensland Government, 2014, p. 37).</td>
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<td>Consignee</td>
<td>(a) means a person who— (i) has consented to being, and is, named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the road transport of the goods; or (ii) actually receives the goods after completion of their road transport; but (b) does not include a person who merely unloads the goods (Queensland Government, 2014, p. 37).</td>
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<tr>
<td>CoR</td>
<td>Chain of responsibility</td>
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<tr>
<td>CVIAQ</td>
<td>Commercial Vehicle Industry Association of Queensland</td>
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<tr>
<td>Deemed liability</td>
<td>If the offence is committed by a driver then the off-road party nominated in the offence will also be deemed to have also committed the offence unless they can prove that all reasonable steps were taken to prevent the breach from occurring.</td>
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<td>Double jeopardy</td>
<td>a procedural defence that forbids an accused from being tried for an offence if he or she has previously been acquitted or convicted of the same offence or if the accused could have been convicted at the first trial of the offence with</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<td>which he or she is charged at the second (Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, 2003).</td>
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<td>DPTI (SA)</td>
<td>Department of Planning, Transport and Infrastructure (South Australia)</td>
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<td>Due diligence</td>
<td>A standard of care characterised by the degree of prudence, activity, or attention, to be expected from, and ordinarily exercised by, a reasonable person under the particular circumstances (Office of the Australian Safety and Competition Council, 2008, p. vii).</td>
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<tr>
<td>Employer</td>
<td>Means a person who employs someone else (Queensland Government, 2014, p. 37)</td>
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<tr>
<td>EOL</td>
<td>Executive Officer Liability</td>
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<tr>
<td>Executive officer</td>
<td>Of a corporation, means— (a) a director of the corporation; or (b) 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 (Queensland Government, 2014, p. 37).</td>
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<tr>
<td>Executive Officer Liability</td>
<td>Refers to provisions that impose individual criminal liability on directors or other corporate officers as a consequence of the corporation having committed some offence (the Underlying Offence), beyond the normal liability that applies to a person who directly commits, or who is an ordinary accessory to, the Underlying Offence (COAG, 2012).</td>
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<tr>
<td>HVNL</td>
<td>Heavy Vehicle National Law</td>
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<tr>
<td>Load and Loader</td>
<td>A person loads goods in a heavy vehicle, and is a loader of goods in a heavy vehicle, if the person is a person who— (a) loads the vehicle, or any container that is in or part of the vehicle, with the goods for road transport; or (b) loads the vehicle with a freight container, whether or not it contains goods, for road transport (Queensland Government, 2014, p. 37).</td>
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<tr>
<td>Loading manager</td>
<td>A person is a loading manager for goods in heavy vehicles, other than for the purposes of Chapter 4, if— (a) goods are— (i) loaded onto a heavy vehicle at regular loading or unloading premises for heavy vehicles; or (ii) unloaded from a heavy vehicle at regular loading or unloading premises for heavy vehicles; and (b) the person (i) is the person who manages, or is responsible for the operation of, the premises; or (ii) has been assigned by a person mentioned in subparagraph (i) as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of goods at the premises. For the purposes of Chapter 4, a person is a loading manager for goods in a heavy vehicle if— (a) the goods are loaded onto the heavy vehicle at regular loading or unloading premises for heavy vehicles; and (b) the person— (i) is the person who manages, or is responsible for the operation of, the premises; or (ii) has been assigned by a person mentioned in subparagraph (i) as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader of the goods (Queensland Government, 2014, p. 37).</td>
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<td>MSNL</td>
<td>Marine Safety (Domestic Commercial Vessel) National Law 2012</td>
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<tr>
<td>Model WH&amp;S Act</td>
<td>Model Work Health and Safety Act (Cth)</td>
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<tr>
<td>National Safety Laws</td>
<td>Collective term used in this discussion paper for the Model Work Health and Safety Act (Cth), the Rail Safety National Law, and the Marine Safety (Domestic Commercial Vessel) National Law</td>
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<td>NatRoad</td>
<td>National Road Transporters Association</td>
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<td>NHVR</td>
<td>National Heavy Vehicle Regulator</td>
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<td>NSW</td>
<td>New South Wales</td>
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<td>NSW RMS</td>
<td>New South Wales Roads and Maritime Services</td>
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<tr>
<td>NTC</td>
<td>National Transport Commission</td>
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<tr>
<td>OBPR</td>
<td>Office of Best Practice Regulation</td>
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<tr>
<td>Operator</td>
<td>A person is an operator of the vehicle or combination, if the person is responsible for controlling or directing the use of— (a) for a vehicle (including a vehicle in a combination)—the vehicle; or (b) for a combination—the towing vehicle in the combination. (Queensland Government, 2014, p. 37)</td>
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<tr>
<td>Packer</td>
<td>A person is a packer of goods, if the person— (a) puts the goods in packaging, even if that packaging is already on a vehicle; or (b) assembles the goods as packaged goods in an outer packaging, even if that packaging is already on a vehicle; or (c) supervises an activity mentioned in paragraph (a) or (b); or (d) manages or controls an activity mentioned in paragraph (a), (b) or (c). (Queensland Government, 2014, p. 37)</td>
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</table>
| Party in the chain of responsibility | For the purposes of Chapter 5 ‘Vehicle operations—speeding’:  
(a) an employer of the vehicle’s driver if the driver is an employed driver;  
(b) a prime contractor for the vehicle’s driver if the driver is a self-employed driver;  
(c) an operator of the vehicle;  
(d) a scheduler for the vehicle;  
(e) a loading manager for any goods in the vehicle;  
(f) a commercial consignor of any goods for transport by the vehicle that are in the vehicle;  
(g) a consignee of any goods in the vehicle, if Division 4 applies to the consignee.  
For the purposes of Chapter 6 ‘Vehicle operations—driver fatigue  
(a) an employer of the vehicle’s driver;  
(b) a prime contractor for the vehicle’s driver;  
(c) an operator of the vehicle;  
(d) a scheduler for the vehicle;  
(e) a consignor of any goods for transport by the vehicle that are in the vehicle;  
(f) a consignee of any goods in the vehicle;  
(g) a loader of any goods in the vehicle;  
(h) an unloader of any goods in the vehicle. (Queensland Government, 2014, p. 37) |
| Prime contractor, | Means a person who engages the driver to drive the vehicle under a contract for services. For example, a logistics business that engages a subcontractor to transport goods. (Queensland Government, 2014, p. 37) |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------)-- |
| QLD             | Queensland                                                                                                                                   |
| RIS             | regulatory impact statement                                                                                                                   |
| RMS             | Roads and Maritime Services (NSW)                                                                                                              |
| RSNL            | Rail Safety National Law                                                                                                                       |
| SA              | South Australia                                                                                                                             |
| Scheduler       | Means a person who— (a) schedules the transport of any goods or passengers by the vehicle; or (b) schedules the work times and rest times of the vehicle’s driver (Queensland Government, 2014, p. 37). |
| Standard of care | The degree of prudence or caution required of an individual who is under a duty of care (Hatcher, 2008). |
| TfNSW           | Transport for New South Wales                                                                                                                  |
| TISOC           | Transport and Infrastructure Senior Officials Committee                                                                                         |
| TMR             | Transport and Main Roads (Qld)                                                                                                                  |
| Unloader        | A person is an unloader of goods in a heavy vehicle, if the person is a person who— (a) unloads from the vehicle, or any container that is in or part of the vehicle, goods that have been transported by road; or (b) unloads from the vehicle a freight container, whether or not it contains goods, that has been transported by road (Queensland Government, 2014, p. 37). |
| VIC             | Victoria                                                                                                                                     |
Appendix D: References


