



# National Transport Reform Implementation Monitoring Report

Report to the Transport and Infrastructure Council

2018



National Transport Commission

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# Abbreviations

ACT	Australian Capital Territory
ATSB	Australian Transport Safety Bureau
COAG	Council of Australian Governments
HVNL	Heavy Vehicle National Law
NHVR	National Heavy Vehicle Regulator
NSW	New South Wales
NT	Northern Territory
NTC	National Transport Commission
ONRSR	Office of the National Rail Safety Regulator
QLD	Queensland
RSNL	Rail Safety National Law
SA	South Australia
TAS	Tasmania
VIC	Victoria
WA	Western Australia

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

# Executive summary

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

Each year the NTC provides a progress report to the Council on the implementation status of nationally agreed reforms. The 2018 *National Transport Reform Implementation Monitoring Report* is the sixth report delivered. The reporting period is from 1 July 2017 to 30 June 2018. Any implementation progress after 30 June 2018 will be included in the 2019 monitoring report.

## Key points of this report

The jurisdictions have made good progress over the 2017–18 period with implementing agreed reforms. This report is the best result of the six reports published to date, with ‘traffic light’ indicators in the report showing actions which are either fully implemented or on track.

For the applied laws, all the participating jurisdictions to both the Heavy Vehicle National Law and the Rail Safety National Law have implemented the amendment packages or are on track to implement them. The applied law approach used for these reforms contributes to this result.

For the model laws, it is in dangerous goods where the ACT and the NT should move quickly to implement the amendment packages to realise the productivity benefits.

## Heavy vehicle regulatory reform

The 5<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*, was passed by the Queensland Parliament (host jurisdiction) in December 2016.

The 6<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018*, was passed by the Queensland Parliament in June 2018.

The 7<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law Amendment Bill 2018* was approved by Ministers in November 2017 and was introduced into Queensland Parliament in May 2018.

The Council agreed that a common implementation date in the second half of 2018 should apply to all chain of responsibility and executive officer liability amendments included in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages.

The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages include changes unrelated to chain of responsibility and executive officer liability that have already commenced in participating jurisdictions. Chapter 2 (amendments to chain of responsibility and executive officer liability) is expected to commence by proclamation in the second half of 2018.

## Heavy vehicle charges

Heavy vehicle charges are a combination of a fixed annual registration and fuel-based road user charges that ensures expenditure on roads allocated to heavy vehicles is recovered by governments. In November 2017, Ministers agreed to freeze heavy vehicle charges at 2017–18 levels for a two-year period (2018-19 and 2019-20). In November 2017, Ministers also approved the *Heavy Vehicle Charges (Annual Registration Charges) Amendment Model Law 2017* scheduled to commence on or by 1 July 2018.

## **Amendments to the Rail Safety National Law**

All jurisdictions, with the exception of Western Australia have implemented the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> amendment packages for the Rail Safety National Law. Mirror legislation is applied in Western Australia with the WA Parliament required to pass any amendments. This approach means amendments to the Rail Safety National Law will be routinely delayed, currently waiting for up to two years to apply in Western Australia. This delay results in the Office of the National Rail Safety Regulator and industry working under different legislation in Western Australia compared with the rest of Australia.

## **Australian Road Rules**

The Australian Road Rules (the road rules) contain the rules of the road for motorists, motorcyclists, cyclists, pedestrians, passengers and others. Most jurisdictions have implemented the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> amendment packages. The 12<sup>th</sup> amendment to the Australian Road Rules was approved in November 2017.

Given that most of these amendment packages are relatively minor in nature and improve clarity in the road rules, the variation in implementation dates for the Northern Territory and Western Australia is unlikely to impact safety or productivity.

## **Australian Light Vehicle Standards Rules**

The Australian Light Vehicle Standards Rules supersede the Australian Vehicle Standards Rules, which covered both light and heavy vehicle in-service standards. There was no change in policy when the Australian Light Vehicle Standards Rules were introduced. Therefore, a failure to adopt the Australian Light Vehicle Standards Rules had no practical effect.

The nature of the subsequent amendments means the impact of different implementation dates for jurisdictions will be minor because, even if their in-service standards are based on the Australian Vehicle Standards Rules, they have most of the Australian Light Vehicle Standards Rules already.

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

Recommendations from the Review of the Australian Road Rules and Australian Vehicle Standards Rules were approved by the Council in 2013. Four of the five recommendations were completed by the end of 2015. Six of the eight states and territories have fully implemented the last recommendation. Tasmania and Western Australia will progress implementation when resources are available. The nature of the recommendation means the impact of different implementation dates is minor.

## **Australian Dangerous Goods**

All jurisdictions apart from the Australian Capital Territory and the Northern Territory have implemented the Dangerous Goods model regulations and Code. These territories will progress implementation when resources are available.

The impact of different implementation dates is likely to be minor for operators who transport bulk dangerous goods. However, reforms relating to the transport of limited quantities of dangerous goods that provide productivity benefits will not be fully realised for any movements that originate, terminate or pass through either territory. National operators will have to wait for national consistency before amending operating procedures and realising benefits for Australians.

## **Review of Regulatory Telematics**

In May 2018, the Council approved the six recommendations for improving regulatory telematics. One implementation task is complete, four tasks are on track to be completed by the due date and one task is delayed.

## **Performance-Based Standards Reform Implementation Plan**

In May 2018, Council agreed to four recommendations to improve the Performance-Based Standards scheme for heavy vehicles. The implementation tasks are underway.

# 1 Introduction

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

Each year, the NTC provides a progress report to the Council on the implementation status of nationally approved transport reforms. The reporting period is from 1 July 2017 to 30 June 2018. Any implementation progress after 30 June 2018 will be reported in the 2019 monitoring report.

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

## Purpose

This report provides the Council with an assessment of the implementation progress of national transport reforms and projects.

This report provides stakeholders with information about reform implementation. It also helps explain implementation issues, successes and departure from agreed recommendations.

## Method

From June to August 2018, the Commonwealth, states and territories, the National Heavy Vehicle Regulator (NHVR), the Office of the National Rail Safety Regulator (ONRSR) and agencies regulating the transport of dangerous goods provided information and implementation progress updates to the NTC to inform this report.

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

## Speeding up the regulatory reform process

The NTC has worked to after scheduling of changes to model national laws, which greatly expedites the process from Council approval to an authoritative version of the model law that jurisdictions can adopt. This is making it easier for national adoption of model law, and reducing the likelihood of different states having different versions of the law over time.

## Reforms and projects for monitoring

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

During 2017–18 the Council approved five reforms that are included for monitoring in this report:

- 7<sup>th</sup> amendment package for the inclusion in the Heavy Vehicle Law Amendment Act
- 12<sup>th</sup> amendment package to the Australian Road Rules
- Updated Model Subordinate Law on the Transport of Dangerous Goods and amendments to the Code for the Transport of Dangerous Goods Code by Road and Rail in Australia
- Review of regulatory telematics
- Performance-Based Standards implementation plan.

## Structure of the report

This report is divided into four areas:

- **Heavy vehicle reforms** – monitors the heavy vehicle regulatory reform and amendments to the Heavy Vehicle National Law (HVNL). This section also includes the heavy vehicle charging framework and a description of derogations.
- **Rail reforms** – monitors the amendments to the Rail Safety National Law (RSNL) and regulations.
- **Maintenance of existing reforms** – monitors implementation of the Australian Road Rules, Australian Light Vehicle Standards Rules, Australian Heavy Vehicle Standards Rules, and the Code for the Transport of Dangerous Goods by Road and Rail and model legislation. Additionally, this report includes monitoring of the implementation of the recommendations from the strategic review of the road rules and the vehicle standards, the review of regulatory telematics and the Performance-Based Standards implementation plan.
- **Derogations** – assesses derogations to the Heavy Vehicle National Law and National Rail Safety Law (Attachments 1 and 2).

## Indicator of implementation status

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

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

**Table 1. Reform implementation status indicators**

Implementation status indicator	Status definition	Progress comments required
✓	Fully implemented in line with national/model law, i.e. no material derogations  Or on track if the agreed start date is not yet reached	Describe: <ul style="list-style-type: none"> <li>when and how the final output was implemented</li> <li>if any local variations were implemented, describe the variation and how it impacts on the ability to realise the desired benefits of the national reform</li> </ul>
✓	Fully implemented with material derogations from national/model law  Or on track if the agreed start date is not yet reached	
●	Delayed implementation with intent to align with national/model law	Describe: <ul style="list-style-type: none"> <li>progress made within the last 12 months</li> <li>expected time for completion</li> <li>reasons for any delays</li> </ul>
○	Delayed implementation with intent to derogate materially from national/model law	
✂	No intent to implement, but efforts to harmonise with national/model law	Describe how non-participation will impact on the benefits of the national reform
✘	No intent to implement and no intent to harmonise with national/model law	
n/a Not applicable	The jurisdiction is not responsible for implementing the reform	No comment required

# 2 Heavy vehicle reforms

## 2.1 Heavy vehicle regulatory reform

### Key point

- All milestones are now fully implemented for those parties that agreed to the reform.

### About the reform

The heavy vehicle regulatory reform established a national regulatory system for all heavy vehicles weighing more than 4.5 tonnes, consisting of uniform laws administered by a single national regulator (Council of Australian Governments, 2011a). At the time, Western Australia and the Northern Territory stated they did not intend to implement this reform.

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

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

The last milestone from the reform agreed by the Council of Australian Governments in 2011 is: Commonwealth introduces legislation to cease new registrations under the Federal Interstate Registration Scheme (FIRS) and to repeal the scheme following passage of enabling legislation by state and territories (once a heavy vehicle register is operational).

On 10 May 2018, the Federal Parliament passed the Interstate Road Transport Legislation (Repeal) Bill 2018 which closes the FIRS to new entrants from 1 July 2018. Operators who have vehicles (including trailers) currently registered under FIRS will no longer be able to renew their registrations after 1 July 2018. Operators who registered or renewed their registration under FIRS before 1 July 2018 keep their FIRS registration rights and obligations until expiry. After 30 June 2019, no FIRS registrations will be valid.

### Implementation analysis

All milestones are now fully implemented. WA and NT stated they did not intend to implement the reform.

## 2.2 Amendments to Heavy Vehicle National Law

### Key points

- The 5<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*, was passed by the Queensland Parliament (host jurisdiction) in December 2016.
- The 6<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018*, was passed by the Queensland Parliament in June 2018.
- The 7<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law Amendment Bill 2018*, was approved by Ministers in November 2017 and was introduced into Queensland Parliament in May 2018.
- The Council agreed that a common implementation date in the second half of 2018 should apply to all chain of responsibility and executive officer liability amendments included in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages.
- The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages include changes unrelated to chain of responsibility and executive officer liability that have already commenced in participating jurisdictions.
- Chapter 2 (amendments to chain of responsibility and executive officer liability) is expected to commence by proclamation in the second half of 2018.

The 5<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* was passed by the Queensland Parliament and assented to in December 2016. Key items in the 5<sup>th</sup> amendment package include: changes to the chain of responsibility, executive officer liability obligations, investigation and enforcement powers, self-clearing defect notices, display of accreditation labels, a schedule of infringement penalties and demerit points and heavy vehicle (vehicle standards) national regulations. Chapter 3 (maintenance amendments) commenced on 1 July 2017. Chapter 2 (amendments to chain of responsibility and executive officer liability) is expected to commence by proclamation in the second half of 2018.

In May 2017, the Council approved a 6<sup>th</sup> amendment package to the HVNL: the *Heavy Vehicle National Law and Other Legislation Amendment Bill 2018*. Key items in the 6<sup>th</sup> amendment package include:

- twin-steer axle mass limit increases
- extension of executive officers' due diligence obligation to incorporate other safety related offences
- amendments to the heavy vehicle national registration provisions that will enable consolidation of heavy vehicle registration information from jurisdictions in a single database and
- heavy vehicle standards.

In November 2017, the Council approved a 7<sup>th</sup> amendment package to the HVNL, the *Heavy Vehicle National Law Amendment Bill 2018*, which was introduced into the Queensland Parliament in May 2018. The proposed amendments will legislate policy to:

- strengthen investigative and enforcement powers for authorised officers
- allow improved heavy vehicle access where mass of freight vehicles is not a constraint, and
- transfer the performance standards for load restraint to the HVNL from the NTC's Load Restraint Guide.

Tables 2 and 3 provide an overview of the progress of implementing the Heavy Vehicle National Law amendments.

**Table 2. Implementation summary of Heavy Vehicle National Law amendments**

Heavy Vehicle National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Heavy Vehicle National Law and Other Legislation Amendment Act 2016 (5 <sup>th</sup> Amendment package) (Council approved draft amendments in May 2016)	✓	✓	✓	✓	✗	✓	✗	✓
Heavy Vehicle National Law and Other Legislation Amendment Act 2018 (6 <sup>th</sup> Amendment package) (Council approved draft amendments in May 2017)	✓	✓	✓	✓	✗	✓	✗	✓
Amendment package 7 amendments are contained in the Heavy Vehicle National Law Amendment Bill 2018 (Council approved November 2017)	✓	✓	✓	✓	✗	✓	✗	✓

Note: The Council agreed to a common implementation date for all chain of responsibility and executive officer liability amendments included in amendment packages 5, 6 and 7 in the second half of 2018. The amendment packages include changes unrelated to chain of responsibility and executive officer liability that have already commenced in participating jurisdictions. The commencement of these changes is reflected in the jurisdiction implementation comments at Table 3.

**Table 3. Participating jurisdictions' comments on adopting the National Heavy Vehicle Law 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Amendment Packages**

Jurisdiction	Implementation comments
NSW	Chapter 3 Maintenance Amendments of the HVNL & Other Legislation Amendment Act 2016 commenced in NSW on 1 July 2017. Relevant provisions of the HVNL and Other Legislation Amendment Act 2018 commenced in NSW on 1 July 2018.
VIC	Chapter 3 of the 5th amendment package commenced 1 July 2017. Chapter 2 of the 5th amendment package will commence in late 2018. Part of the 6th amendment package commenced 1 July 2018 and the remainder will commence late 2018. The 7th amendment package will commence concurrently with the 5th and 6th amendment packages in late 2018.

<b>SA</b>	<p>Part of the 5th amendment package commenced on 1 July 2017, while the remainder is expected to commence in October 2018 when formally proclaimed in Queensland.</p> <p>Similarly, part of the 6th amendment package commenced on 1 July 2018, while the remainder is expected to commence in October 2018 when formally proclaimed in Queensland.</p> <p>The 7th amendment package has yet to pass all stages in Queensland Parliament – subject to that Parliament’s approval and formal proclamation, it is expected that these and associated un-commenced amendments from the 5th and 6th amendment packages will commence in October 2018.</p>
<b>QLD</b>	<p>The registration-related provisions contained in the 6th and 7th amendment packages commenced on 1 July 2018.</p> <p>The Chain of Responsibility amendments contained in the 5th, 6th and 7th amendment packages are scheduled to commence on 1 October 2018, along with the remaining provisions of the 7th amendment package.</p>
<b>TAS</b>	<p>Part of the 5th amendment package has already commenced, with the remainder due to commence upon proclamation in October 2018.</p> <p>The 6th and 7th amendment packages will be tabled in Tasmanian Parliament during August/September 2018. Some items have commenced with the remainder due to commence upon Proclamation.</p>
<b>ACT</b>	<p>The Heavy Vehicle National Law (ACT) Act 2013 (the Act) which commenced on 10 February 2014 provides that the Heavy Vehicle National Law (HVNL) set out in the schedule to the Queensland Act, as amended from time to time, applies as a territory law, as modified by schedule 1 of the Act, and may be referred to as the Heavy Vehicle National Law (ACT).</p> <p>Amendments to the HVNL and regulations (while needing to be tabled in the ACT Legislative Assembly and are subject to disallowance) under the HVNL are adopted automatically in the ACT.</p> <p>As such the 7th package will commence in the ACT at the same time as they commence in Queensland.</p>

## Implementation analysis

Amendment package 7 amendments were contained in the Heavy Vehicle National Law Amendment Bill 2018 that was introduced into the Queensland Parliament on 1 May 2018 and referred to the relevant scrutiny committee. Subject to Parliamentary processes, amendment package 7 is anticipated for commencement on 1 October 2018.

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

## 2.3 Heavy vehicle charges

### Key points

- In November 2017, Ministers agreed to freeze heavy vehicle charges at 2017–18 levels for a two-year period (2018–19 and 2019–20).
- In November 2017, Ministers also approved the *Heavy Vehicle Charges (Annual Registration Charges) Amendment Model Law 2017* scheduled to commence on or by 1 July 2018.

### About the heavy vehicle charges

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

An annual adjustment formula is automatically applied in July each year, unless the Council decides otherwise.

### Charges implementation

On 10 November 2017, Ministers agreed to freeze heavy vehicle charges at 2017–18 levels for a two-year period (2018–19 and 2019–20). This decision recognised the need for governments to continue to invest in infrastructure to support heavy vehicle productivity, and the need to provide revenue and price certainty to road management agencies and heavy vehicle operators as heavy vehicle road reform is accelerated.

As part of this decision, the regulatory component of registration charges was adjusted to reflect growth in the heavy vehicle fleet and the revised National Heavy Vehicle Regulator budget for 2018–19 and 2019–20 which incorporates industry funding of the new National Heavy Vehicle Registration System.

Ministers also approved an amendment to the Heavy Vehicle Charges Model Law which will give effect to the 2018–19 and 2019–20 heavy vehicle registration charges when implemented.

### Implementation analysis

All jurisdictions (except NT and WA) agreed that heavy vehicle registration charges will be frozen at 2017–18 levels for the two-year period.

# 3 Rail reform

## 3.1 Amendments to Rail Safety National Law

### Key point

- All jurisdictions apart from Western Australia have implemented the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> amendment packages.

The 1<sup>st</sup> amendment package was approved in November 2014 and the 2<sup>nd</sup> amendment package was approved in November 2015. Changes included minor amendments to improve the operation of the Rail Safety National Law.

The 3<sup>rd</sup> amendment package was approved by Ministers in November 2016 and commenced on 1 July 2017. Changes included the introduction of a fee for Major Projects, inclusion of Queensland-specific fatigue requirements, support for the agreed recommendations of the cost recovery review and other minor amendments to improve the operation of the Rail Safety National Law.

Tables 4 and 5 provide an overview of jurisdictional progress in implementing Rail Safety National Law amendments.

**Table 4. Implementation summary of amendments to Rail Safety National Law**

Rail Safety National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
1 <sup>st</sup> Amendment package (Council approved November 2014)	✓	✓	✓	✓	✗	✓	✓	✓
2 <sup>nd</sup> Amendment package (Council approved November 2015)	✓	✓	✓	✓	✗	✓	✓	✓
3 <sup>rd</sup> Amendment package (Council approved November 2016)	✓	✓	✓	✓	✗	✓	✓	✓

**Table 5. Jurisdictions' comments on amendments to Rail Safety National Law**

Jurisdiction	Implementation comments
WA	WA has begun preparations to implement the 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> amendment packages. Depending on maintaining Ministerial and legislative priority, the package of amendments is expected in the 2018–19 financial year.

## Implementation analysis

All states and territories apart from Western Australia have implemented the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> amendment packages. Western Australia has begun preparations to implement the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> amendment packages. The mirror law approach in Western Australia means amendments to the Rail Safety National Law are routinely delayed and subject to separate parliamentary decision-making. This delay results in the Office of the National Rail Safety Regulator and industry working under different legislation in Western Australia compared to the rest of Australia.

# 4 Maintenance of existing reforms

## 4.1 Australian Road Rules

### Key points

- Most jurisdictions have implemented the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> amendment packages.
- The 12<sup>th</sup> amendment to the Australian Road Rules was approved in November 2017.
- Given that most of the amendment packages are relatively minor in nature and improve clarity in the road rules, the variation in implementation dates for the Northern Territory and Western Australia is unlikely to impact safety or productivity.

### About the Australian Road Rules amendment package

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

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

The 9<sup>th</sup> amendment package included changes relating to portable warning triangles and the use of disability parking permits.

The 10<sup>th</sup> included changes relating to bicycle crossing lights, level crossing line markings, and driver's aids such as navigation devices.

The 11<sup>th</sup> included changes relating to motorcycles, cycling on footpaths for children and people with a medical condition and their companions, as well as driver distraction (mobile phones and video displays).

The 12<sup>th</sup> amendment package included:

- specifying load restraint performance standards in the law, rather than relying on jurisdictions to reference the standards with variation
- improving consistency in rules for road crossings by pedestrians and cyclists
- introducing nationally-consistent rules relating to motorcycle lane-filtering and approved motorcycle helmets
- removing barriers to access for larger vehicles through small roundabouts, and
- several technical clarifications.

Tables 6 and 7 provide an overview of progress in delivering the Australian Road Rules amendment packages.

**Table 6. Implementation summary of the Australian Road Rules amendment package**

Adopt Australian Road Rule amendment packages	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Adopt the 9 <sup>th</sup> amendment package (Council approved December 2011)	✓	✓	✓	✓	✓	✓	●	✓
Adopt the 10 <sup>th</sup> amendment package (Council approved November 2013)	✓	✓	✓	✓	●	✓	●	✓
Adopt the 11 <sup>th</sup> amendment package (Council approved November 2015)	✓	✓	✓	✓	●	✓	●	✓
Adopt the 12 <sup>th</sup> amendment package (Council approved November 2017)	✓	✓	✓	✓	✓	✓	✓	✓

**Table 7. Jurisdictions' comments on implementing the Australian Road Rules amendment package**

Jurisdiction	Implementation comments
<b>NSW</b>	NSW (TfNSW) is in the process of finalising drafting instructions for the NSW Parliamentary Counsel's Office which will include proposed amendments from the 12th amendment package.
<b>VIC</b>	The new Victorian Road Safety Road Rules 2017, which commenced on 1 July 2017, includes the 11th amendment package of changes. The 12th amendment package was incorporated into the Victorian Road Safety Rules 2017 in June 2018, and commenced on 26 June 2018.
<b>SA</b>	SA is aiming to implement the amendments associated with the 12th package during the second half of 2018.
<b>QLD</b>	Subject to Queensland Government approval, Queensland is on track to implement the 12th amendment package in 2018. It is expected that only minor drafting variations will be present, preserving the intent of the national rules.
<b>WA</b>	The 11th and 12th packages will be considered together for implementation. Given other high priority matters on the Government's legislative reform agenda, it is unlikely that the packages will be implemented until early 2019.
<b>TAS</b>	The motorcycle lane filtering elements of the 12th package have been implemented, the remaining elements will be progressively implemented throughout 2018–19.

<b>NT</b>	Amendments from the 9th, 10th, 11th and 12th amendment packages are progressing for adoption in NT law. It is anticipated the four packages will commence on 1 March 2019.
<b>ACT</b>	<p>The entirety of the 10th and 11th packages were incorporated into the new ACT stand-alone Road Transport (Road Rules) Regulation 2017 that commenced on 30 April 2018.</p> <p>It is intended that the 12th package be implemented in 2018–19 with a possible local variation made to the motorcycle lane filtering rule to maintain the existing ACT conditions relating to lane filtering.</p>

## Implementation analysis

The 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> amendment packages have been implemented by most states and territories, with those still due to implement expecting to do so by June 2019. The 12<sup>th</sup> amendment package was approved by Council in November 2017.

Given that most of the amendment packages are relatively minor in nature and improve clarity in the road rules, the variation in implementation dates for the NT and WA is unlikely to impact safety or productivity.

## 4.2 Australian Light Vehicle Standards Rules

### Key points

- The Australian Light Vehicle Standards Rules supersede the Australian Vehicle Standards Rules, which covered both light and heavy vehicle in-service standards. There was no change in policy when the Australian Light Vehicle Standards Rules were introduced. Therefore, a failure to adopt the Australian Light Vehicle Standards Rules had no practical effect.
- The nature of the subsequent amendments means the impact of different implementation dates for jurisdictions will be minor because, even if their in-service standards are based on the Australian Vehicle Standards Rules, they have most of the Australian Light Vehicle Standards Rules already.

### About the Australian Light Vehicle Standards Rules

In November 2015 the Council approved the Australian Light Vehicle Standards Rules. Heavy Vehicles Standards Rules are now included in the HVNL. There have been two amendment packages for the Australian Light Vehicle Standards Rules.

Tables 8 and 9 provide an overview of progress in delivering the Australian Light Vehicle Standards Rules.

**Table 8. Implementation summary of the Australian Light Vehicle Standards Rules and amendment packages**

Packages	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Adopt the Australian Light Vehicle Standards Rules (Council approved November 2015)	✓	✓	✓	✓	●	●	●	●
Adopt the 1 <sup>st</sup> amendment package to the Australian Light Vehicle Standards Rules (Council approved May 2016)	✓	✓	✓	✓	●	●	●	●
Adopt the 2 <sup>nd</sup> amendment package to the Australian Light Vehicle Standards Rules (Council approved May 2017)	●	●	✓	●	●	●	●	●

**Table 9. Jurisdictions' comments on implementing the Australian Light Vehicle Standards Rules and amendment packages**

Jurisdiction	Implementation comments
<b>NSW</b>	On 1 September 2017, New South Wales Road Transport (Vehicle Registration) Regulation 2017 came into force. In the regulation, NSW adopted the Australian Light Vehicle Standards Rules and the 1st amendment package to the Australian Light Vehicle Standards Rules. The 2017 amendment package to the Australian Light Vehicle Standards Rules is expected to be implemented in late 2018.
<b>VIC</b>	VicRoads has implemented the agreed 1st light vehicle standards amendment package which commenced on 1 July 2018. The 2nd and subsequent light vehicle standards amendment packages will be adopted as part of its upcoming 'sun setting' of Victoria's Road Safety (Vehicles) Regulations 2009, since the changes within these packages only come into effect in 2019. The new regulations are expected to be remade by 31 October 2019.
<b>SA</b>	The Australian Light Vehicle Standards Rules and all amendment packages were implemented on 23 January 2018.
<b>QLD</b>	The 2017 amendment package is expected to be implemented during 2019 (subject to timely release of the package), now that operational issues have been resolved in consultation with the NTC.
<b>WA</b>	WA is preparing a regulatory reform package and this is planned for completion during 2018–19.
<b>TAS</b>	The 2016 ALVSR and both the 1st and 2nd amendment packages are expected to be implemented into Tasmanian legislation in 2018.
<b>NT</b>	The NT has commenced analysis of options for either adapting its combined in-service light and heavy vehicle standards regulations to reflect amendments in the outstanding packages (of the Australian Vehicle Standards Rules and Australian Light Vehicle Standards Rules), or separating the light and heavy vehicle standards to allow direct adoption of the Australian Light Vehicle Standards Rules including any outstanding packages. Timing of implementation is subject to advice on the options and the Government's legislative drafting priorities.
<b>ACT</b>	The ACT will work to progress adoption of the Australian Light Vehicle Standards Rules and the 1st amendment package to those rules through 2018–19, noting that the existing standards for light vehicles in the Road Transport (Vehicle Registration) Regulation 2000 are already very similar to the requirements of the Australian Light Vehicle Standards Rules, and relaxations to vehicle standards as a result of those packages have been managed through an exemption instrument until regulation changes can be progressed. Given other regulatory priorities it is expected that the requirements for labelling electric and hydrogen powered vehicles may be progressed out of sequence as these requirements are required to be mandatory from 1 January 2019.

## Implementation analysis

The Australian Light Vehicle Standards Rules supersede the Australian Vehicle Standards Rules, which covered both light and heavy vehicle in-service standards. There was no change in policy when the Australian Light Vehicle Standards Rules were introduced. Therefore, a failure to adopt the Australian Light Vehicle Standards Rules had no practical effect.

The nature of the subsequent amendments means the impact of different implementation dates for jurisdictions will be minor because, even if their in-service standards are based on the Australian Vehicle Standards Rules, they have most of the Australian Light Vehicle Standards Rules already.

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

### Key points

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

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

Following the review, the NTC developed the 11<sup>th</sup> amendment package for the Australian Road Rules. This amendment package implemented the recommendations of the strategic review and now includes relevant aspects of the council's visions, policy objectives and principles.

Tables 10 and 11 provide an overview of the implementation status of the review's recommendations.

**Table 10. Implementation summary of the Strategic Review of the Australian Road Rules and Australian Vehicle Standards Rules recommendations**

Recommendations	Implementation status								
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT	NTC
Maintain publicly available lists outlining the difference between jurisdictions' laws and the model laws for the road rules and vehicle standards	✓	✓	✓	✓	●	●	✓	✓	✓

**Table 11. Jurisdictions on implementing the recommendations**

Jurisdiction	Implementation comments
<b>VIC</b>	This task has been completed.
<b>QLD</b>	<p>Queensland published a list of significant differences between the Queensland Road Rules and the Australian model laws in September 2017. The information is available on the Queensland Government website.</p> <p>Regarding the vehicle standards, Queensland has reviewed the Australian Vehicle Standards Regulation and whilst there are no significant differences to the national model law, expect to post the completed list of differences by the end of 2018.</p>
<b>WA</b>	WA supports the recommendations in principle, though implementation is contingent upon Ministerial direction and legislative priority. WA will progress the publication of variations when resourcing allows.
<b>TAS</b>	This is currently included on Tasmania’s work program for both Road Rules and Vehicle Standards, however it is not a high priority. The majority of the Tasmanian Road Rules legislation is consistent with the model law, with most deviations being contained separately in jurisdictional qualifications or local road rules.

## Implementation analysis

Six of the eight states and territories have fully implemented the last recommendation. Tasmania and Western Australia will progress implementation when resources are available.

The nature of the recommendation means there is no impact from different implementation dates.

## 4.4 Transport of Dangerous Goods laws

### Key points

- All jurisdictions apart from the Australian Capital Territory and the Northern Territory have implemented the Dangerous Goods model regulations. These two territories will progress implementation when resources are available.
- The impact of different implementation dates is likely to be minor for operators who transport bulk dangerous goods. However, reforms relating to the transport of limited quantities of dangerous goods that provide productivity benefits will not be fully realised for any movements that originate, terminate or pass through either territory. National operators will have to wait for fully national consistency before amending operating procedures and realising benefits for Australians.

### About the Transport of Dangerous Goods Model Regulations and Code

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

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

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

Tables 12 and 13 provide an overview of the progress of states and territories in implementing Council reforms.

**Table 12. Implementation summary of the Transport of Dangerous Goods model regulations and Code**

Model Subordinate Law and Australian Dangerous Goods Code Amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Amendments to the Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 3) (Council approved May 2015)	✓	✓	✓	✓	✓	✓	✓	●
Edition 7.5 of the Australian Dangerous Goods code (Council approved November 2016)	✓	✓	✓	✓	✓	✓	●	●

Amendments to the Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 4) (Council approved November 2016)	✓	✓	✓	✓	✓	✓	●	●
Amendments to the Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 5) (Council approved May 2018)	✓	✓	✓	✓	●	✓	●	●
Edition 7.6 of the Australian Dangerous Goods code (Council approved May 2018)	✓	✓	✓	✓	●	✓	✓	✓

**Table 13. Jurisdictions' comments on implementing the Australian Dangerous Goods Code**

Jurisdiction	Implementation comments
<b>NSW</b>	NSW proposes to update its Regulation in the next six months to reflect changes in the Model Subordinate Law. Edition 7.6 of the ADG Code took effect on 1 July 2018 in NSW.
<b>VIC</b>	<p>Victoria's Dangerous Goods (Transport by Road or Rail) Regulations 2008 sunset on 16 December 2018. Due to the caretaker period commencing on 30 October 2018, Victoria is proposing to remake its Regulations, adopting the changes made in the Model Subordinate Law, by 29 October 2018. The proposed changes are still subject to public comment.</p> <p>Any amendments made to the Code do not come into force in Victoria until notice of the amendment is published in the Government Gazette by WorkSafe Victoria. As amendments to the Regulations are required to give effect to some of the changes in the Code, Victoria is proposing to provide notice of amendments to the Code at the same time as the making of the 2018 Regulations. As a result, the Code will not come into force in Victoria until the proposed date of 29 October 2018.</p>
<b>SA</b>	The 4th amendment package and edition 7.6 of the Code have been implemented. The 5th amendment package is expected to commence in the second quarter of 2018.
<b>QLD</b>	Subject to final government approvals, Amendment Package 5 and Edition 7.6 expected to commence operation on 31 August 2018.
<b>WA</b>	WA is in the process of making suitable amendment regulations to adopt NTC package No. 5 and only when these are gazetted will ADG 7.6 take effect in WA. A rough estimate would be gazettal sometime in September, but difficult to say because Parliamentary Counsel has not provided a first draft (at 24 July 2018) and may not have started drafting work.
<b>TAS</b>	Code 7.6 took effect on 1 July 2018 and will become mandatory from 1 July 2019. Implementation of amendment package 5 in progress.

<b>NT</b>	Code 7.6 implemented. Implementation of updated model subordinate law are on NT Worksafe's reform agenda for 2018–19. Timing will be subject to Government's legislative drafting priorities.
<b>ACT</b>	No response received.

## Implementation analysis

All jurisdictions, apart from the Australian Capital Territory and the Northern Territory, have implemented the Dangerous Goods model regulations and Code. These territories will progress implementation when resources are available.

The impact of different implementation dates is likely to be minor for operators who transport bulk dangerous goods. However, reforms relating to the transport of limited quantities of dangerous goods that provide productivity benefits will not be fully realised for any movements that originate, terminate or pass through either territory. National operators will have to wait for fully national consistency before amending operating procedures and realising benefits for Australians.

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

### Key point

- All recommendations from the Strategic Framework Review of the Regulation of Land Transport of Dangerous Goods are now fully implemented.

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

Five of the six recommendations were completed by 2014–15. The last recommendation is for the NTC to amend the model laws to include a timeline for a competent authority to make a decision once it has received an application. The NTC updated the competent authorities panel rules to include a timeline for a decision. These rules commenced on 1 July 2018.

### Implementation analysis

All recommendations are now fully implemented.

## 4.6 Review of Regulatory Telematics

### Key points

- In May 2018, Council approved the six recommendations for improving regulatory telematics.
- One implementation task is complete and four tasks are on track to be completed by the due date. One task is delayed.

The Intelligent Access Program (IAP) is based on certification of service providers by Transport Certification Australia (TCA) and has been available since 2009. The Electronic Work Diary (EWD) is based on approval by the National Heavy Vehicle Regulator (NHVR) and commenced in May 2018.

In September 2017, the Transport and Infrastructure Senior Officials' Committee (TISOC) asked the NTC to review regulatory telematics. In May 2018, Council approved the six recommendations for improving regulatory telematics.

Table 14 provides a progress update of the of the implementation plan.

**Table 14. Progress of the implementation plan for the review of regulatory telematics**

Recommendation	Lead agency	Implementation timing	Status
<p>1. That TCA examines the feasibility of improving the IAP in the following areas:</p> <p>1.1 Reviewing the IAP specification to improve the accuracy of vehicle location, mapping information and alarm records.</p> <p>1.2 Providing real-time information to IAP service providers and operators, including underlying navigable data.</p> <p>1.3 Improving business processes to manage access and map updates in a timelier manner, and to rationalise IAP certificates.</p> <p>1.4 Any other areas that would improve the value, efficiency and affordability of IAP for government and industry.</p>	TCA	Deliver a business case with timeframes to the Council by November 2018.	<p>✓</p> <p>On track for submitting to the Council by November 2018</p>
<p>2. That the NTC develops national guidelines that set out agreed principles and a methodology for road transport agencies to apply when assessing the costs and benefits of including new vehicle types or future applications in the IAP.</p>	NTC	Submit to the Council by November 2018	<p>✓</p> <p>On track for submitting to the Council by November 2018</p>

Recommendation	Lead agency	Implementation timing	Status
<p>3. That the NHVR develops and applies a national compliance and enforcement policy for regulatory telematics. Working closely with road transport agencies, police and the NTC, the enforcement policy should provide regulatory certainty as to how telematics will be used to meet heavy vehicle compliance and enforcement objectives. The national policy will draw on the NTC's Compliance and Enforcement Framework for Heavy Vehicle Telematics and consider in what circumstances roadside enforcement can be enhanced or replaced by greater emphasis on compliance and audit.</p>	NHVR	Submit to the Council by November 2018.	<p></p> <p>The NHVR has developed a Draft National Compliance and Enforcement Policy, which is currently undergoing consultation with jurisdictions and industry. This Policy recognises telematics and other emerging technologies.</p> <p>The NHVR will develop a national compliance and enforcement policy for telematics and other technologies after a Council decision has been made for the best practice model for regulatory telematics (see recommendation 6).</p> <p>The NHVR is also considering the development of a Heavy Vehicle Technology Policy, to demonstrate the interaction between current and emerging heavy vehicle related technologies and their benefits for industry and governments.</p>
<p>4. That the NHVR develops outcome performance and effectiveness measures to assess the success of the EWD model 12 months from first approval and subsequently provide a report under 659(2)(i) of the HVNL on the extent to which those objectives have been achieved.</p>	NHVR	The NHVR develops outcome performance and effectiveness measures by the end of 2018 and a report to the Council by late 2019	<p></p> <p>On track for submitting to the Council by November 2019</p>
<p>5. That, in collaboration with the NHVR, road transport agencies, the road transport industry, TCA and technology providers, the NTC co-designs a Best Practice Model for Regulatory Telematics.</p>	NTC	Submit to Council by November 2019	<p></p> <p>This work will start in late 2018</p>

Recommendation	Lead agency	Implementation timing	Status
<p>6. That, as part of the review of the HVNL, the NTC, in consultation with the NHVR, road transport agencies, the road transport industry, TCA and technology providers, assesses whether the co-designed Best Practice Model for Regulatory Telematics should be legislated and replace existing regulatory telematics models.</p>	<p>NTC</p>	<p>The review of the HVNL is planned to commence in July 2018</p>	<p>✓</p> <p>On track. The NTC will begin the review of the HVNL after the Transport and Infrastructure Council approves the Terms of Reference in November 2018.</p>

## Implementation analysis

One implementation task is complete and the other four tasks are on track to be completed by the due date. One task is delayed.

## 4.7 Performance-Based Standards Reform Implementation Plan

### Key points

- In May 2018, Council agreed to four recommendations to improve the Performance-Based Standards scheme for heavy vehicles.
- The implementation tasks are underway.

Performance Based-Standards (PBS) for heavy vehicles, introduced into Australia in 2007, are designed to maximise the productivity and safety of freight movements by matching the freight task, and the vehicle's performance, to the roads they will drive on. This is different to the prescriptive system which specifies the dimensional and other standards that need to be complied with.

In May 2018, Council agreed to four recommendations to improve the PBS scheme for heavy vehicles.

Table 15 provides a progress update of the of the implementation plan.

**Table 15. Progress of the implementation plan for the Performance-Based Standards reform**

Recommendation	Lead agencies	Implementation timing	Status
1. States and territories identify PBS networks for each access level and the NHVR to publish a National Notice for each network level by the end of financial year 2020–21.	States and Territories	States and territories identify PBS networks / issue consent by May 2019	✓ Underway
2. Austroads and the NHVR design a nationally consistent infrastructure assessment guideline.	Austroads and NHVR	Austroads review and develop nationally-consistent infrastructure assessment methodology by September 2019  NHVR Update and publish PBS Network Classification Guidelines December 2019  NHVR commence Road Manager Training and Communication December 2019 ongoing	✓ Underway  Austroads is undertaking the project (NEF 6133) titled 'investigation and development of bridge formulae for inclusion in the performance-based standards network classification guidelines'.

Recommendation	Lead agencies	Implementation timing	Status
3. The NHVR review and revise current PBS Scheme Standards used to assess PBS Scheme applications.	NHVR	May 2019, ongoing	<p>✓</p> <p>Underway – Engagement of consultants to review Phase One standards.</p> <p>Development of Phase Two review program has commenced with governance documents being developed.</p>
4. The NHVR lead a communications plan to promote the benefits of the PBS Scheme.	NHVR	2018 - Ongoing	<p>✓</p> <p>Underway – Road Manager information kit under development.</p> <p>PBS demonstrations and road manager forums have commenced.</p>

## Implementation analysis

The implementation tasks are underway.

## 5 References

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

Standing Council on Transport and Infrastructure (2012), Communiqué, 18 May 2012, Adelaide.  
Transport and Infrastructure Senior Officials' Committee (2013), *2012 Review of the NTC and other Transport bodies*, Standing Council on Transport and Infrastructure, Canberra.

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

For the HVNL, most minor derogations can be considered and addressed by the HVNL maintenance advisory group.

There are several derogations with a moderate significance rating which are likely to be resolved following a decision on recommendations from the current NTC project reviewing investigative and enforcement powers.

There are also derogations of low–moderate significance which relate to fatigue laws which the NTC will reassess with the NHVR and states and territories following the Heavy Vehicle Driver fatigue research project underway.

In analysing the derogations, the NTC has examined the type and impact of derogations. We have used the following categories to classify derogation type:

- **Addition:** refers to the inclusion of a new section or subsection by the adopting jurisdiction that was not included in the model law.
- **Omission:** refers to the exclusion of a section or subsection of the model law by the adopting jurisdiction.
- **Alteration:** refers to the amendment of a specific detail in a section or subsection of the model law by the adopting jurisdiction.
- **Reference:** refers to a clarifying note that explains how a related piece of legislation is affected by the adoption of the HVNL in that jurisdiction.

NSW	Vehicle standards				NTC comment
	Derogation	Type	Impact	Description	
	Speed limiters deemed noncompliant if travelling at more than 115 km/h (section 93(8A))	Addition	Low	The NSW offence makes the responsible person (for example, the operator) for a vehicle liable if a vehicle is not speed-limiter compliant when the vehicle is driven on a road. In proceedings for this offence, proof that the vehicle concerned was driven at a speed of more than 115 km/h is prima facie evidence that the vehicle was not speed-limiter compliant at the time the vehicle was travelling at that speed.	Ministers decided to retain the current approach to speeding Heavy Vehicle laws in November 2016.
	Vehicle monitoring devices (VMDs) – Requirement for a heavy vehicle (with GVMs or GCMs exceeding 13.9 tonnes) and vehicles carrying dangerous goods to have fitted a device capable of recording various operating parameters (new section 93A)	Addition	Medium	VMD requirements were introduced in NSW following major bus crashes in Kempsey and Grafton in 1989. NSW is currently considering access issues for heavy vehicles carrying dangerous goods in tunnels. The VMD requirement and the vehicles to which a VMD might apply may form part of this review.	The NTC is open to receiving evidence and advice from NSW after their review of the VMD requirement. This will inform whether the NTC will develop a proposal to amend the national laws.
	The use of warning lights and signs on buses carrying children (omits Part 6 Division 16)	Alteration	Low	This alteration reflects the fact that in NSW a 40–km zone exists around school buses that are stopped to allow children to board or disembark. Thus 40 km signage and extra flashing lights are required. Since school buses rarely cross borders this alteration has a low impact.	Local policy decision which has low impact in terms of costs, and does not impact operators across borders.
	Conditions on heavy vehicles being fitted with lights and reflectors (new section 7A)	Alteration	Low	This alteration prevents heavy vehicles from fitting blue lights. In NSW, blue lights may only be used by police and other emergency vehicles. This provision is required to ensure there is consistency between light and heavy vehicles in NSW being used for the same purpose.	The NTC has added this to the maintenance issues register.

Additional offences to which demerit points	Addition	Low	<p>NSW has attached demerit points to six offences that do not attract demerit points in the HVNL. This derogation ensures consistency with light vehicle offences in NSW. The additional offences are covered under section 60 of the HVNL and are:</p> <ul style="list-style-type: none"> <li>• Use vehicle with defective brakes</li> <li>• Use vehicle with defective steering</li> <li>• Use vehicle with seatbelt missing or defective</li> <li>• Use vehicle not fitted/equipped with seatbelts/anchorage</li> <li>• Use vehicle with dangerous protrusion.</li> </ul>	These issues were considered fully during the 2014 NTC penalties review. NSW decided to retain its variation.
<b>Speed derogations</b>				
<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
Exemptions for emergency services from chain of responsibility requirements (new section 203A)	Addition	Low	This exempts staff of an emergency service from obligations concerning speed compliance but only in the course of undertaking work for the emergency service.	The NTC has added this to the maintenance issues register.
Section 27E – Evidence of speed	Addition	Low	Provides that evidence of speed obtained under Part 5.3 of the Road Transport Act 2013 may be used for an offence against the HVNL (NSW).	Ministers decided to retain the current approach to speeding heavy vehicle laws in November 2016.
<b>Fatigue derogations</b>				
<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
Exemptions for accredited service operators and their drivers from certain application requirements when applying for accreditation (new section 222A)	Addition	Low	Derogation in place with the intention of allowing an exemption from certain bus operator requirements including medical assessment requirements.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.

	Exemption for non-accredited buses and private hire vehicles from some fatigue requirements in the HVNL (new section 222B)	Addition	Low	This exempts private hire vehicles and buses not providing a public passenger service from some fatigue obligations.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
	Exemptions for emergency services from work and rest time requirements (alters section 265, new section 265A)	Alteration/ addition	Low	This exempts staff of an emergency service from obligations concerning fatigue compliance but only in the course of undertaking work for the emergency service.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
	Exemption from counting 15-minute periods for certain buses (section 246, new sections 5)	Addition	Low	This exempts certain fatigue-regulated buses (undertaking a journey in accordance with a service contract) from the rounding rule, which applies to counting periods of less than 15 minutes. This was inserted to maintain the status quo for these operators that record the actual time of work for these periods.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
	Occupying driver's seat to count as rest time in certain circumstances (new section 248A)	Addition	Low	This allows drivers to rest in an air-conditioned cabin and for concrete truck drivers to continue to churn concrete during a rest break.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
	Certain personal activities may be counted as part of rest time (section 248B)	Addition	Low	This provides for limited personal use of a vehicle on rest days, which allows the cleaning, driving or refuelling of a fatigue-related heavy vehicle to count as 'rest' if it is done as a 'personal' activities, and is not performed at the employers' direction, for reward or at the beginning or end of a mandated rest period.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.

	Additional provision allows the NSW minister to attach conditions on Advanced Fatigue Management (AFM) accreditation (new section 462A)	Addition	Medium	This section was included to alter an AFM accreditation in those limited circumstances that the NSW minister determined it was necessary to maintain safety standards based on the available fatigue evidence base.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
	Requirement on the regulator to issue a replacement accreditation certificate (section 464, new subsection 2A)	Addition	Low	This section requires the regulator to issue a replacement AFM accreditation certificate if the current certificate inaccurately states the conditions applicable because of the imposition or revocation of a condition by the NSW minister (under section 462A).	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
<b>Enforcement derogations</b>					
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
	Power for an authorised officer to enter a vehicle if the incident involves death, injury or damage Removal of limitation on powers for authorised officers who are not police (omits section 521(6))	Omission or alteration (NSW)	Low	Omits section 521(6) of the HVNL and allows an authorised officer other than a police officer to enter a vehicle. The HVNL currently only provides for a police officer to enter a vehicle. This change was made to preserve existing powers in NSW.	The 2016–17 Investigative and Enforcement Powers review partially addressed this issue by allowing an authorised officer to enter a vehicle if acting under the direction of a police officer. This power is limited in comparison to the NSW derogation.
<b>QLD</b>	<b>Fatigue derogations</b>				
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
	Police commissioner to approve use of blue flashing lights on vehicles (new sections 40– 41)	Addition	Low	This alteration prevents heavy vehicles from fitting blue lights. In QLD, blue lights may only be used by police and other emergency vehicles. This provision is required to ensure there is consistency between light and heavy vehicles in QLD being used for the same purpose.	This is a local Queensland issue relating to interaction between justice/HVNL.

<b>Mass, dimensions and loading</b>				
<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
Additional consents required to grant a mass or dimension exemption permit (affects section 124)	Addition	Medium	Materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place.	The NTC will write to Queensland requesting they reconsider this derogation.
Additional requirements for commissioners' consents for a mass or dimensions exemption permit (affects sections 118, 124, 127, 128) and creates new requirements on granting of permits	Addition	Medium	Materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place.	The NTC will write to Queensland requesting they reconsider this derogation.
Clarification of reviewable decisions under schedule 3. QLD sections 28–29 clarifies the scope and process for review of commissioners' decisions	Reference	Low	This derogation is tied to the additional consents required under a mass or dimension exemption permit. QLD provision provides avenue for a commissioner's response to the permit application to be reviewed if required by a particular party.	The NTC will write to Queensland requesting they reconsider this derogation.

SA	Enforcement derogations				
	Derogation	Type	Impact	Description	
	Additional offences constituting infringement (Schedule 1 of HVNL (SA))	Addition	Medium	<p>SA has made all parties in the chain of responsibility liable for the contravention of mass, dimensions or load requirements. This includes the consignee, loader, loading manager and packer. This is an extension of liability from operators, prime contractors and employees currently provided for in the schedule. SA also intends to make all parties in the chain of responsibility liable for a driver's contravention of work/rest hours requirements. The HVNL does not currently make this an infringeable offence in the chain of responsibility.</p> <p>These derogations have the potential to reduce national consistency in the enforcement of the HVNL, increase the regulatory burden on, and confuse industry (especially those parties that would become liable as a result of the derogation) and to cause increased administrative workload for the regulator. The 2016 HVNL Amendment Bill will remove these offences (section 183 and section 261) from the HVNL and will replace them with a primary duty of care on all parties to ensure the safety of their operations. Once this bill is in operation this derogation will no longer be an issue.</p>	Addressed by the HVNL Amendment Bill 2016 and the removal of sections 183 and 261.

<p>Issuance of improvement notices before an offence occurs (section 16e of the SA HVNL, alters section 572)</p>	<p>Alteration</p>	<p>Medium</p>	<p>SA legislation enables authorised officers to issue an improvement notice where an offence is 'likely to occur'. All other jurisdictions require a breach to have occurred before an enforcement measure is taken. This derogation is likely to have implications for natural justice, may reduce national consistency, and may result in disproportionate outcomes. Notwithstanding this derogation, provisions already exist in the HVNL to issue warning notices, and the ability to enforce a penalty for a breach would continue to remain available. Conversely, should the improvement notice be issued, and the person to whom it is issued ignores it but no breach ever eventuates, that person would remain liable for a \$10,000 penalty upon conviction. This matter was explored as part of the 2014 penalties review and all jurisdictions (except SA) agreed that it should not be adopted.</p>	<p>The NTC will write to South Australia requesting they reconsider this derogation.</p>
<p>Exclude the requirement for enforcement officers to form a reasonable belief that evidence may be concealed or destroyed if a place is not immediately entered and searched, before they can enter without a warrant for investigation purposes (amends sections 498 and 499 of the HVNL)</p>	<p>Alteration</p>	<p>Medium</p>	<p>This derogation removes the requirement for an authorised officer to form a reasonable belief that evidence will be destroyed before invoking warrantless entry to a place. This derogation has implications for natural justice, as well as human and property rights. It is also likely to result in additional costs to, and decreased confidence in, the exercise of the national regulator's enforcement powers. Further, this derogation has been implemented following extensive discussion and compromise by all jurisdictions to reach agreement on the balance between the intrusiveness of enforcement powers and the protections afforded by human rights charters.</p>	<p>The NTC will write to South Australia requesting they reconsider this derogation.</p>

	Exclude the 'reasonable steps' defence for the offence of tampering with a speed limiter (omits section 93(8))	Omission	Medium	This derogation removes the ability for a person charged with tampering to use the reasonable steps defence. Under section 93(8), it is a defence against a charge of tampering if the person charged took all reasonable steps to prevent the tampering, or there were not reasonable steps that the person could have taken to prevent the tampering. This derogation has potential to cause national inconsistency in the enforcement of national law and may have implications for natural justice and procedural fairness. The 2016 HVNL Amendment Bill will remove the reasonable steps defence for this offence (section 93) and the 'mistake of fact' defence will be available. Once this bill is in operation this derogation will no longer be an issue.	Addressed by the 2016 HVNL Amendment Bill and removal of the reasonable steps defence for section 93.
	Reverse the onus of proof for a 'reasonable excuse' defence for a number of offences	Addition	Medium	This derogation reverses the onus of proof for the reasonable excuse defence in proceedings for an offence against the HVNL. This means that the onus will rest with the defendant to prove that the lawful authority or reasonable excuse exists. In the absence of such proof, it will be presumed that no authority or excuse exists. This derogation may have implications for fundamental human and legal rights and procedural fairness. The NTC recommends that SA clarify its position regarding the extra offences that will be amended to include the reasonable excuse defence as part of the 2016 Amendment Bill.	Addressed by the 2016 HVNL Amendment Bill and removal of the reasonable steps defence for section 93.

	Additional power to enter premises where vehicles are offered for sale and inspect those vehicles	Addition	Low	This derogation provides authorised officers with the power to enter a place opened for business where heavy vehicles are exhibited or kept for sale or hire and search those vehicles for defects. Provisions of this nature are generally associated with consumer protection activities in order to protect buyers of vehicles.	The NTC will write to South Australia requesting they reconsider this derogation.
	Additional powers relating to the sale or disposal of a defective vehicle	Addition	Low	This derogation provides authorised officers with the power to enter a place opened for business where heavy vehicles are exhibited or kept for sale or hire and search those vehicles for defects. Provisions of this nature are generally associated with consumer protection activities in order to protect buyers of vehicles.	The NTC will write to South Australia requesting they reconsider this derogation.
	Additional power for authorised officers to direct a heavy vehicle to move if it is obstructing	Addition	Medium	This derogation allows authorised officers to direct a heavy vehicle to move if it obstructs a road, area adjacent to a road, a lawful event, or specified other areas. This derogation has potential to introduce significant complexity and cost into the operations of the national regulator. The need for these powers is unclear, as comprehensive powers already exist in this regard. This derogation may result in reduced consistency of national law.	The NTC will write to South Australia requesting they reconsider this derogation.
	Additional offence for possessing a device designed for tampering with a speed limiter	Addition	Low	This derogation creates an offence for possessing a device that is designed, or is adapted, to enable tampering with a speed limiter. This includes a computer or other electronic device that is intended, or able, to be used to tamper with a speed limiter.	SA argues the offence is too broad (a device could be everything from a screwdriver to an electronic device). Low impact on national consistency.

	Allowing the Commissioner of Police to authorise a class of police officers as well as individual officers for the purposes of issuing improvement notices	Addition	Low	This derogation provides power for the Commissioner of Police to nominate additional parties that are authorised to issue improvement notices under the HVNL.	This is a local issue between justice/HVNL.
	Section 134A of SA's Motor Vehicles Act provides power to exempt a person/class of persons or vehicle/class of vehicles from <b>any act, law or standard</b>	Omission	Low	This derogation can exempt persons/vehicles from the HVNL, and this power has not been provided for under the national HVNL model.	This relates to the exemption powers put in place for automated vehicle trials and will not impact application of HVNL or operators.
<b>VIC</b>	<b>Fatigue derogations</b>				
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
	Statutory rail replacement service exemption	Addition	Low	This derogation exempts bus drivers who are responding to an emergency or replacing a rail service from fatigue management provisions.	Local jurisdictional variation which does not impact at the national level.
	<b>Enforcement derogations</b>				
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
Disposal of unclaimed seized goods to the Crown, rather than the regulator	Addition	Low	This derogation clarifies that police have the power, under the Police Regulation Act 1958, to dispose of goods seized under the Heavy Vehicle HVNL, where such goods are unclaimed after three months. Victorian courts and tribunals are also empowered to offer the forfeiture of the goods to the Crown if they might be used to commit or continue an offence.	Local jurisdictional variation which does not impact at the national level.	

	Extension of time within which a person may challenge an evidentiary certificate	Alteration	Low	Under this derogation, a person accused of causing damage to road infrastructure will have 60 days in which to challenge an evidentiary certificate (rather than 28 days as provided under the HVNL). The derogation operates to the benefit of the defendant. Hence there is no additional abridgement of their rights. It is limited in its application to instances where a conviction is made, so there is no change to the overall regulatory burden.	The NTC has added this to the maintenance issues register.
<b>TAS</b>	<b>Enforcement derogations</b>				
	<b>Derogation</b>	<b>Type</b>	<b>Impact</b>	<b>Description</b>	
	Regulation 4 of the Heavy Vehicle National Law (Tasmania) Regulations 2014 details sections of the Heavy Vehicle (Vehicle Standards) Regulation that do not apply in Tasmania	Omission	Low	This derogation reflects local specifications relating to the location and display of flashing lights, and the accompanying signage for school buses. Given that this is current practice in Tasmania, adopting the national law approach would constitute a significant financial burden to refit the existing school bus fleet.	Local jurisdictional variation which does not impact at the national level.

Notes:

1. ACT has not applied chapters 5, 6, 7 or 8.
2. No jurisdiction has proclaimed chapter 2 of the HVNL as it will not take effect until 1 July 2018.

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

NSW	Enforcement derogations				NTC comment
	Derogation	Type	Impact	Description	
	Rail Safety (Adoption of National Law) Regulation 2012  <b>Part 2 Drug and alcohol testing</b>	Addition	Medium	Division 1 Provisions relating to drug and alcohol offences  Division 2 Testing for alcohol or other drugs  Division 3 Offences relating to testing for alcohol/other drugs  Division 4 Admission of evidence in proceedings  Division 5 Certificate evidence	The Council considered the Drug and Alcohol Review in May 2018. NSW did not accept the recommendations and there will be no change to legislative requirement in NSW. The derogation remains and no further work is being undertaken in this area.
	Rail Safety (Adoption of National Law) Regulation 2012  <b>Part 3 Train communications systems</b>	Addition	Medium	A rolling stock operator must ensure that each train for which the person is responsible is, at all times, fitted with a radio communications system that complies with this clause and a back-up means of communication to be used if the radio communications system fails.  RISSB published a national standard for train communications in 2017 (AS7660: 2016 Wireless Communication in the Rail Corridor)	NSW Government have advised the RISSB standard does not sufficiently meet their requirements. The derogation remains and no further work is being undertaken in this area.

<p>Rail Safety (Adoption of National Law) Regulation 2012</p> <p><b>Part 4 Savings and transitional provisions: Data loggers</b></p>	<p>Addition</p>	<p>Medium</p>	<p><b>Data Loggers Compliance Code</b> means the code of that name approved by the minister under section 167 of the former Act (the Rail Safety Act 2008), as in force immediately before the commencement of this Regulation.</p> <p>The Data Loggers Compliance Code continues to have effect and section 167 of the former Act continues to apply in respect of that code.</p> <p>RISSB published a national standard for data loggers (AS 7527:2015 Event Recorders) in July 2015.</p> <p>In May 2012 the Standing Council on Transport and Infrastructure agreed that a regulatory impact statement would be developed following the development of this Australian Standard.</p>	<p>The standard published in July 2015 did not sufficiently address all concerns in NSW. This standard has now been amended and NSW Government has advised that they will be undertaking legislative change to remove the derogation.</p>
<p><b>Fatigue derogations</b></p>				
<p><b>Derogation</b></p>	<p><b>Type</b></p>	<p><b>Impact</b></p>	<p><b>Description</b></p>	
<p>Rail Safety National Law (NSW) (2012 no. 82a)</p> <p><b>Part 3 Regulation of rail safety fatigue risk management requirements</b></p>	<p>Addition</p>	<p>Medium</p>	<p>A rail transport operator must prepare and implement a program, in accordance with the prescribed requirements, for the management of fatigue of rail safety workers who carry out rail safety work in relation to railway operations in respect of which the operator is required to be accredited that complies with the prescribed requirements relating to fatigue risk management programs.</p>	<p>ONRSR is currently undertaking a review into fatigue risk management arrangements under the RSNL. This is due to the Council for consideration in May 2019.</p>

QLD	Fatigue derogations				
	Derogation	Type	Impact	Description	
	Rail Safety National Law Queensland <b>Part 3 Subdivision 3</b>  Rail Safety National Law National Regulations 2012 <b>Schedule 2 Part 2</b>	Addition	Medium	Under the RSNL, a rail transport operator must prepare and implement a program for the management of fatigue of rail safety workers.  The RSNL does not prescribe limits on train driver hours; however, Queensland's application of the RSNL includes specified provisions about standard work hours and rest periods for drivers of passenger or freight trains, light rail vehicles or other rolling stock such as track maintenance machines.	ONRSR is currently undertaking a review into fatigue risk management arrangements under the RSNL. This is due to the Council for consideration in May 2019.
	Drug and Alcohol Management derogations				
	Derogation	Type	Impact	Description	
	Rail Safety National Law (Queensland) Act 2017 <b>Part 3</b>	Alteration	Low	Under the Qld Adoption Act, police officers will continue to conduct drug and alcohol testing of train drivers exercising powers under other legislation. An authorised officer appointed under the RSNL may not perform these tests if a police officer is also performing the same tests under other legislation.	There are no plans to remove this derogation.

WA	RSNL – Mirror Legislation				
	Derogations	Type	Impact	Description	
	Rail Safety National Law (WA) 2015	Alterations and Additions	High	<p>WA implements the RSNL by enacting it in mirror form to address circumstances in WA. Significant differences are:</p> <ul style="list-style-type: none"> <li>• Urine testing may continue as part of drug and alcohol management programs</li> <li>• Samples may be used for other purposes</li> <li>• The Governor of WA will continue to make regulations under the law rather than the Governor of SA and may do so without the unanimous recommendation of Ministers of relevant jurisdictions</li> <li>• Changes to the RSNL WA will be able to be made by the legislation of WA and not SA legislation.</li> </ul>	ONRSR has written to the Minister for Transport and conversations are continuing with WA Government in this regard.