

# A risk-based approach to regulating heavy vehicles

March 2019

**Issues paper**

# Report outline

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<b>Title</b>	A risk-based approach to regulating heavy vehicles
<b>Type of report</b>	Issues paper
<b>Purpose</b>	For public consultation
<b>Abstract</b>	In May 2018, the Transport and Infrastructure Council directed the National Transport Commission to review the Heavy Vehicle National Law (HVNL). This is the first of eight issues papers that seek your feedback on the HVNL as it is, and opportunities to improve it.
<b>Submission details</b>	<p>The NTC will accept submissions until 31 May 2019 online at <a href="http://www.ntc.gov.au">www.ntc.gov.au</a> or by mail to:</p> <p>National Transport Commission Submission – A risk-based approach to regulating heavy vehicles Level 3, 600 Bourke Street Melbourne VIC 3000</p>
<b>Attribution</b>	<p>This work should be attributed as follows:</p> <p>Source: National Transport Commission 2018, <i>A risk-based approach to regulating heavy vehicles</i>, Issues paper, NTC, Melbourne.</p> <p>If you have adapted, modified or transformed this work in any way, please use the following:</p> <p>Source: Based on National Transport Commission 2018, <i>A risk-based approach to regulating heavy vehicles</i>, Issues paper, NTC, Melbourne.</p>
<b>Key words</b>	Heavy Vehicle National Law Review, HVNL, regulation, heavy vehicles
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# Have your say

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## Submit your advice

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The National Transport Commission (NTC) wants to give everyone affected by the Heavy Vehicle National Law (HVNL) an opportunity to have their say on what is working, what is not working and how to improve the law. We seek your advice on the problems identified and whether we have accurately and comprehensively covered the key issues.

Your advice (whether by written submission or other form) will assist the NTC to conduct a regulatory impact assessment of policy reform options.

There are many ways to provide your feedback including:

- written submission
- online feedback through the interactive consultation website
- workshops and engagement activities, and
- through industry associations.

You can register on the [HVNL review website](https://www.hvnreview.ntc.gov.au)<sup>1</sup> to stay updated on the project. Planned engagements will be publicised on the website and in regular newsletters.

## When to submit

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The NTC invites written submissions and online feedback on this issues paper by **Friday 31 May 2019**.


The NTC cannot guarantee submissions or feedback received after this date will be fully considered.


## How to submit

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

### Written submission

 Visit [www.ntc.gov.au](https://www.ntc.gov.au) and select 'Submissions' from the navigation menu, or

 Send a hard copy to:

National Transport Commission  
Submission – A risk-based approach to regulating heavy vehicles  
Level 3, 600 Bourke Street  
Melbourne VIC 3000.

Where possible, you should provide supporting evidence with your submission.

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<sup>1</sup> [www.hvnreview.ntc.gov.au](https://www.hvnreview.ntc.gov.au)


## **Publishing your submission**

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

The *Freedom of Information Act 1982* (Cwlth) applies to the NTC.

## **Online feedback**

For stakeholders who may prefer not to make a formal written submission, we also welcome feedback on this issues paper via our HVNL review microsite.

 Visit [www.hvnireview.ntc.gov.au](http://www.hvnireview.ntc.gov.au) and select 'Risk-based regulation' to participate in surveys, forums and polls relating to this issues paper.

Like written submissions, online feedback will inform the NTC's regulatory impact assessment of policy reform options.

## **Publishing your online feedback**

Any content published to the interactive consultation website is subject to a **moderation policy**<sup>2</sup>. Content that violates the moderation policy will be rejected and the submitter notified.

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<sup>2</sup> [www.hvnireview.ntc.gov.au](http://www.hvnireview.ntc.gov.au)

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# Purpose of this paper

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The National Transport Commission (NTC) is reviewing the Heavy Vehicle National Law (HVNL).

The NTC has adopted a first-principles approach to the HVNL review. Rather than simply looking to the existing law as a starting point, assumptions underpinning the existing law are being drawn out and tested.

The goal of the HVNL review is an entirely new law.

This is the first of eight issues papers.

The purpose of this issues paper is to:

- describe good regulation and options for regulatory approaches
- summarise the current state of the HVNL
- identify and confirm problems with the current regulatory approach, and
- seek preliminary views on the ways we can improve heavy vehicle regulation.

The NTC wants to give everyone affected by the HVNL an opportunity to have a say. We seek your advice on the problems identified and whether we have accurately and comprehensively covered the key issues.

Note: a list of common terms and abbreviations is included at the end of this paper.



# Executive summary

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## Effective regulation

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Regulation is one of three types of tools available to governments, the others being persuasion and finance. While acknowledging the importance of all government tools, the Heavy Vehicle National Law (HVNL) review focuses on regulation.

The National Transport Commission (NTC) has a mandate to lead national land transport reform on behalf of the Transport and Infrastructure Council and is leading the review of the HVNL. The evidence shows that a risk-based approach to regulation, both in legislation and administration, maximises regulatory efficiency and best addresses community priorities.

A risk-based approach to regulation centres on the principle that regulation should target the more significant risks to safety. This ensures regulations are effective and efficient. Risk-based regulation is being applied across regulated sectors around the world.

The different styles of regulation can be expressed in terms of who owns the various roles of risk management.

Prescriptive regulation leaves the roles of risk identification, analysis and controls with the government (the law states exactly what you must do), with regulated parties required to apply the controls.

Performance-based regulation transfers the responsibility for the detail of the controls to the regulated parties (the law allows some flexibility), but leaves the outcomes required to be determined by government.

Principles-based regulation requires the government to set a high-level purpose, but regulated parties are charged with the entire risk management process. They will typically report to (and be audited by) governments to ensure risk management is adequate.

Each regulatory style lends itself to different instruments in the legislative hierarchy.

## The Heavy Vehicle National Law

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The primary purpose of the HVNL can be described as ensuring that a heavy vehicle operates safely while delivering an efficient service – that is, a safe and efficient heavy vehicle journey.

A safe and efficient heavy vehicle journey comprises:

- a safe driver – one who is well-trained, competent, fit for duty and alert when driving
- a safe vehicle – one that is registered, roadworthy and safely loaded, and
- a suitable route – one that minimises public safety risks and excessive impacts on road infrastructure (given a heavy vehicle's mass and dimensions).

Risks to a safe and efficient journey must be managed, recognising the threats that may lead to harms often originate well before, and far away from, the journey (and may be controlled by others, such as customers).

The HVNL regulates parties who can reasonably influence the safe and efficient journey, as well as those that play a key administrative or enforcement role.

The HVNL is implemented by means of an applied law scheme, supported by regulations and other instruments. Essentially, the law is implemented by Queensland and applied by all other participating jurisdictions (as their own state or territory law), because the Commonwealth doesn't have the power to make laws with respect to road, rail and intermodal transport under the Australian Constitution.

The HVNL is enforced by state and territory police and authorised officers of the National Heavy Vehicle Regulator and its delegates.

The HVNL consists of the Heavy Vehicle National Law Act 2012 and five sets of regulations. Other regulatory instruments such as registered industry codes of practice and guidance material support the objectives of the HVNL.

The HVNL is considerably different in scale and style from comparable laws. The HVNL is large and highly prescriptive, with a lot of detail in the primary legislation.

## **Problems with the current law**

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Through consultation with industry, regulators, jurisdictions (participating and non-participating) and others, the NTC understands there are several high-level problems with the HVNL.

The HVNL is not nationally consistent: it has not been implemented in Western Australia or the Northern Territory, and every participating jurisdiction has derogated from the HVNL (that is, made local variations or exceptions).

The HVNL is prescriptive and inflexible: the primary legislation contains a great deal of detail; and focuses on inputs rather than outcomes. It is difficult to introduce new approaches or technologies, for example, when amendments to primary legislation can take more than a year.

The HVNL fails to adapt to the many diverse heavy vehicle uses, domains and operators. It applies a 'one size fits all' approach, which does not recognise the diverse risk profile applicable to heavy vehicle use around Australia.

The HVNL is not risk-based or proportionate: many risks are opaque or out of the scope of the law, making true risk management challenging. Even where risk management principles can be applied, the controls used by the HVNL are not proportionate to the risks they seek to manage and, with a focus on inputs, are often poorly-targeted to reducing harm.

Administration, compliance and enforcement of the HVNL are all difficult. The NHVR must deal with varied powers and requirements across participating jurisdictions, and many local governments, as road managers under the HVNL, are not sufficiently resourced to deal with their role of providing access consents. Compliance for regulated parties often requires managing multiple regulatory environments, with limited legislative support to innovate. And enforcement, presently, is highly dependent on resource-intensive roadside interception.

Finally, the HVNL has not fully delivered on its original goals: regulatory burdens remain high; productivity gains are mixed; and we must strive to accelerate improvements in safety outcomes.

## Aspirations for a new law

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Through this issues paper, the NTC seeks your views on how we can develop a new HVNL that:

- is based on risk analysis and control
- has the right object, coverage and scope
- is responsive and flexible, including supporting innovation and technology
- is nationally harmonised but able to regulate diverse operations
- is proportional to risks and harms, and
- delivers better outcomes.

## Questions

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The NTC will consult on the following questions until **Friday 31 May 2019**.

### List of questions

- Question 1: Have we covered the issues with the current HVNL accurately and comprehensively? If not, what do we need to know? ..... 42
- Question 2: What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions' regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law? ..... 42
- Question 3: Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved? ..... 47
- Question 4: Does the object or scope of the HVNL need to change? If so, how? ..... 47
- Question 5: Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and non-participating jurisdictions alike to be nationally agreeable? ..... 47
- Question 6: Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside? ..... 48
- Question 7: How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want? ..... 49
- Question 8: What areas of the current law are particularly problematic because they are process or administration focused? Can you detail the impacts? ..... 49
- Question 9: How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia? .. 49
- Question 10: In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require? ..... 50

Question 11: How can the new HVNL help to improve safety, productivity and regulatory efficiency? .....	51
Question 12: Do you agree with the six draft regulatory principles? If not, why? Are there other principles we should consider? .....	51

# 1 About this project

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## Key points

- The Transport and Infrastructure Council has directed the National Transport Commission to review the Heavy Vehicle National Law (HVNL) from a first-principles perspective.
- The HVNL commenced in 2014. Despite numerous amendments to the law over the years, there is a view shared by a wide range of stakeholders that it is not functioning as effectively as it could.
- This issues paper explores the regulatory style and structure of the HVNL and presents a model for thinking about 'how' to regulate the use of heavy vehicles based on risk. This model will be applied in forthcoming issues papers.

## 1.1 Project objectives

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### 1.1.1 Purpose of the review

The objective of the Heavy Vehicle National Law (HVNL) review is to deliver – from a first principles perspective – a modern, outcome-focussed law regulating the use of heavy vehicles that will:

- improve safety for all road users
- support increased economic productivity and innovation
- simplify the HVNL, its administration, and enforcement of the law
- support the use of new technologies and methods of operation, and
- provide flexible, outcome-focused compliance options.

### 1.1.2 Background

The HVNL was enacted in 2012 and commenced in 2014, replacing 13 model laws and six state and territory transport-related laws. The objective of the reform was to implement a seamless, national, uniform and co-ordinated system of heavy vehicle regulation in a way that:

- promotes public safety
- manages the impact of heavy vehicles on the environment, road infrastructure and public amenity
- promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles, and
- encourages and promotes productive, efficient, innovative and safe business practices.

In many respects, the HVNL represents a compromise between the views of jurisdictions, industry and other key stakeholders. The result has been inconsistency. The law has not been adopted by two jurisdictions. Participating jurisdictions derogate (depart) from the HVNL in their local HVNL application laws. There is inconsistent application and enforcement of the HVNL.

The HVNL comprises more than 800 sections and is supported by five sets of regulations. Together these provisions can be inconsistent in approach, difficult to read and interpret, onerous for industry to comply with and difficult for the National Heavy Vehicle Regulator (NHVR) to administer.

Many parts of the HVNL are complex, prescriptive and reflective of an era when access to digital technology and innovation was not a consideration.

The HVNL does not recognise that in many locations, such as regional or remote Australia, or in different industries regulated under the law, such as agriculture, mining and cranes, a 'one size fits all' approach to regulation is not appropriate.

In this context the Transport and Infrastructure Council agreed in May 2018 that the NTC should bring forward the planned review of the HVNL and supporting regulations by two years, to commence in January 2019.

In November 2018 the Council agreed to the **Terms of reference**<sup>3</sup> for the HVNL review.

### 1.1.3 NTC's approach to the review

In January 2019 the NTC published **its approach**<sup>4</sup> to the review, which outlines and explains the project framework, governance, deliverables and consultation.

The NTC adopted a first-principles approach to the HVNL review. Rather than simply looking to the existing law as a starting point, assumptions underpinning the existing law are being drawn out and tested. The aim is to deliver an entirely new law.

This is the first of eight issues papers (see Figure 1). It outlines how, at a high level, we regulate the use of heavy vehicles under the HVNL and how we might do so in the future.

The next four issues papers will cover 'what is regulated' under the HVNL, including fatigue management, access to suitable routes, safe people and practices, and safe vehicles.

The following two issues papers will cover more specific 'how to regulate' matters, including accrediting operators to deliver best practice and managing compliance, including the regulatory role that could be played by technology and data.

The last issues paper will cover other policy matters not covered in other issues papers.

**Figure 1. HVNL review issues papers**

<i>Foundation</i>	<i>What is regulated</i>				<i>How to regulate</i>		<i>Other</i>
Risk-based regulation	Fatigue	Safe vehicles	Safe people and practices	Suitable routes	Accrediting operators	Managing compliance	Other policy matters



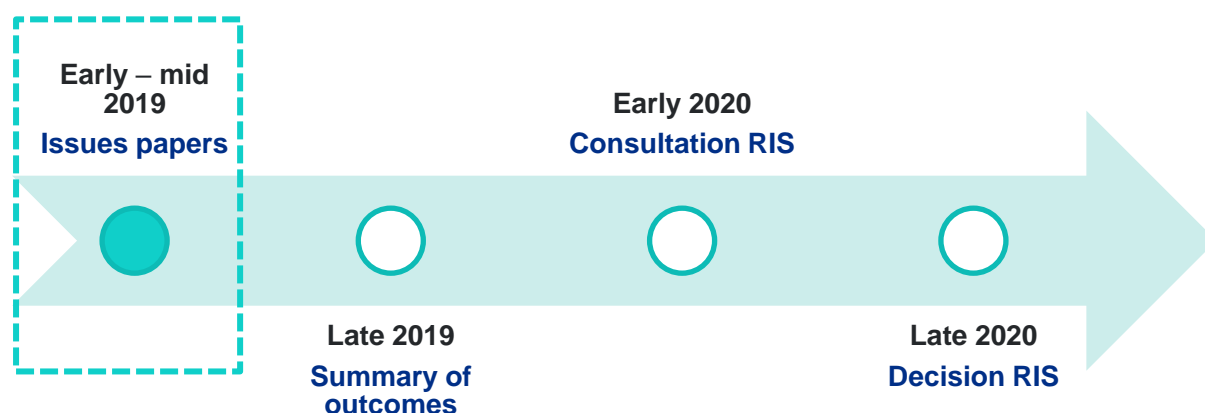
<sup>3</sup> [www.hvnreview.ntc.gov.au](http://www.hvnreview.ntc.gov.au)

<sup>4</sup> [www.hvnreview.ntc.gov.au](http://www.hvnreview.ntc.gov.au)



We will produce a summary of outcomes from the issues papers to bring together all of your feedback and advice, and to form a basis for a regulatory impact assessment (see 0).

**Figure 2. HVNL review timeline**



## 1.2 This issues paper

This is the foundation issues paper for the review and sets the tone for later issues papers.

### 1.2.1 Objectives

The purpose of this issues paper is to:

- describe good regulation and options for regulatory approaches
- summarise the current state of the HVNL
- identify and confirm problems with the current law, and
- seek preliminary views on the ways we can improve heavy vehicle regulation.

### 1.2.2 Scope of the paper

The issues paper explores the regulatory style and structure of the HVNL and presents a model for thinking about 'how' to regulate the use of heavy vehicles. This model of thinking will be applied in forthcoming issues papers.

The issues paper does not cover the detail of 'what' and 'who' the HVNL regulates, nor the specific 'hows' of managing compliance or accrediting operators. These topics will be explored in detail in subsequent issues papers.

## 2 Principles of good regulation

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### Key points

- Regulation is intended to maximise the public good. There is a persistent tension between the level of regulation applied and the burden it imposes. A risk-based approach to regulation is likely to best manage that tension.
- Well-targeted risk-based regulation makes best use of limited public resources and focuses regulators' efforts on harm minimisation.
- Regulation can have a prescriptive, performance-based or principles-based style. Each regulatory style has pros and cons, and careful consideration is needed to select the best option. Each style lends itself to specific regulatory instruments.

### 2.1 Aim of this chapter

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This chapter presents and outlines the philosophy of risk-based regulation. Risk-based regulation is designed to be efficient and effective and has been gaining favour around the world and across multiple regulated sectors as a 'best practice' approach.

The chapter aims to give readers a common understanding of risk-based regulation and the concepts it comprises, and serve as a foundation for discussions on specific regulations for heavy vehicle operations between policy-makers, regulators, transport operators, other regulated parties and the Australian community.

### 2.2 Purposes of regulation

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Governments have three ways to achieve things in the public interest: finance (for example, road funding), persuasion (for example, road safety campaigns) and regulation (for example, the HVNL).

The HVNL review focuses on regulation. Though governments' other tools are out of scope, the NTC acknowledges the importance of their contribution to delivering public good.

Regulation is defined by Freiberg (2017, p. 2) as being:

*An intentional form of intervention by public sector actors in the economic and social activities of a target population with the aim of achieving a public policy objective or set of objectives. The intervention can be direct and/or indirect, the activities can be economic and/or non-economic and the regulatee may be a public or private sector actor.*

Freiberg's definition is comprehensive; however, in simpler terms, regulation compels people or entities to behave in a certain way or to achieve an objective or outcome (typically for the public good).

There is a persistent tension between the level of regulation applied and the burden it imposes. Regulation allows governments to achieve social, environmental and economic goals on behalf of the people. However, regulation also comes at a cost: it imposes

administrative burdens on government and regulators and, more significantly, ‘red tape’ and significant cost on industry and the wider community.

## 2.3 NTC’s role in road transport regulation

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The NTC, under the *National Transport Commission Act 2003* (Cwlth), has a mandate to lead national reform relating to road transport on behalf of the Transport and Infrastructure Council. We outlined the process we use to deliver reforms in our **approach**<sup>5</sup> to the review.

Through an Inter-Governmental Agreement, the Council affirms its intention for the NTC to improve ‘transport productivity, efficiency, safety and environmental performance and regulatory efficiency in a uniform or nationally-consistent manner’ (Council of Australian Governments, 2011, p. 1).

The NTC is committed to developing and proposing effective regulatory reform, managing the tension between driving the public good without imposing excessive regulatory burdens. It is our goal to deliver the best achievable value for the Australian community.

The evidence shows that a risk-based approach to regulation, both in legislation and administration, maximises regulatory efficiency and best addresses community priorities.

## 2.4 Risks and harms

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People may not share a common understanding of the terms related to risks. For clarity, the NTC uses key terms as described below.

The ISO 31000:2018 defines *risk* as ‘the effect of uncertainty on objectives’ (ISO, 2018). An effect is a deviation from the expected and may be positive, negative or both.

A risk is usually expressed in terms of its *likelihood* (the probability it will occur) and its *consequence* (the severity or significance of the *results*).

*Harm* means a negative event. That might be a decrease in public safety (such as a load dislodged from a vehicle) or a cost, problem or other loss of value (such as pavement wear).

We are using the term *threats* to describe the component parts that contribute to the *likelihood* of a *risk*, and precede a *harm*, and *results* for the events that derive from a *harm* and make up the *consequence* of a *risk*.

Risk management involves:

- identifying and describing a risk
- understanding the risk’s threats and results
- quantifying the risk in terms of likelihood and consequence, and
- treating the risk by applying controls to the threats to reduce the likelihood (*prevention*), and/or applying controls to the results to limit the consequences (*mitigation*).

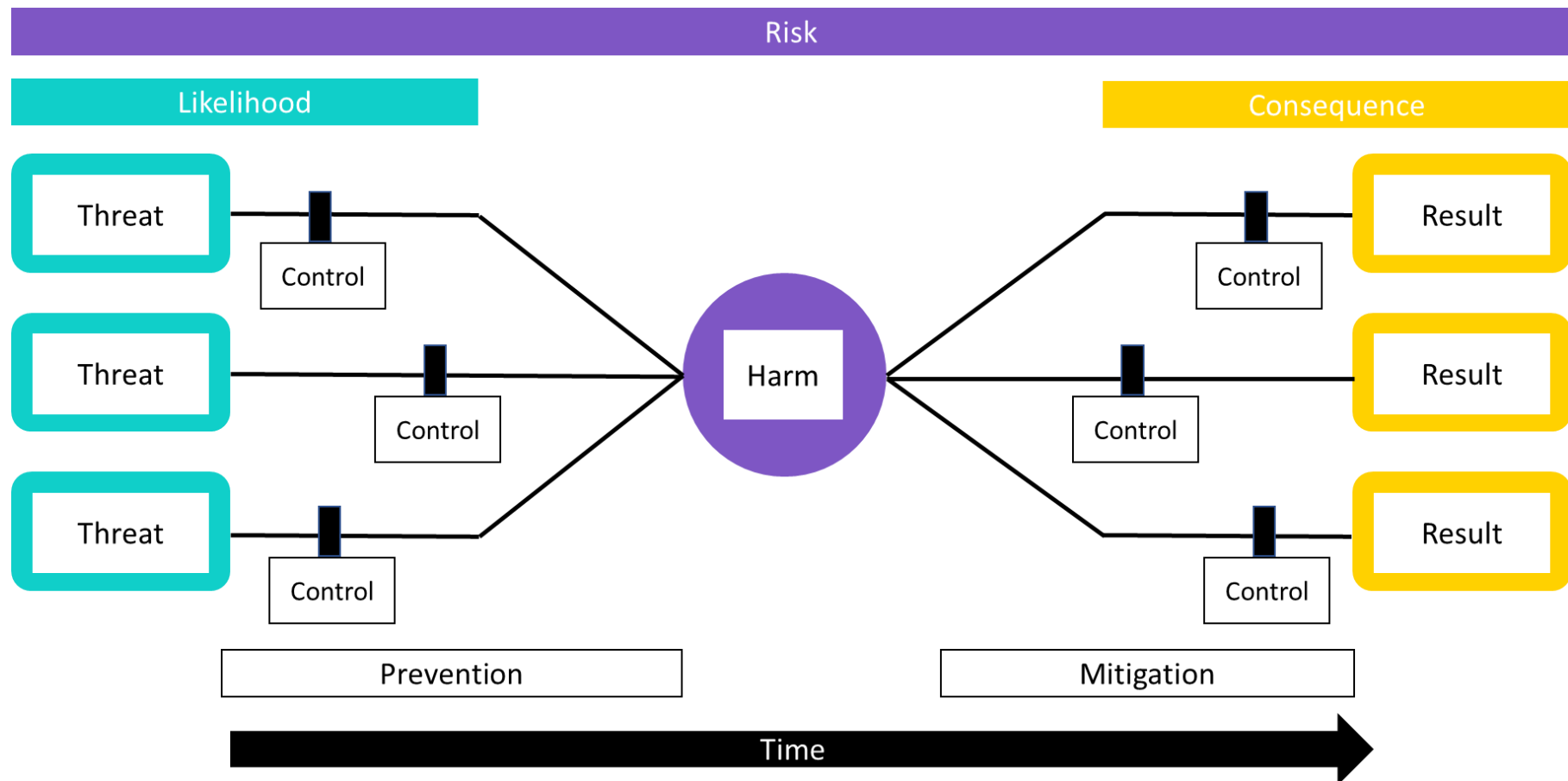
Risk management can be represented in a ‘bow-tie’ diagram, which has a left-to-right chronology (see Figure 3).

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<sup>5</sup> [www.hvnireview.ntc.gov.au](http://www.hvnireview.ntc.gov.au)

**Figure 3. A bow-tie diagram used to express risk management**

Source: adapted from Department of Industry, Innovation and Science (2016)

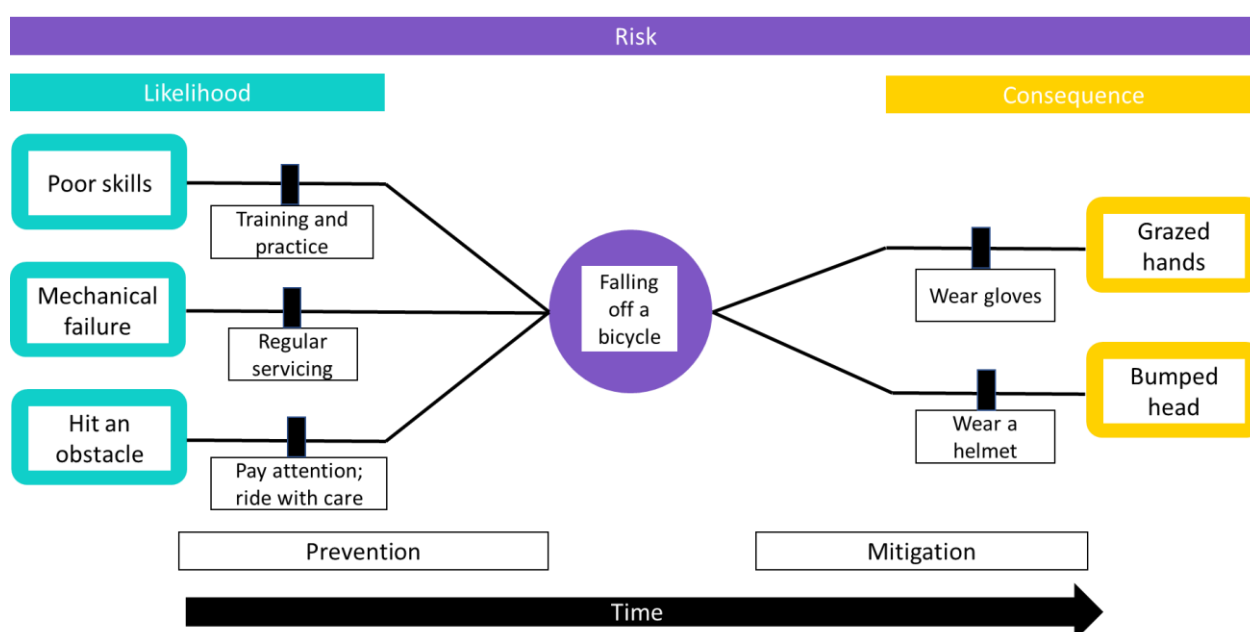


By way of example, the ‘bow-tie’ approach can be applied to the following simple scenario (see Figure 4). The identified harm is falling off a bicycle.

The threats include poor skills, a mechanical failure or hitting an obstacle. Prevention controls can be applied to the threats: training and practice, regular bicycle servicing, and paying attention and riding with care. Prevention controls reduce the likelihood of the harm occurring.

The results of a fall might include grazed hands or a bumped head. Mitigation controls include wearing gloves and a helmet. Mitigation controls reduce the consequence of the harm.

**Figure 4. Bow-tie example – falling off a bicycle**



## 2.5 Risk-based regulation

Risk-based regulation, as the name suggests, targets regulatory effort to material risks. It better aligns laws with actual significant harms, improving the effectiveness and efficiency of regulation and providing for proportional compliance and enforcement activity.

### 2.5.1 What is risk-based regulation?

A risk-based approach to regulation centres on the principle that regulation should target the most significant risks to safety. Risk-based regulation focuses on ‘harm prevention and the promotion of outcomes, and choosing the appropriate instruments to achieve performance’ (Nicholls, 2015, p. 2).

Regulation must be effective at dealing with priority risks and harms. Regulation that is ineffective in meeting its objectives can be just as damaging as no regulation or over-regulation (Organisation for Economic Co-operation and Development, 2000).

Malcolm Sparrow (2011) describes risk-based regulation as a shift from a focus on illegality into a more agile approach aimed at minimising harms. Not everything that is illegal is harmful, and many things that are legal can cause harm.

In a risk-based framework, there is greater transparency about the objectives to be achieved and greater accountability placed on both the regulator and the regulated to achieve the outcome (Nicholls, 2015, p. 5).

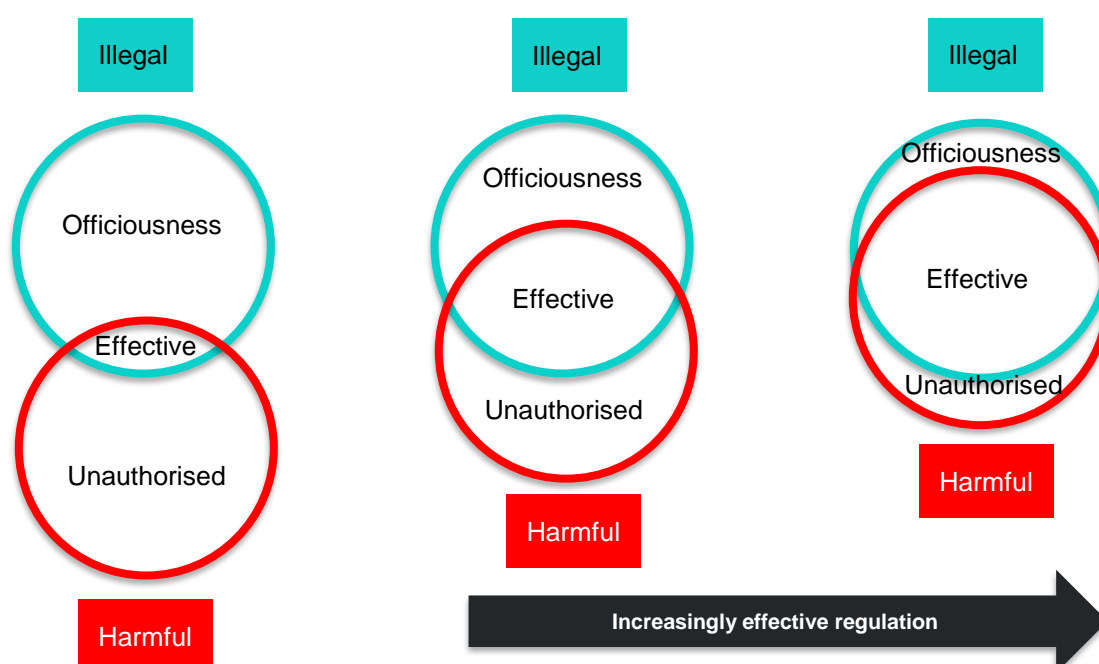
Effective risk-based regulation requires regulators to tailor their use of enforcement and other regulatory tools based on the severity of potential risks (Commissioner for Better Regulation, 2016, p. 9). Regulators need the right legislation to support them to do this.

A regulator best uses scarce public resources if they concentrate their efforts on minimising risks and harms – and, preferably those of highest likelihood and/or consequence. But regulators are restricted to operate within the bounds of the law they administer.

A regulator's effectiveness is enabled when the law closely aligns with the risks and harms it seeks to manage (see Figure 5).

**Figure 5. The difference between effective and ineffective regulation**

Source: adapted from Sparrow (2011)



Regulation of illegal-but-not-harmful behaviours may result in perceptions of officiousness, pedantry and 'revenue-raising'. This may lead to accusations of heavy-handed regulation of administrative matters and processes (such as correctly filling out forms) and regulated parties being penalised on technicalities that have little or no safety implications. Such symptoms are more likely to manifest if the law is poorly aligned to harms.

On the other hand, harmful-but-not-illegal behaviours result in a lack of regulation where it matters. Regulators may recognise and want to address these issues but they are not authorised to do so. People or entities may be compliant with the law, or beyond its scope, yet their behaviours are unsafe.

Harmful-but-not-illegal behaviours may result in regulators being unreasonably accused of being ineffective or of dereliction of duty. The outcomes for the broader public are lower levels of safety, primarily, but also ineffective use of public resources.

Well-targeted regulation allows most (if not all) harms and risks to be sensibly and effectively managed and crowds out the management of immaterial harms and risks.



The NTC contends there is a dynamic: risks and harms evolve over time. Effective regulation, therefore, is responsive, and adapts to our understanding of risks and harms and how to manage them. Fixed regulation will progressively degrade in its effectiveness.

### **2.5.2 The move to risk-based regulation**

Risk-based regulation is considered good regulatory practice. A 2011 analysis undertaken for the NTC suggested that the approach that comes closest to 'good practice', and that might arguably be said to reflect 'internationally accepted practice', is risk-based regulation (NTC, 2011a, p. 18).

Risk-based regulation has been applied internationally. For example, in the United Kingdom the government has expressed a strong preference for risk-based regulation that emphasises that targeting of inspection and enforcement resources should be 'based on an assessment of the risks that a regulated person or firm poses to the regulator's objectives' (NTC, 2011b, p. 18).

Risk-based regulation has been applied across different transport modes. Risk-based approaches are used in air and rail, for example, particularly for fatigue management.

Risk-based regulation has been used across many sectors too. Regulators around the world are developing risk-based approaches in areas such as environmental management, work health and safety (WHS), food safety, financial services and pension regulation (Baldwin and Black, 2008).

Besides the obvious value of efficiently using limited resources to regulate actual harms and risks, risk-based regulation has a number of other benefits. The NSW Commissioner for Better Regulation (2016) states that the move towards outcomes and risk-based regulation will enhance economic and social wellbeing by:

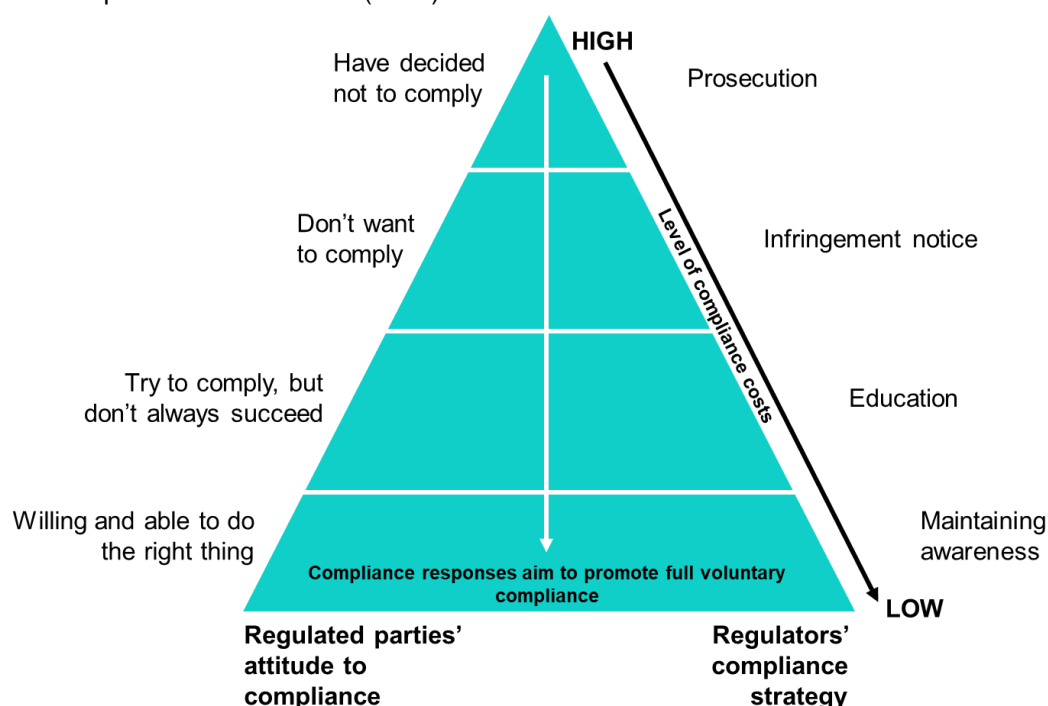
- reducing unnecessary regulatory burden on regulated entities
- increasing the productivity of regulators and regulated entities, and
- driving flow-on economic and social benefits.

### **2.5.3 Better enforcement**

Risk-based regulation supports more effective enforcement outcomes. The enforcement response is informed by the level of risk. Occurrences that are likely to have a major consequence will normally lead to prosecution or other action at the top of the 'enforcement pyramid', while those involving lesser risk will be subject to action at lower levels of the pyramid (see Figure 6) (Braithwaite, 2018).

**Figure 6. Enforcement pyramid**

Source: adapted from Braithwaite (2018)



Braithwaite's model proposes that regulators should start at the bottom of the pyramid, assuming the regulated party is willing to comply voluntarily. However, where this assumption is shown to be ill-founded, regulators should escalate enforcement up the pyramid. Regulators need a suite of regulatory tools to be able to apply this strategy.

Braithwaite's model highlights that the cost of compliance and enforcement is lower at the base of the pyramid, and this should be where most regulator activity occurs.

### 2.5.4 Challenges

A challenge of risk-based regulation is that it requires meaningful data and a methodology to accurately assess risk. Ideally a regulator has the tools it needs to develop a risk profile across the parties it regulates.

The advantages of risk-based regulation may be compromised if there are material risks beyond the scope of the regulation. Ideally a regulator has administrative oversight over all risks and harms that might compromise its objectives.

### 2.5.5 Targeting risk-based regulation

Risk-based regulation – like any regulatory approach – can deliver public good in one of two ways (Sparrow, 2011):

- **Expanding the good** – promoting safety, productivity, best-practice, industry development, environmental stewardship, etc.
- **Sabotaging the bad** – preventing harms by removing or reducing their threats, reducing the likelihood of an adverse event, and mitigating the consequences of adverse events.

The choice of regulatory option depends on which is most tangible and meaningful in the circumstance. It tends to be more difficult to 'sabotage the bad' because it is more strategic

and specific. But, particularly in areas of regulation that have infrequent but severe harms like road transport, sabotaging the bad can be a highly-effective tactic to maximise public good. For example, there are millions of safe journeys every year; increasing those journeys by a few per cent is quite different from intervening to prevent journeys that result in, or could have resulted in, fatalities, injuries or property damage.

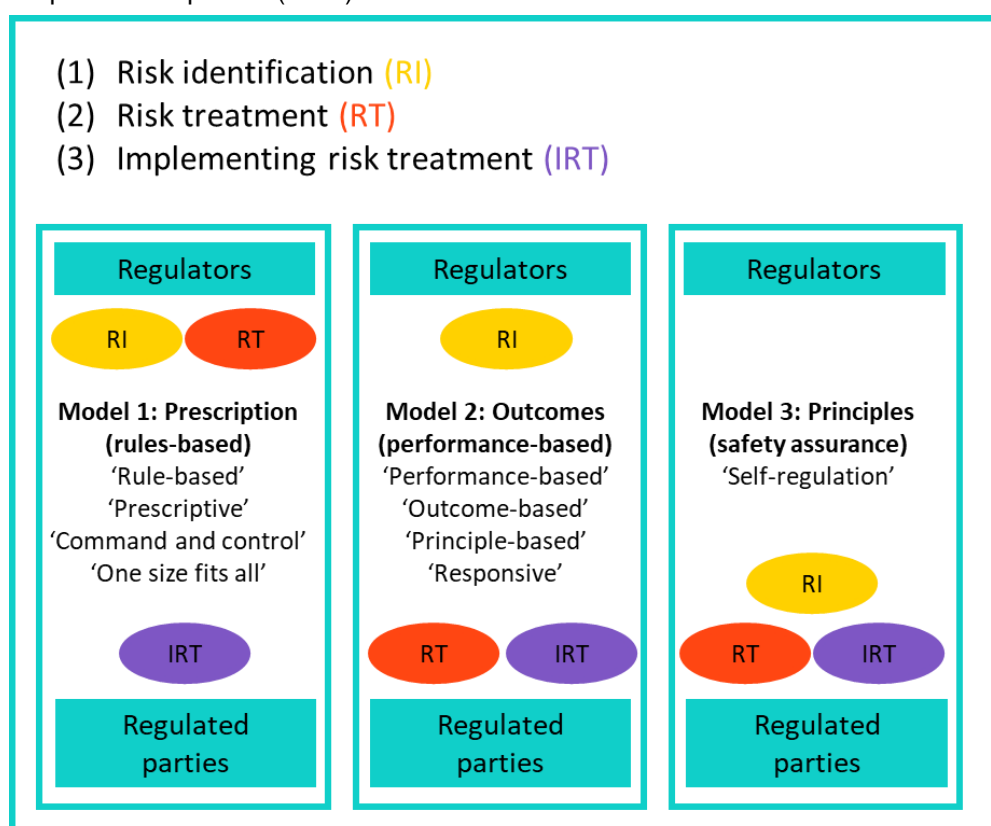
## 2.6 Regulatory styles

There are three broad regulatory styles that can be described by who owns the various risk management roles (see Figure 7):

- **Prescription (rules-based)** – the government is responsible for identifying risks and prescribing specific risk treatments; operators are responsible for implementing the prescribed treatments.
- **Outcomes (performance-based)** – the government is responsible for identifying risks and setting commensurate performance standards for risk treatments; operators are responsible for specifying and implementing risk treatments that meet those performance standards.
- **Principles (safety assurance)** – the government specifies an overall safety objective and monitors outcomes; operators and the government share responsibility for identifying risks; operators manage risks to attain the safety objective and provide assurances to government of appropriate risk management policies and procedures to attain the safety objective.

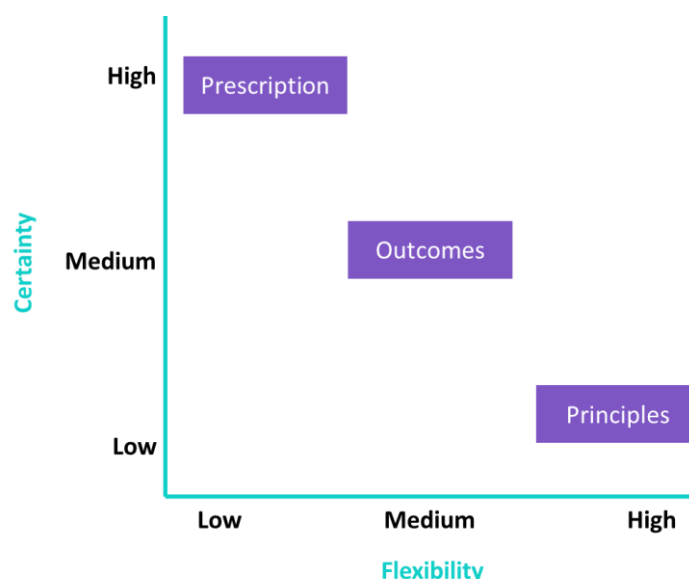
**Figure 7. Regulatory styles and responsibility**

Source: adapted from Sparrow (2011)



Each of these regulatory styles can be used to implement a risk-based approach to regulation, and each has a place. No single regulatory style is universally more effective, because there is a trade-off between certainty and flexibility (see Figure 8).

**Figure 8. Certainty and flexibility of regulatory styles**



A law that allows for a deliberate use of all three regulatory approaches, rather than an imbalanced reliance on one, is likely to deliver better overall outcomes.

### 2.6.1 Prescription (rules-based) regulation

Prescriptive regulation is based on hard-and-fast rules and provides certainty, clarity and uniformity. Prescriptive regulation can be easier to enforce – it requires limited judgement to be exercised and means enforcement officers may not need to be as highly skilled.

The disadvantages include inflexibility, higher likelihood of becoming outdated, and potential to hinder innovation. Regulators have limited use of discretion and regulated parties may find 'loopholes' that allow them to behave unsafely but, technically, not illegally. Prescriptive regulation can become quite long and complicated, and may need to be updated frequently to eliminate technicalities.

### 2.6.2 Outcomes (performance-based) regulation

Performance-based regulation defines a standard or outcome and allows regulated parties to choose the way they meet it. Performance-based regulation provides flexibility to regulated entities and allows the regulation to be responsive to changes in technology and methods of operation.

Performance-based regulation can reduce certainty about what acceptable compliance may look like and requires a higher degree of competence from regulators and regulated parties. Comprehensive guidance material from regulators can greatly assist regulated parties with compliance.

Performance-based regulation may be supported by rules-based 'deemed-to-satisfy' provisions, which provides assurances for regulated parties without compromising the capacity of others to be innovative and comply in a manner that better suits their needs. This

is effectively a dual regulatory approach that is designed in a way so as not to risk internal inconsistency. An example is the *National Construction Code of Australia* (see Appendix A).

### 2.6.3 Principles (safety assurance) regulation

Safety assurance is typically associated with high-level principles. Government specifies an overall safety objective and monitors outcomes. Regulated parties are responsible for identifying and managing risks to attain the safety objective and assuring government – through reporting and auditing – that appropriate risk management policies and procedures are in place to attain the safety objective.

Safety assurance provides government oversight of how an operator manages risk, as well as visibility of the risks across an industry. Regulated parties identify, treat and control the risks against the outcome or objective specified by the government. Whether implicit or explicit, safety assurance recognises and depends on regulated parties' expertise in matching, or more likely exceeding, that of government.

Safety assurance requires significant overhead costs to establish and a mature industry with high capacity to understand, implement and comply with the various requirements. It requires a highly-competent and empowered regulator, able to access and assess regulated parties' safety systems. Safety assurance depends on a co-operative and open relationship between regulators and regulated parties, and is typically supported by accreditation, licensing or other formal endorsements to operate.

## 2.7 Regulatory structures

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Requirements for regulated parties can be found in various instruments. The authority to amend lower-order instruments is delegated by the Parliament and is limited in scope by primary legislation. These instruments include the following:

- **Primary legislation** – the Act, which is made by the Parliament. Changes to primary legislation are, by design, difficult and therefore it offers a degree of certainty and persistence that complements the high flexibility of safety assurance and performance-based regulation.
- **Supporting regulations** – regulations have their scope set by the primary legislation, but only require a responsible minister for amendments. They are therefore more flexible than primary legislation but still have a degree of persistence, and so complement the lower flexibility of performance-based and prescriptive regulation.
- **Other instruments** – instruments such as codes of practice (such as the Master Code approved by the NHVR in late 2018), standards, guidelines and notices, for example, can be authorised by a regulator and updated at short notice if needed. These instruments are often used for prescriptive rules for technologies or processes, as well as guidance material that supports performance-based and safety assurance requirements.

## 3 The Heavy Vehicle National Law

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### Key points

- The HVNL consists of the *Heavy Vehicle National Law Act 2012* and five sets of regulations.
- The primary purpose of the HVNL can be described as ensuring that a heavy vehicle operates safely while delivering an efficient service.
- The HVNL regulates components of a safe and efficient heavy vehicle journey including a safe driver, a safe vehicle and a suitable route, as well as providing the administrative and functional framework for heavy vehicle regulation.

### 3.1 Purpose of the HVNL

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The primary purpose of the HVNL can be described as ensuring that a heavy vehicle operates safely while delivering an efficient service – that is, a **safe and efficient heavy vehicle journey** (see Figure 9).

A **safe and efficient heavy vehicle journey** comprises:

- a **safe driver** – one who is well-trained, competent, fit for duty and alert when driving
- a **safe vehicle** – one that is registered, roadworthy and safely loaded, and
- a **suitable route** – one that minimises public safety risks and excessive impacts on road infrastructure (given a heavy vehicle's mass and dimensions).

The HVNL, along with other legislation, aligns with this purpose.

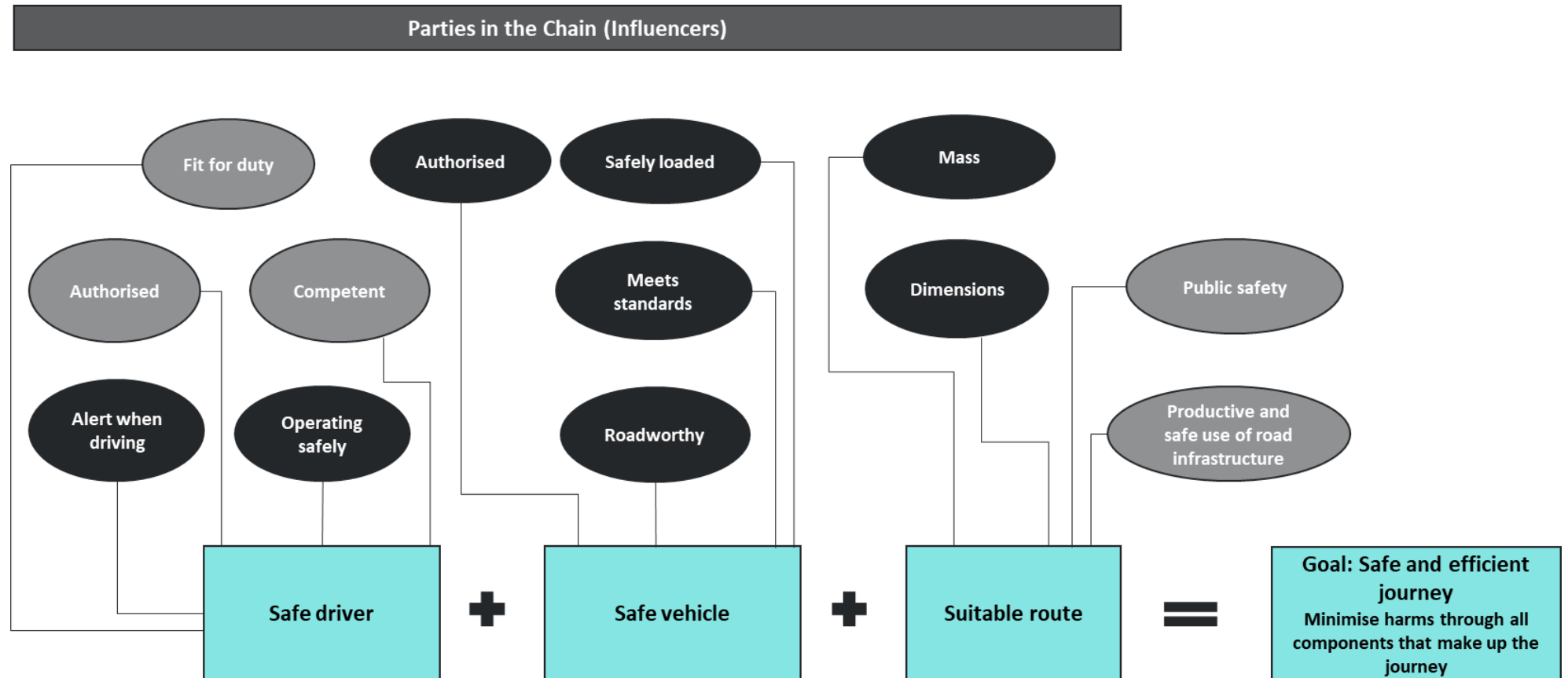
Fundamentally, most risk and harms the HVNL seeks to address – relating to public safety and excessive public infrastructure wear and damage – occur during the journey.

In developing a risk-based regulation from first principles, risk must be identified and framed in terms of the objective of a safe and efficient heavy vehicle journey.

The threats that may lead to harms often originate well before, and far away from, the journey (and may be controlled by others). The HVNL aims to manage these threats and to aid efficiency and productivity by regulating those who control or influence the component parts of a heavy vehicle journey.



Figure 9. Elements of a safe and efficient heavy vehicle journey



## 3.2 Object of the law

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The object (as set out in section 3 of the HVNL) is to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:

- promotes public safety
- manages the impact of heavy vehicles on the environment, road infrastructure and public amenity
- promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles, and
- encourages and promotes productive, efficient, innovative and safe business practices.

## 3.3 What the HVNL regulates

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The HVNL regulates components of a safe and efficient heavy vehicle journey:

- a safe driver – for example, fatigue management, including work and rest hour requirements, paper and electronic work diaries, accreditation
- a safe vehicle – for example, vehicle standards, accreditation, load restraint, roadworthiness
- a suitable route – for example, mass, dimension and loading requirements, oversize and overmass, general and restricted access, the Intelligent Access Program, the Performance Based Standards scheme, and
- administrative and functional support for the above – for example, auditing, investigations, enforcement, sanctions, penalties, reviews and appeals.

## 3.4 Who the HVNL regulates

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The HVNL regulates all parties who can reasonably influence the safe and efficient journey. This includes those explicitly listed in the chain of responsibility (section 5 of the HVNL):

- if the vehicle's driver is an employed driver – an employer of the driver
- if the vehicle's driver is a self-employed driver – a prime contractor for the driver
- an operator of the vehicle
- a scheduler for the vehicle
- a consignor of any goods in the vehicle
- a consignee of any goods in the vehicle
- a packer of any goods in the vehicle
- a loading manager for any goods in the vehicle
- a loader of any goods in the vehicle, and
- an unloader of any goods in the vehicle.

The HVNL also regulates:

- road managers and road authorities (Chapter 4, Part 4.7 of the HVNL)
- auditors (Chapter 7, Part 7.5 of the HVNL)
- authorised officers (Chapter 9 of the HVNL)
- the NHVR and NHVR board (Chapter 12, Part 12.2 Division 1 and 2 of the HVNL)
- Transport Certification Australia (Chapter 7, Part 7.5 of the HVNL).

There are some parties who can influence safety of heavy vehicle use who are not subject to the HVNL, for example third-party heavy vehicle maintenance providers.

### 3.5 How the law is applied

The HVNL is implemented using an applied law scheme, supported by regulations and other instruments. Essentially, the law is implemented by one jurisdiction and applied by all other participating jurisdictions (as their own state or territory law).

Applied law is used to drive national harmonisation because the Australian Constitution doesn't give the power to make laws with respect to road, rail and intermodal transport. Land transport is a matter for the states and territories to regulate.

Changes to the HVNL and its subordinate instruments require unanimous agreement from the responsible ministers on the Transport and Infrastructure Council.

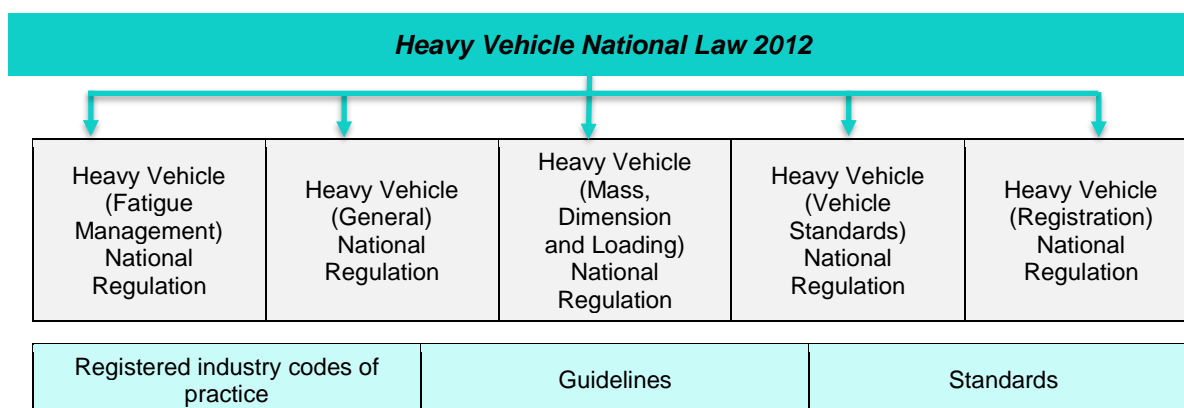
Once the ministers have agreed to the legislative reforms, the applied law scheme is passed by a 'host' Parliament. In the case of the HVNL, this is the Queensland Parliament. The HVNL is then applied by each participating state and territory to give it legal effect in that jurisdiction. States and territories retain the capacity to determine which parts of the law they will and will not apply (derogations), which may be necessary given the varied legislative interactions in each jurisdiction.

The HVNL is enforced by police and authorised officers of the NHVR and its delegates.

### 3.6 Legislative structure

The HVNL consists of the *Heavy Vehicle National Law Act 2012* and five sets of regulations (see Figure 10). Other regulatory instruments such as registered industry codes of practice and guidance material support the objectives of the HVNL.

**Figure 10. Heavy Vehicle National Law**



## 4 The problems

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### Key points

- The HVNL is not applied uniformly across Australia. Over half of Australia (by area) has not applied the HVNL, and every participating jurisdiction has derogated.
- The HVNL contains a large number of prescriptive rules in the primary legislation, making changes onerous. Even relatively minor amendments can take more than 12 months to take effect.
- Heavy vehicles are used for diverse purposes by a wide range of operators. Heavy vehicles travel in vastly different domains in Australia. The law does not deal well with the diversity.
- The HVNL is not risk-based and contains inconsistent rules and regulations disproportionate to the risks it seeks to manage.
- The HVNL is challenging to administer, enforce and comply with.
- Although the HVNL has been in operation for some years, it has not fully achieved its original goals in reducing regulatory burden, and productivity and safety improvements have been mixed.

Through consultation with industry, regulators, jurisdictions (participating and non-participating) and others, the NTC understands the high-level problems with the HVNL are that the law:

- is not nationally consistent and is not applied consistently in participating jurisdictions
- is prescriptive and inflexible
- adopts a 'one size fits all' approach to many diverse industries, domains and operators
- is not risk-based or proportionate
- presents challenges for administration, compliance and enforcement, and
- has not achieved its original goals.

These are the broad, high-level issues. More specific problems, such as fatigue management and access, are the subject of subsequent issues papers.

### 4.1 The law is not nationally consistent

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The HVNL is not applied uniformly across Australia:

- Two jurisdictions have not applied the HVNL.
- All participating jurisdictions have derogated from the HVNL.

#### 4.1.1 The law is not national

Over half of Australia (by area) is not covered by the HVNL (see Figure 11).

In 2011 all jurisdictions agreed to establish a national system of regulation for all heavy vehicles over 4.5 tonnes, consisting of uniform laws administered by a single national regulator (Council of Australian Governments, 2011).

However, the Northern Territory and Western Australia have not applied the HVNL on the grounds it does not offer net benefits to their jurisdictions. This means that regulated parties with operations across jurisdictions may need to understand and comply with the HVNL as well as Western Australian and Northern Territory regulations.

**Figure 11. Half of Australia is not covered by the Heavy Vehicle National Law**



#### 4.1.2 States and territories have derogated

Participating jurisdictions apply the HVNL differently. When applying the law, jurisdictions may need to change or not apply some parts of the law (derogate). In addition to inconsistent application, there are varied enforcement approaches between participating jurisdictions.

The consolidation of heavy vehicle laws in 2011 sought to 'address a long-standing problem of contradictory and inconsistent state laws that stifle productivity and hamper the promotion of safety' (Explanatory Notes, Heavy Vehicle National Law Bill 2011 (Qld), p. 4).

All participating jurisdictions have derogated from the HVNL. While the overall number of derogations is small in comparison with the size of the HVNL, some have material effect.

Derogations mean regulators have varied powers and obligations between the jurisdictions. For example, New South Wales and Tasmania have derogated from Chapter 9 of the HVNL to allow authorised officers to use force that is reasonably necessary to exercise a power under the section. Note, however, that not all derogations are bad - many are needed because of other state laws.

Figure 12 illustrates the severity of derogations across participating jurisdictions. Appendix B presents more details.

**Figure 12. Severity of derogations in participating jurisdictions**

**Key:** ■ No material derogations ■ Low severity ■ Medium severity ■ High severity



<sup>6</sup> The Australian Capital Territory has not applied chapter 6 (fatigue) or chapter 8 (accreditation)



Inconsistent application of the HVNL means rules change at state and territory borders, which compromises the original goal of the reform. Even relatively small distinctions in regulation have compliance and enforcement consequences for cross-border operators (Explanatory Notes, Heavy Vehicle National Law Bill 2011 (Qld), p. 5).

According to industry sources, drivers who cross borders experience considerable 'compliance stress' (Explanatory Notes, Heavy Vehicle National Law Bill 2011 (Qld), p. 5).

In addition, there are 537 local governments in Australia (Australian Local Government Association, 2018). Local governments, as road managers (section 5 of the HVNL), have a say in granting access and each may exercise their judgement differently. This adds another challenge to achieving national harmonisation.

## 4.2 The law is prescriptive and inflexible

The HVNL draws from a long legacy of transport law that was written before the concepts of risk-based and responsive regulation. The HVNL:

- is highly prescriptive
- has a paper focus
- focuses on administration instead of outcomes, and
- is unresponsive and change is onerous.

### 4.2.1 The law is highly prescriptive

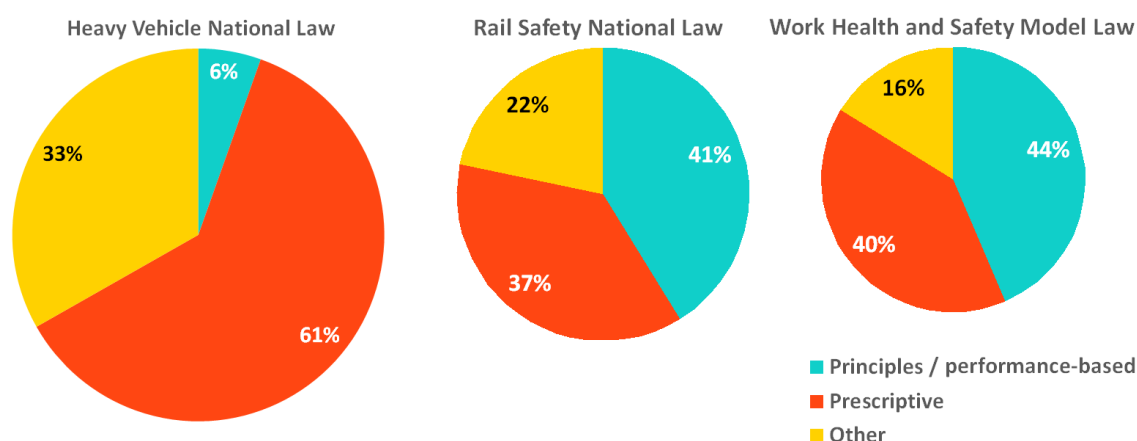
The HVNL is 676 pages long and comprises 13 chapters. It is considerably different in scale and style from comparable laws.

Figure 13 provides a comparison of the size and regulatory styles used in the HVNL, Rail Safety National Law (RSNL) and model Work Health and Safety (WHS) Act.

By simple count of provisions in the primary legislation, the HVNL is more than twice the size of the RSNL and the model WHS Act.

The HVNL is also highly-prescriptive: almost two-thirds of the Act contains prescription. The HVNL has 10 prescriptive rules for each performance-based requirement, whereas the RSNL and model WHS Act are closely balanced between prescriptive and performance-based requirements. Appendix C has further detail.

**Figure 13. Comparison of regulatory styles by instrument**



#### **4.2.2 The law has a paper focus**

An industry peak body commented that ‘we live in a digital world and we’re bound by analogue legislation’ (McKay, 2018).

The HVNL has a paper focus in that it requires drivers to carry copies of documents, such as Performance Based Standards approvals, permits and accreditation certificates. Various applications of new technologies can provide more efficient and flexible alternatives for verifying authorisations that are not well accommodated by the law (International Transport Forum, 2017, p. 11).

The HVNL does not adequately support the uptake of advancing technologies such as fatigue monitoring devices and telematics. Potential advances in safety and productivity, through the use of technology for regulatory purposes, are held back by the need to amend prescriptive primary legislation.

For example, many drivers are required to maintain a paper work diary to record work and rest hours. Electronic work diaries (EWDs), which essentially mirror the requirements of the paper-based diary, are now supported by the law but the HVNL primary legislation required amendment to permit them. The process to bring EWDs into the HVNL took more than three years and, at the time of writing this issues paper, no EWDs were yet approved for use.

Further, telematics have been widely adopted commercially because operators have seen the business and safety benefits. Operators use telematics to increase the efficiency and safety of commercial operations by monitoring harsh braking, routing, drivers and the driving task. Some operators have developed their own systems; others have bought off-the-shelf-solutions to meet their commercial needs (NTC, 2018b).

Despite commercial use, telematics have not been adopted broadly for regulatory purposes (NTC, 2018b). The HVNL regulates the Intelligent Access Program, however, it does not support the use of other telematics options for regulatory and compliance purposes.

Finally, driver fatigue monitoring devices are being used by operators such as Toll Group and Ron Finemore Transport, to help effectively manage driver fatigue (NTC, 2018a). Despite the potential benefits of this technology (when coupled with suitable management systems) to both operators and regulators, operators must use records of work and rest hours as their primary means of demonstrating compliance with fatigue requirements.

The HVNL’s inflexibility means it poorly accommodates advances in technology, data and electronic communications.

Technology advances faster than changes to primary legislation can accommodate. Today’s technology will look different from technology that will exist when the new HVNL is drafted and enacted in a few years’ time.

#### **4.2.3 The law focuses on administration instead of outcomes**

The HVNL often specifies in detail processes and risk treatment options that have questionable links to real risks.

For example, the HVNL is heavily focused on administrative and record-keeping requirements for fatigue management, rather than the intended outcome of stopping drivers from driving while impaired by fatigue (Australian Transport News, 2018a). Any focus on administration rather than harm prevention or mitigation imposes a high regulatory burden on operators for limited safety benefit.

#### **Case study: Fatigue record-keeping requirements (NatRoad case study)**

Drivers and record keepers advised us that they spend a significant amount of time completing and checking work diaries to avoid receiving a fine for an administrative error. Drivers in particular face hefty financial penalties.

For example, in 2019 a driver was subject to a roadside inspection where his work diary was examined.

The driver was issued with three penalty notices for various administrative work diary breaches: \$165 for not recording prescribed information in the work diary (most likely failing to sign and date a diary page); \$330 for not removing a yellow copy page; and \$661 for not recording his base location in the front of the work diary.

Although the driver complied with the work and rest time requirements, managed his fatigue and did not pose a safety risk to himself or other road users, he was penalised a total of \$1,156.

Fatigue management will be explored in further detail in the issues paper on effective fatigue management.

The HVNL access regime is also a highly prescribed process that imposes a burden on businesses and local government. Operators must apply for permits for each movement of a restricted access vehicle that is not otherwise authorised. This can be a lengthy process that may lead to local government capacity challenges, frustration for operators and perverse or inconsistent results.

#### **Case study: Access (Crane Industry Council of Australia case study)**

Some operators have developed work-arounds to deal with the prescriptive access requirements of the law while running their business cost-effectively.

For example, the Crane Industry Council of Australia informed the NTC that an operator applied for 15 permits in one month 'just in case' a crane was required for a job. This process means that the crane can leave the yard when required by a customer. Although this process is expensive because it requires a full-time employee to continually apply for permits and follow up applications, the operator considers this approach to be more cost-effective and reliable than waiting up to 28 days.

This perverse outcome of the regulation means permits are often sought with no expectation of use, with associated burdens placed on the NHVR and road managers (as well as operators).

Access will be explored in further detail in the issues paper covering easy access to suitable routes.

#### **4.2.4 The law is unresponsive, and change is onerous**

Almost two-thirds of the Act is prescriptive (see section 4.2.1). To make a change to primary legislation requires unanimous agreement from all responsible ministers and subsequent

passage through the Queensland Parliament. Even relatively straightforward amendments take more than a year (see section 3.5 and Table 2 of the **HVNL review approach**<sup>7</sup>).

In the five years since the commencement of the HVNL, the NTC has led nine amendment packages for the primary legislation (see Appendix D). This is nine sets of amendments that have been considered by the Transport and Infrastructure Council and nine sets of amendments that have been introduced and passed through the Queensland Parliament. Each time the law must be applied by every participating state and territory.

### **4.3 The law applies a ‘one size fits all’ approach**

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The current HVNL applies a ‘one size fits all’ approach and does not recognise the diverse:

- purposes of the industry
- risks associated with geographical areas, and
- types of operators.

#### **4.3.1 Not one but many industries**

A broad set of Australia’s industries operate or influence the operation of heavy vehicles and are therefore regulated by the HVNL.

Heavy vehicles are used for diverse purposes such as:

- freight movements - for example, oversize overmass, interstate line haul, urban distribution, livestock movements, refrigerated transport and dangerous goods
- specialised services - for example, cranes, agricultural vehicles and concrete pumps
- passenger services - for example, buses, and
- waste management services.

Vehicles carrying livestock have different needs and present different risks from that of a passenger service or waste management vehicle. The law currently does not accommodate for these differences or recognise their diverse needs and risk profiles.

The diversity of purposes for heavy vehicles means a diversity of vehicle types.

Parties regulated by the HVNL, too, are diverse. They influence or control the operation of different vehicles, under varied business models, and each have different capacities and risk profiles.

#### **4.3.2 Disparate operating domains**

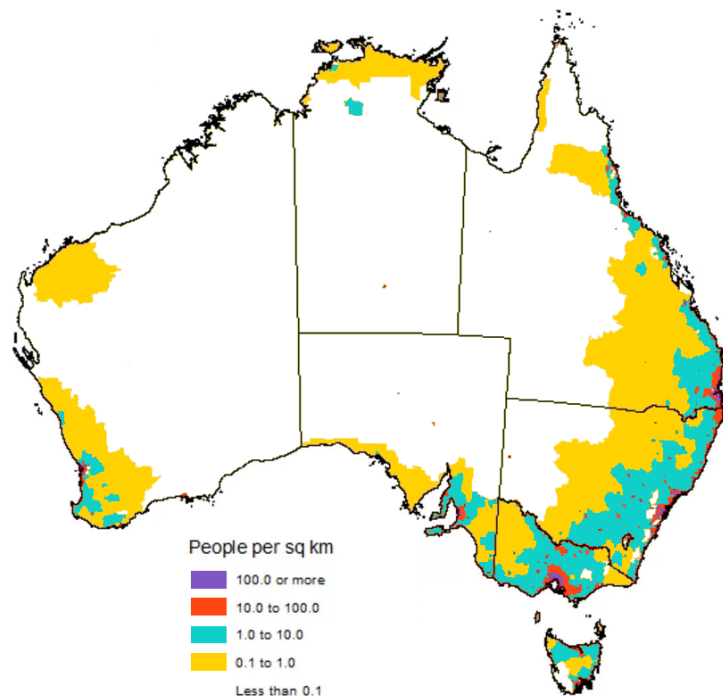
Australia is one of the world’s least densely-populated countries, surpassing only Namibia, Western Sahara and Mongolia for population density (see Figure 14) (World Bank, 2018).

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<sup>7</sup> [www.hvnreview.ntc.gov.au](http://www.hvnreview.ntc.gov.au)

#### Figure 14. Australian population density

Source: (Australian Bureau of Statistics, 2018)



Our low population density contrasts with our highly urbanised population. Nearly 90 per cent of us live in urban areas and more than 70 per cent live in a capital city (World Bank, 2018). Australia is more urbanised than Germany, the United Kingdom and the United States (World Bank, 2018).

The result of these two extremes (by world standards) is that road transport in Australia operates in vastly different domains yet is subject to broadly equivalent requirements.

The NTC observes that the law appears to focus on regulating interstate line-haul freight operations on the eastern seaboard:

- Chapter 4 of the law focuses on access for larger vehicles.
- Chapter 6 of the law focuses on work and rest hour records for work greater than 100 kilometres from base.
- Chapter 7 of the law focuses on telematics use for access for larger vehicles (though specialised vehicles are included as well).
- Chapter 8 of the law focuses on accreditation, with regulatory incentives for access and fatigue. These incentives are of no value to non-fatigue-regulated heavy vehicles, for example.

#### 4.3.3 Diverse operators

Road freight is one of the biggest sectors regulated by the HVNL but, even in this business, the operators are diverse.

In 2018 there were an estimated 40,332 operators in the road freight industry, ranging from single-vehicle operators to large corporations (IBISWorld, 2018). These operators range from seasonal farmers to international logistics chains.

Approximately 70 per cent of all operators only have one truck in their fleet and about 24 per cent have two to four trucks (National Transport Insurance, 2016, p. 6).

Typically, smaller operators prefer the certainty and relative simplicity of prescriptive regulation but can be frustrated and limited by the lack of flexibility. Larger operators tend to prefer the flexibility and adaptability of performance-based or safety assurance regulatory frameworks, accepting that comes at the cost of simplicity and certainty. The HVNL seems to have a bet each way, forcing all operators and regulated parties to run a safety management system in a prescriptive regulatory environment.

Larger operators may already operate under safety assurance frameworks (especially if they have air and rail operations) and have well-developed WHS systems that are often limited in use for heavy vehicle operations because of the highly-prescriptive nature of the HVNL.

Conversely, the recent introduction of primary duties to the HVNL combined with the chain of responsibility effectively require all operators and regulated parties, including smaller operators, to operate a suitable safety management system.

## **4.4 The law is not risk-based or proportionate**

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The HVNL is not risk-based and contains inconsistent rules and regulations that are disproportionate to the risks it seeks to manage.

### **4.4.1 Opaque and out-of-scope risks**

A risk-based approach to regulation should target the most significant risks.

The HVNL does not set out requirements for operators to enter and exit the industry, and barriers to entry are quite low compared with other transport modes. An operator's ability to freely enter and exit the industry makes it difficult for the NHVR to have visibility of all regulated parties (and risks). The NHVR can access registration data but cannot see drivers at an individual level, nor others in the chain of responsibility. This makes it difficult to build a clear picture of the industry.

The HVNL does not expressly address risks directly related to driver competence, fitness for duty and authorisation (see Figure 9). These components are important to a safe and efficient journey and each present their own unique risks. This will be explored in further detail in the issues paper addressing safe people and safe practices.

The use of pilots and escorts is regulated by state-based instruments. As a result, the number of pilot and escort vehicles required, and the accreditation of drivers, varies significantly across jurisdictions. The HVNL only regulates operational requirements of pilot and escort vehicles such as warning lights, warning signs and positioning of vehicles (Schedule 8 of the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*). This will be explored in further detail in the issues paper on easy access to suitable routes.

### **4.4.2 Disproportionate responses to risks**

The HVNL does not respond proportionally to the risks it seeks to manage. For example, the key control for fatigue risk is a work diary, and it is not used as a control in most cases.

More than three-quarters of vehicle operations are not required to use work diaries. Australian Bureau of Statistics (ABS) data from 2016 suggests there are 379,074 heavy vehicles over 4.5 tonnes and of those only 84,175 (22 per cent) are fatigue-regulated heavy vehicles (over 12 tonnes) that may be required to use a work diary (in participating jurisdictions) (ABS, 2017).

ABS data shows that most road freight does not leave the state. In 2014, more than two-thirds of total freight tonne kilometres were within the same state or territory (intrastate) (ABS, 2014). Despite the average journey covering more kilometres, less than one third of freight tonne kilometres were carried interstate (ABS, 2014).

Drivers within 100 kilometres of their base do not need to use a work diary. This means operators of at least 78 per cent of heavy vehicles, and probably more, are not required to manage driver fatigue through a work diary, despite often driving among vulnerable road users. Other longer distance drivers, by contrast, face harsh sanctions even for administrative errors in a work diary (see section 4.2.3). The law has a confused view of the importance of work diaries as a control for managing the risks of driver fatigue.

## **4.5 The law is challenging to comply with, administer and enforce**

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The HVNL presents challenges to effective compliance, administration and enforcement for all parties.

### **4.5.1 Compliance**

Operators and other regulated parties have the primary responsibility for complying with the law. Most regulated parties are willing and able to 'do the right thing', though that is made difficult by the prescriptive nature and complexity of the HVNL.

Operators are limited in their opportunities to innovate because of the need to comply with prescribed risk treatments. Those who do innovate may see limited benefit from a compliance perspective, even if there are business and safety benefits.

The complexity of the HVNL presents a great deal of difficulty, particularly for smaller or more occasional operators or regulated parties who may have limited understanding of their obligations as a party in the chain of responsibility. Guidance from industry bodies and the regulator are crucial aids to compliance for many regulated parties; however, the regulator and industry bodies have no robust way of identifying all regulated parties to pro-actively reach them.

Interstate operators (particularly those that operate between non-participating and participating jurisdictions) retain the pre-HVNL problems of needing to comply with multiple regimes.

### **4.5.2 Administration**

The prescription and complexity of the HVNL presents challenges for governments and regulators administering the law.

The NHVR must deal with varied powers and requirements across participating jurisdictions.

As road managers under the HVNL, many local governments are not sufficiently resourced to deal with their role of providing access consents. In practice this is a new role under the HVNL (Australian Local Government Association, 2017).

### **4.5.3 Enforcement**

The traditional heavy vehicle enforcement approach relies heavily on roadside enforcement to detect non-compliance, rather than an audit-based approach. Roadside enforcement is based on highly visible enforcement activities that rely on an efficient system of identifying breaches, motivations for non-compliance and subsequent action (NTC, 2014, p. 16).



Roadside enforcement will necessarily miss a great deal of non-compliance, by virtue of being unable to be in all places at once. Audit-based enforcement relies on visibility of all regulated parties to develop a risk model, which is limited under the HVNL.

Technology may play a role in a future risk and audit-based enforcement approach. This will be explored in further detail in the managing compliance issues paper.

## **4.6 The reform has not fully achieved its original goals**

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Although the HVNL has been in operation for some years, the reform has not fully achieved its original goals in reducing regulatory burden, and productivity and safety improvements have been mixed.

### **4.6.1 Regulatory burden remains high**

The original aim of the HVNL was to reduce the regulatory burden by providing a single set of laws, a single regulator to administer it and consistent practices to enforce it (Explanatory Notes, Heavy Vehicle National Law Bill 2011 (Qld), p. 3). Derogations, delegations of powers and jurisdictional-specific enforcement have limited the achievement of this aim. That said, we are likely to continue to draw closer to the original aim as the NHVR matures and lifts delegations from jurisdictions.

The HVNL aimed to deliver a single set of laws. As outlined in section 4.1.1, this has not eventuated because Western Australia and the Northern Territory do not believe there is net benefit in their jurisdictions in applying the current HVNL.

The HVNL aimed to provide consistent practices to reduce regulatory burden. The Explanatory Notes to the 2011 Bill (p. 5) recognised that the more diversions there are within the law, the more resources interstate operators must expend on understanding and maintaining compliance. The Explanatory Notes (p. 5) suggest the regulatory burden imposed on operators to undertake compliance training is three days per year.

The HVNL aimed to provide consistent practices to administer and enforce the law. The HVNL established a veto power for access decisions to local governments in the prescribed access decision-making process. This introduced the inefficiency of multiple decision-makers, many of whom are under-resourced and inexperienced in a regulatory function that they had either not previously had or had seldom exercised. The result is often a long and laborious process for operators, regulators and road managers alike, with associated financial cost and delays (Australian Livestock and Rural Transporters Association, 2017, p. 9; National Farmers' Federation, 2017, p. 13). This issue will be explored in further detail in the issues paper covering easy access to suitable routes.

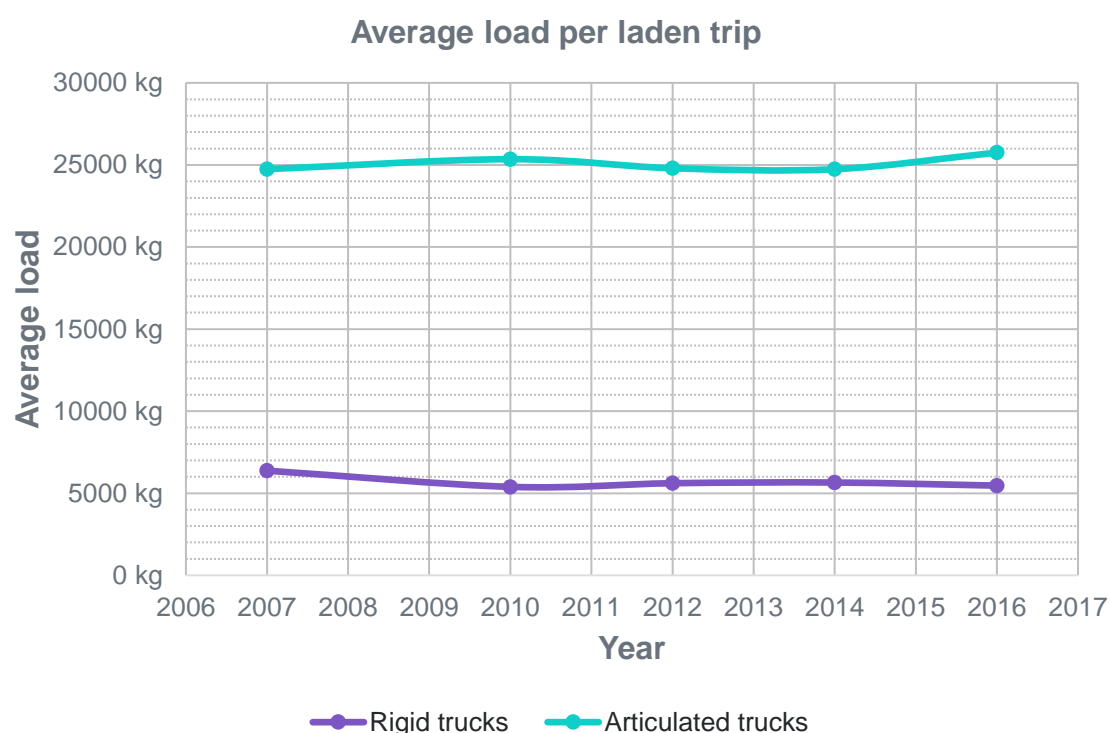
### **4.6.2 Productivity improvements are mixed**

The HVNL was intended to improve and promote productivity and efficiency in the road transport industry. But industry peak bodies have stated that the current HVNL is an obstacle to ongoing productivity improvement (Australian Transport News, 2018b).

ABS data suggests heavy vehicle freight productivity has marginally improved over the past few years. The average load carried by a laden heavy vehicle increased from 2007 to 2016, though the results are mixed for rigid trucks (down 14.3 per cent) and articulated heavy vehicles (up 4.1 per cent) (ABS, 2017) (see Figure 15). The extent these results can be attributed to evolving practices and freight demands, or the HVNL, is not apparent.

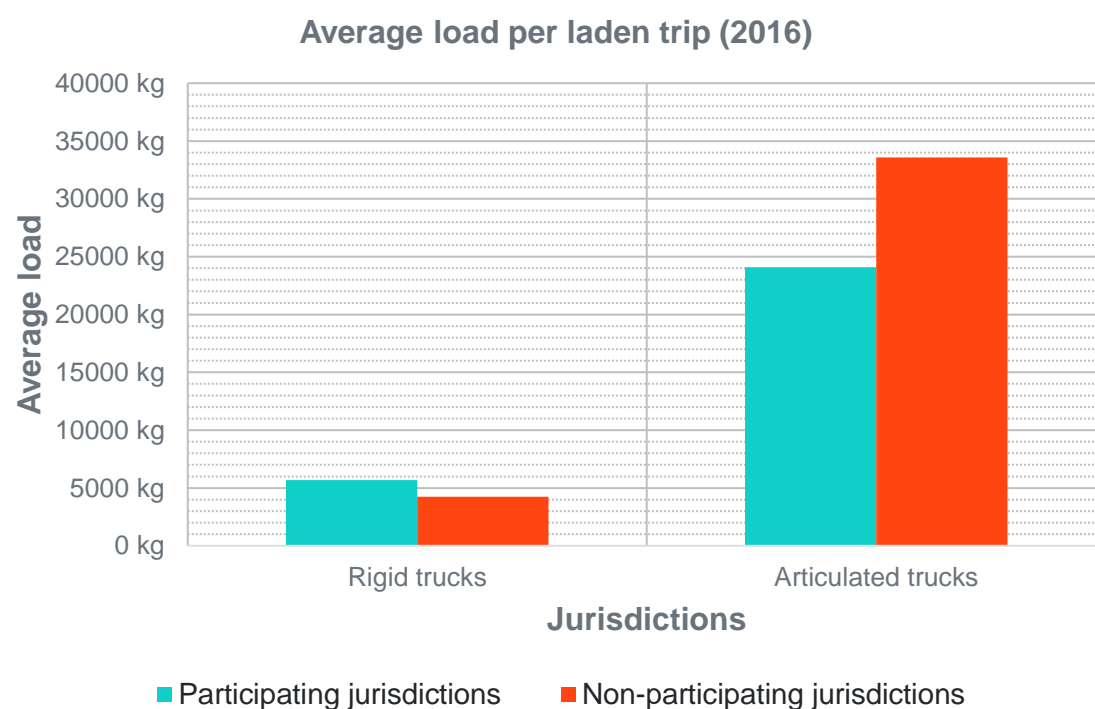


**Figure 15. Load per laden journey of a heavy freight vehicle**



There is a substantial difference in the productivity of freight vehicles in participating versus non-participating jurisdictions, in particular for articulated vehicles (see Figure 16).

**Figure 16. Load per laden journey of a heavy freight vehicle**

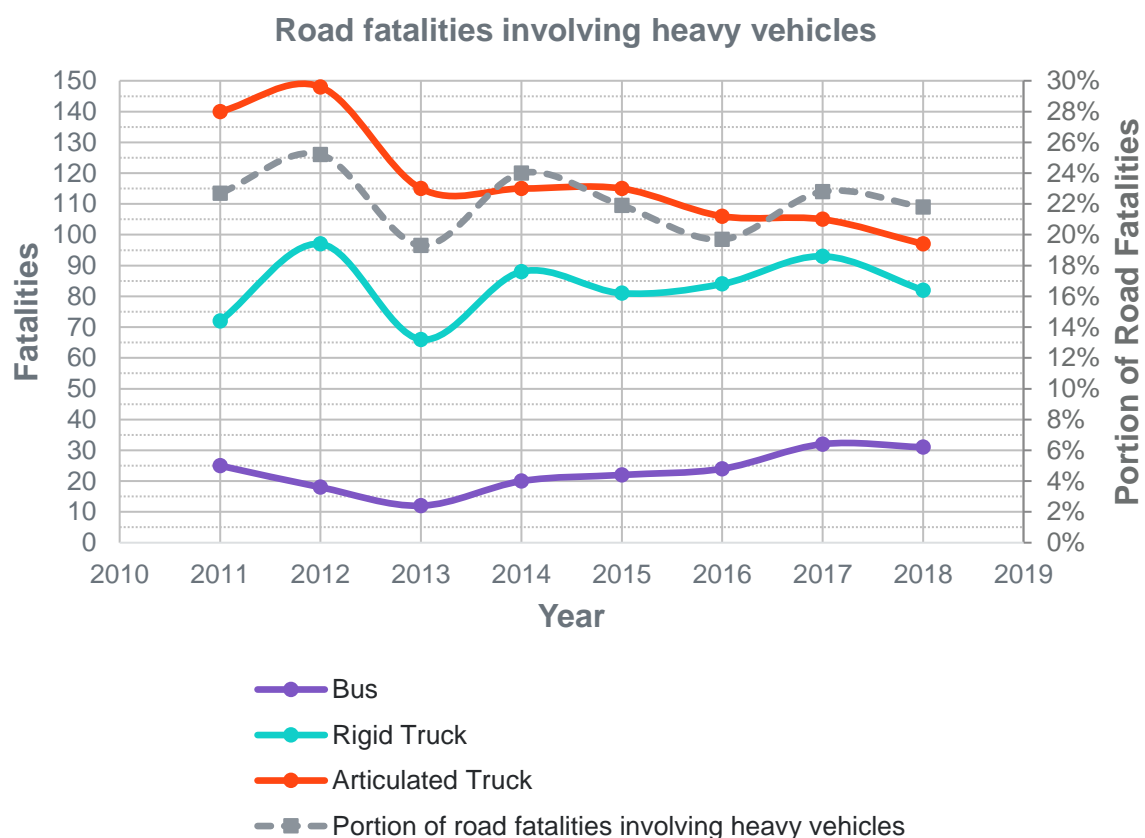


### 4.6.3 Heavy-vehicle-related road safety must improve

Simply because of their size, crashes involving heavy vehicles tend to have a higher probability of fatalities and severe injuries. National Transport Insurance data and government studies show that, in most cases, crashes involving a heavy vehicle are the result of a poor decision by the driver of the other vehicle (National Transport Insurance, 2017, p. 12).

While the overall rate of fatalities from heavy vehicle crashes has fallen in recent years, primarily due to improvements for articulated vehicles, it has roughly kept pace with overall reductions in fatal road crashes despite substantial growth in the road freight task and number of heavy vehicle movements (see Figure 17) (Bureau of Infrastructure, Transport and Regional Economics, 2013; Bureau of Infrastructure, Transport and Regional Economics, 2018).

**Figure 17. Road fatalities involving heavy vehicles 2011-2018**



**Question 1:** Have we covered the issues with the current HVNL accurately and comprehensively? If not, what do we need to know?

**Question 2:** What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions' regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law?

## 5 Aspirations for a new law

### Key points

- This section sets a broad and high-level vision for a future HVNL and outlines six draft regulatory principles to guide the development of a new law.

### 5.1 Regulation based on risk analysis and control

**Draft regulatory principle 1:** The future HVNL should be risk-based. The law should be developed by identifying, analysing, evaluating and establishing controls for material risks. The future HVNL should not attempt to control immaterial risks or have controls that aren't clearly contributing to risk management. Controls should be specified in terms of suitable regulatory styles.

In future issues papers we will use a risk management model to test policy options that will consider:

- risk appetite and tolerance
- risk identification
- risk analysis and quantification, and
- risk treatment – threat controls (prevention), result controls (mitigation).

Once controls are described, options for implementation will consider:

- the place in the legislative hierarchy, and
- whether to apply a prescription, performance and/or principle style of regulation.

#### **Example: risk of OSOM load dislodgement, as the law currently stands**

Transporting oversize and overmass (OSOM) loads is crucial for key sectors, such as mining, energy and construction. There are many risks to be managed to successfully move large items: load dislodgement is one.

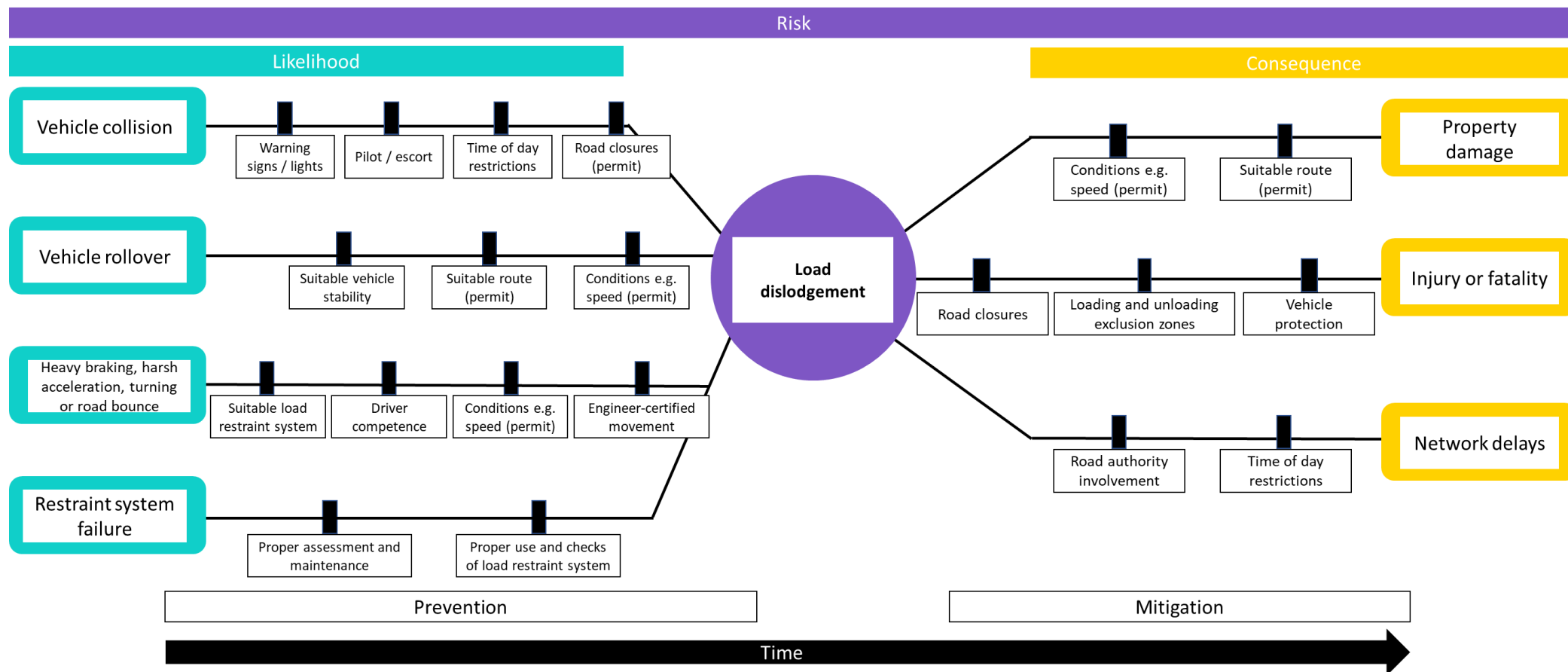
An OSOM load dislodgement has the potential to kill or injure those involved with moving the load or other road users. It may damage public or private property and cause costly road network delays. The appetite for risk in this case will generally be very low, meaning treatments (controls) must be comprehensive and effective.

We don't present this example as necessarily comprehensive, but illustrative of the way a risk-based approach might be considered.

The 'bow tie' diagram in Figure 18 encourages controls to match threats or results, and to demonstrate how they may contribute to prevention or mitigation of the harm, respectively.

Table 1 lists current HVNL controls for this particular risk and presents hypothetical options for other controls. It demonstrates that reliance on prescription, performance-based or principle-based regulatory styles depends on the nature of the control. In some cases, multiple styles might work, allowing compliance options. In other cases, certain regulatory styles may be impractical, ineffective or otherwise not feasible.

Figure 18. OSOM load dislodgement example bow-tie diagram



**Table 1. OSOM example**

Table key			
Control under current law		Possible control (indicative only)	
Control	Principle <sup>8</sup>	Performance-based	Prescription
Warning signs / lights	<b>Possible option:</b> load restraint safety management system accreditation	<b>Possible option:</b> specify suitable warning times and distances for signs and lights.	Specific warning signs or lights must be displayed for certain loads (e.g. Schedule 8 of the HV(MDL)NR)
Pilot / escort	<b>Possible option:</b> load restraint safety management system accreditation		Details of the vehicles and use (e.g. Schedule 8 of the HV(MDL)NR)
Time of day restrictions	<b>Possible option:</b> load restraint safety management system accreditation		Night-time or low visibility driving is not permitted for certain vehicles/loads.  Road managers may have as a condition of consent time of day restrictions (Part 4.7, division 2 HVNL)
Road closures	<b>Possible option:</b> load restraint safety management system accreditation for self-management (low risk moves)		Road managers may have as a condition of consent road closures (Part 4.7, division 2 HVNL)
Suitable vehicle stability	A load must not be placed to make the vehicle unstable or unsafe (Schedule 7 1 (1) HV(MDL)NR)  A load may not move so as to adversely affect stability and weight distribution (Schedule 7 2 (2)(a) HV(MDL)NR)	<b>Possible option:</b> specify a static rollover threshold (or similar) for a loaded vehicle.	<b>Possible option:</b> prescribe certain load placement option/s, potentially as 'deemed-to-satisfy' alternatives.

<sup>8</sup> Primary duties (chapter 1A of the HVNL) apply.

Control	Principle <sup>8</sup>	Performance-based	Prescription
Suitable route		<b>Possible option:</b> specify a pre-assessed network for a given large load envelope.	As per permit details.
Conditions (e.g. speed)	<b>Possible option:</b> load restraint safety management system accreditation	<b>Possible option:</b> speed to be restricted to limit total energy/momentum commensurate with the vehicle and route	Road managers may have as a condition of consent speed restrictions (Part 4.7, division 2 HVNL)
Suitable load restraint system	A load on a heavy vehicle must be secured suitably (Schedule 7 1 (2), (3) HV(MDL)NR)	Load able to withstand vehicle g-forces specified in Schedule 7 2 (3) HV(MDL)NR	<b>Possible option:</b> develop deemed-to-satisfy restraint options (based on the Load Restraint Guide advice).
Driver competence	<b>Possible option:</b> load restraint safety management system accreditation	<b>Possible option:</b> demonstrated / qualified competence (specific training module)	Must be licensed. Competence implied.
Engineer-certified movement	An engineer may certify the safety of a restraint system (Schedule 7 2 (4) HV(MDL)NR)	<b>Possible option:</b> require an engineer to certify to a specific g-force standard.	
Proper assessment and maintenance	<b>Possible option:</b> load restraint safety management system accreditation	<b>Possible option:</b> specified wear limits	<b>Possible option:</b> prescribed inspection or replacement regime
Proper use and checks of load restraint system	<b>Possible option:</b> load restraint safety management system accreditation		<b>Possible option:</b> prescribed restraint process (including checks)
Vehicle protection	<b>Possible option:</b> load restraint safety management system accreditation	<b>Possible option:</b> load restraint equipment performance standard	Vehicle standards (HV(VS)NR)
Loading and unloading exclusion zones	<b>Possible option:</b> load restraint safety management system accreditation	<b>Possible option:</b> mandated zones (safe)	<b>Possible option:</b> mandated zones (prescribed)
Road authority involvement	<b>Possible option:</b> load restraint safety management system accreditation to allow delegated road authority powers		Road managers may have as a condition of consent road closures (Part 4.7, division 2 HVNL)

**Question 3:** Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved?

## 5.2 A law with the right object, coverage and scope

**Draft regulatory principle 2:** The future HVNL should have a clear and balanced object, and provide the scope, coverage and visibility needed to manage the risks specific to Australian heavy vehicle operations. The new law should consider good regulatory practice from participating and non-participating jurisdictions, other transport modes, and elsewhere so as to be nationally agreeable and set us on a path to improved consistency.

### 5.2.1 Object

The object of the new law should:

- have a clear primary purpose of safety, complementing more general WHS laws
- promote the safe and efficient use of road infrastructure and assets by heavy vehicles, and
- encourage and facilitate operators to be innovative in their business.

### 5.2.2 Coverage

The new law should strive to make harmonisation across Australia a realistic prospect and reduce the need for jurisdictions to derogate. To be clear, harmonisation does not necessarily mean the law has to be uniformly applied in all circumstances.

A harmonised law could reduce the regulatory burden currently imposed upon operators and other regulated parties, yet still acknowledge the diverse risk profile of operations around the country.

### 5.2.3 Scope

The scope of the new law should complement the WHS regulation in facilitating management of all risks specific to the use of heavy vehicles, including non-occupational use, as well as heavy vehicle road access.

Where the HVNL does not directly regulate potential risk factors - for example, driver licensing - there needs to be capacity to work with state and territory legislation effectively (if there is not an appetite to bring such factors into the HVNL scope).

**Question 4:** Does the object or scope of the HVNL need to change? If so, how?

**Question 5:** Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and non-participating jurisdictions alike to be nationally agreeable?

## 5.3 A responsive and flexible law

**Draft regulatory principle 3:** The future HVNL should be responsive, flexible and able to readily accommodate changes to technology and business models while maintaining the right degree of oversight. Operators should be provided with flexibility to choose the most suitable compliance option, where options are appropriate. Obligations should be placed as far down the legislative hierarchy as is tolerable and should preference outcomes, in the form of harm minimisation, over inputs and process.

### 5.3.1 The right balance of regulatory styles

The new law should strike the right balance between the three regulatory styles of: prescriptive, performance-based and principles-based.

The new law should encourage a shift from a strong prescriptive and paper focus towards a more performance-based and flexible law.

The new law should start from a foundation of performance-based requirements but provide prescriptive alternatives as a deemed-to-satisfy option for operators who prefer a more 'black and white' requirement. The law should move away from the 'one size fits all' approach, recognise the different risk profile of rural and remote areas and provide operators with flexibility to choose the best option to suit their business.

### 5.3.2 The right structure

A new law should be able to respond rapidly to changes in operations, technology and risk-management options.

Developing the structure of the new law will rely on consistency in deciding which instrument in the legislative hierarchy is appropriate to regulate particular matters, and how to move detail down the hierarchy of legislative instruments for maximum agility in the law. Matters that may change frequently are best dealt with by subordinate legislation (Department of Prime Minister and Cabinet, 2017, p. 33).

The desire for agility must be balanced against the oversight and authority needed to make changes to the legislative instruments. Changes to primary legislation and regulations require appropriate consultation with industry, ministerial agreement and follow a parliamentary process (primary legislation) or a ministerial process (supporting regulation). Other lower-order instruments may be approved, by delegation from ministers and the Parliament, to an administrative body such as the Transport and Infrastructure Senior Officials' Committee or by the NHVR. Consultation with affected parties remains crucial.

**Question 6:** Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside?

### 5.3.3 Encouraging broader use of technology and data for regulatory purposes

The new law should allow technology with demonstrable safety and/or efficiency benefits to be used by operators and other regulated parties for compliance purposes.



An approval process with a suitable degree of oversight needs to be developed for the law to flexibly accommodate new technology. Alternative approval processes for regulatory technology, such as administrator approval, should be considered.

The new law should also clarify the need for different levels of data assurance for evidentiary purposes. The law may offer a tiered approach of assurance that builds from low to high evidentiary certainty, allowing technology and data to be matched to risks, enforcement goals and business objectives.

A flexible approach to technology and data for regulatory purposes should facilitate innovative business practices, improve knowledge and encourage voluntary uptake of technology at a faster pace.

**Question 7:** How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want?

#### 5.3.4 Administration and process

The new law should prioritise outcomes over process.

If the new law adopts a risk-based approach and changes its focus from administration to outcomes this should provide operators with more flexibility and ensure government is addressing the highest order risks.

**Question 8:** What areas of the current law are particularly problematic because they are process or administration focused? Can you detail the impacts?

### 5.4 A harmonised law for diverse operations

**Draft regulatory principle 4:** The future HVNL should recognise the diverse risk profile of the industry, operators and regulated parties and provide flexibility (in a harmonised manner) for those operating across vastly different domains and under different business models.

The new law should recognise the diversity of Australia's heavy vehicle industry, including the different purposes of the industry and various vehicle types.

It should acknowledge that heavy vehicles operate in vastly different domains and face diverse risk profiles. This is necessary if a truly national law is to be attained.

The new law should provide a range of compliance options that can be applied depending on the capacity and preference of the operator or regulated party.

**Question 9:** How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia?

## 5.5 A law that responds proportionally to risks and harms

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**Draft regulatory principle 5:** The future HVNL should target the most significant risks associated with heavy vehicle operations. The new law should support sanctions and enforcement tools that reflect the severity of the risk, and enforcement decisions must be able to be reasonably challenged.

The new law should address actual risks and harms, provide appropriate sanctions and support proportional enforcement responses.

The new law should provide the NHVR and police, as appropriate, the capacity to intervene in a robust and timely manner to compliance breaches when needed. However, the new law should ensure the sanctions and enforcement response is commensurate with the nature of the breach and can be escalated up the enforcement pyramid as required (see Figure 6).

Of course, fairness for regulated parties is crucial. The new law should provide accessible avenues for proportional appeal and recourse where enforcement decisions are not agreed with.

**Question 10:** In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require?

## 5.6 A law that delivers better outcomes

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**Draft regulatory principle 6:** The future HVNL should deliver better safety, productivity and regulatory efficiency outcomes and lead to continual improvement across these key performance areas.

### 5.6.1 Regulatory efficiency

The new law should reduce regulatory burden on operators, governments and other regulated parties wherever practical. If regulation cannot demonstrate a public good, it should not persist.

In developing the new law, consideration should be given to ways the law can limit the need for jurisdictions to derogate.

### 5.6.2 Higher productivity

The new law should seek to eliminate any potential obstacles to achieving increased productivity and support the safe and efficient use of road assets and infrastructure by higher productivity vehicles. This means fewer heavy vehicle trips for a given freight and service task.

### 5.6.3 Better safety

The new law should identify the biggest safety risks, provide options for risk treatments to improve safety outcomes and drive a continual downward trend in the fatality rate. Given the responsibility of light vehicle drivers in road crashes, this is a challenging aim.

Consideration must be given to deciding what risks should be targeted through the primary legislation and what risks are better targeted through existing regulation (for example WHS) or moved down the legislative hierarchy to guidelines and codes of practice.

**Question 11:** How can the new HVNL help to improve safety, productivity and regulatory efficiency?

**Question 12:** Do you agree with the six draft regulatory principles? If not, why? Are there other principles we should consider?

## 6 Next steps

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### Key points

- We want to hear from you. Consultation is open until **Friday 31 May 2019**.
- There will be future opportunities to tell us about the specifics of fatigue, access, safe people and practices, safe vehicles, accreditation, compliance and technology and other matters.

### 6.1 Have your say

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The NTC wants to give everyone affected by the HVNL an opportunity to have a say.

We are seeking your advice on the problems we have identified and whether we have suitably outlined them.

We will consult on the questions asked in this paper until **Friday 31 May 2019**.

To stay updated on the project, visit the [HVNL review website](http://www.hvnreview.ntc.gov.au)<sup>9</sup> and register to receive newsletters and consultation alerts.

### 6.2 Future publications

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This is the first of eight issues papers.

The next four issues papers will cover ‘what is regulated’ under the HVNL, including effective fatigue management, easier access to suitable routes, safer people and practices, and safer vehicles.

The following two issues papers will cover more specific ‘how to regulate’ matters such as accrediting operators to deliver best practice and managing compliance, including the regulatory role that could be played by technology and data.

The last issues paper will cover other policy matters not covered in other issues papers.

We will produce a summary of outcomes from the issues papers to bring together all of your feedback and advice, and to serve as a basis for a regulatory impact assessment.

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<sup>9</sup> [www.hvnreview.ntc.gov.au](http://www.hvnreview.ntc.gov.au)

# Appendix A How other industries are regulated

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## Work Health and Safety law

In 2011, Safe Work Australia developed a single set of Work Health and Safety (WHS) laws to be implemented across Australia. The model WHS laws have been implemented in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and the Commonwealth.

The main object of the legislation is to provide for a balanced, nationally-consistent framework to secure the health and safety of workers and workplaces through eliminating or minimising risks and harms.

The model WHS Act is also supported by regulations and codes of practice. Compliance with the WHS Act and Regulations may be achieved by following another method if it provides an equivalent or higher standard of WHS than the code of practice.

## Rail Safety National Law

The Rail Safety National Law (RSNL) has been adopted by all states and territories. The Office of the National Rail Safety Regulator (ONRSR) was created to administer and regulate the safety of the Australian railway industry under the co-regulatory framework established by the RSNL.

The RSNL consists of the *Rail Safety National Law Act* and various supporting regulations, such as the Rail Safety National Law National Regulations, Rail Safety National Law (Drug and Alcohol Testing Regulations) and Rail Safety National Law (Transitional Arrangements) Regulations.

The RSNL regulatory approach also adopts elements of the safety assurance model including developing appropriate risk management policies and procedures as well as safety management systems. The ONRSR administers a national scheme of accreditation to ensure rail transport operators are competent and have the capacity to ensure the safety of their operations. This regulatory approach includes checking safety management systems to verify that the rail transport operator understands the approach to be taken to manage a safety assurance process.

## Civil aviation

The Civil Aviation Safety Authority (CASA) adopts a tiered fatigue management approach.

The tiered approach ranges from prescriptive requirements with basic limits to a safety assurance system with a fully-developed fatigue risk management system. To approve an operator's fatigue risk management system, CASA must be satisfied that it is a safe, integrated, data-driven system that is capable of continuously and effectively monitoring and managing fatigue-related safety risks using scientific principles and knowledge as well as operational experience.

The tiered system allows operators to choose a regulatory approach based on their operational requirements and a fatigue risk management strategy appropriate for their organisation.

## Construction

The performance-based *National Construction Code of Australia* consists of two compliance solutions that enable a building, plumbing or drainage installation to meet the compliance level.

The compliance solutions include a performance solution, a deemed-to-satisfy solution or a combination of the two.

A deemed-to-satisfy solution follows a set recipe of what, when and how to do something that, if followed, is deemed to comply with the performance requirements of the code.

A performance solution is unique for each individual situation and provides for flexibility in achieving the performance requirements and encouraging innovative design and technology use.

# Appendix B Preliminary analysis of Heavy Vehicle National Law derogations

## Derogations analysis key:

- **Addition:** an addition refers to the inclusion of a new section or subsection by the adopting jurisdiction that was not included in the model law.
- **Omission:** an omission refers to the exclusion of a section or subsection of the model law by the adopting jurisdiction
- **Alteration:** an alteration refers to the amendment of a specific detail in a section or subsection of the model law by the adopting jurisdiction
- **Severity rating:** refers to the severity of the derogation on nationally consistent application of the HVNL

Chapter 1 - Preliminary	
Chapter 1 of the HVNL sets out a number of introductory matters, including the object of the law, the regulatory framework to achieve the object of the law, definitions, and the application and operation of the HVNL. Part 1.4 also sets out provisions in relation to Performance Based Standards (PBS) vehicles.	
NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42	
<b>Addition of definition of RMS:</b> Roads and Maritime Services constituted under the <i>Transport Administration Act 1988</i> of NSW. <b>Description:</b> Amendment relates to the role and function of RMS under the HVNL.	Low severity
<b>Addition of definition of Private hire vehicle:</b> This definition is not in the HVNL. It is defined as a private hire vehicle within the meaning of the <i>Passenger Transport Act 1990</i> . <b>Description:</b> This definition relates to a derogation under section 203B of the Act, where private hire vehicles are exempt from provisions in relation to speed. The Act should now be amended, as the Passenger Transport Act has been amended to refer only to 'hire cars', and not private car vehicles. See discussion under Chapter 5.	Low severity
<b>Addition of definition of Public Passenger Service:</b> means the transport, by a motor vehicle, vessel, aircraft, train, or other vehicles prescribed by the regulations for the purpose of this decision, of passengers within, or partly within, NSW for a fare. <b>Description:</b> This definition relates to a further derogation under section 203B of the Act. See discussion under Chapter 5.	Low severity
Queensland derogations: Heavy Vehicle National Law Act 2012 (Qld)	
<b>Addition of definitions relating to s 118 - Commissioner's consent required for a mass or dimension exception notice:</b> <i>commissioner, critical area, critical road, non-critical area, relevant map, public safety condition, commissioner's amendment or cancellation decision, commissioner's conditional decision, commissioner's refusal decision, review and appeal information.</i> <b>Description:</b> These definitional derogations facilitate a derogation under s 118 of the Queensland legislation. A discussion of the significance of this derogation is under Chapter 4.	High severity: see discussion under Chapter 4.
Chapter 1A - Safety duties	
Chapter 1A of the HVNL establishes a chain of responsibility to ensure that both on-road and off-road parties in a position of control or influence in the supply chain are held accountable to their actions.	

NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42	
<p><b>Addition of schedule 1 section 26I:</b> Exemptions for emergency services from the operation of section 26C of the HVNL.</p> <p><b>Description:</b> This provision exempts emergency service operators from the primary duty in the chain of responsibility duties, but only in relation to speed and fatigue</p>	<p><b>Low severity:</b> In practice s26C is unlikely to be applied to emergency service officers in relation to speed and fatigue</p>
<p><b>Addition of schedule 1 section 26J:</b> Exemptions for hire vehicles and buses.</p> <p><b>Description:</b> This provision exempts operators of hire vehicles and buses from the primary duty in the chain of responsibility (26C) as well as the prohibited requests and contracts (26E).</p>	<p><b>High severity:</b> This derogation exempts a significant class of vehicles that were intended to be captured by COR duties as part of the HVNL.</p>
Chapter 3 - Vehicle operations - standards and safety	
<p>The purpose of chapter 3 is to ensure heavy vehicles used on roads are of a standard and in a condition that prevents or minimises safety risks (s 58). This chapter provides power for the prescribing of regulations about vehicle standards. Under this chapter it is an offence for a person to use or permit to be used, a heavy vehicle that contravenes a heavy vehicle standard applying to the vehicle (s 60). This chapter also provides a scheme under which the Regulator may provide a vehicle standards exemption.</p>	
NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42	
<p><b>Addition of section 93(8A) Person must not tamper with speed limiter fitted to heavy vehicle:</b> <i>Nothing in this section limits the application of Part 6.2 (Speed limiting of heavy vehicles) of the Road Transport Act 2013 of New South Wales to a heavy vehicle to which that Part applies.</i></p> <p><b>Description:</b> This effect of this derogation is to add an evidentiary requirement to the offence of tampering with a speed limiter fitted to a heavy vehicle, under s 93 of the HVNL. S 93(8A) ensures that section 93 does not affect Part 6.2 of the Road Transport Act 2013, which creates an offence for a person driving a vehicle that is not 'speed limiter compliant'. 'Speed limiter compliant' is defined (in relation to a vehicle) as being the speed at which the vehicle is capable of being driven is limited, in the manner prescribed by the statutory rules for the purpose of 6.2, to not more than 100 km/h. Under Part 6.2, evidence that a vehicle was driven on a road at a speed of more than 115km/h is admissible as prima facie evidence for an offence against section 162. The NTC has previously consulted with jurisdictions over the possible inclusion of an evidentiary requirement to be inserted in the HVNL, similar to the NSW offence. It appears this wasn't supported.</p>	<p><b>Low severity:</b> Derogation preserves the operation of NSW law.</p>
<p><b>Addition of section 93A: Monitoring of heavy vehicles and vehicles carrying dangerous goods:</b> <i>(1) Part 6.1 of the Road Transport Act 2013 of New South Wales makes provision for the monitoring of the journeys on roads of certain heavy vehicles with GVMs or GCMs exceeding 13.9 tonnes and vehicles carrying dangerous goods.</i></p> <p><i>(2) The requirements of that Part are in addition to, and do not limit the effect of, any other provisions of this Law concerning the use of monitoring devices or equipment (such as intelligent transport systems) and the keeping of journey documentation or other records for a heavy vehicle.</i></p> <p><b>Description:</b> This derogation ensures that the HVNL does not affect the operation of part 6.1 of the Road Transport Act 2013, namely the requirement that heavy vehicles exceeding 13.9 tonnes are fitted with a device capable of recording various operating parameters. This derogation may not be necessary, as there does not appear to be anything in the HVNL which would affect the operation of the HVNL. VMD requirements were introduced in NSW following major bus crashes in Kempsey and Grafton in 1989. NSW is currently undertaking a comprehensive review of its VMD requirement and the vehicles to which a VMD might apply.</p>	<p><b>Medium severity:</b> Following review by NSW, data produced may provide a case to implement a VMD requirement in the HVNL.</p>
<p><b>Section 157 of the Road Transport Act 2013 No 18:</b> While not technically a derogation from the HVNL, this provision provides penalties for tampering with monitoring devices or vehicle movement records in NSW local legislation.</p>	<p><b>High severity:</b> Creates an additional offence under NSW law which is confusing for operators.</p>



SA derogations: Heavy Vehicle National Law (South Australia) Act 2013	
<p><b>Omission - section 93 (Person must not tamper with speed limiter fitted to heavy vehicle)</b>—<i>applies as if subsection (8) were deleted.</i></p> <p><b>Description:</b> This derogation omits the reasonable steps defence from the offence of tampering with a speed limiter fitted to a heavy vehicle. Currently this derogation has implications for national consistency of enforcement of the HVNL, however the 2016 HVNL Amendment Bill will remove the reasonable steps defence, and the mistake of fact defence will be made available.</p>	<p><b>Low severity:</b> Following 2016 Amendment Bill the mistake of fact defence will be removed.</p>
<p><b>Addition to section 20—Person must not possess certain devices:</b> (1) A person must not, without reasonable excuse, have in his or her possession a device that is designed, or is adapted, to enable tampering with a speed limiter (a tampering device). Maximum penalty: (a) if the offender is a natural person—\$10 000; (b) if the offender is a body corporate—\$50 000. (2) An authorised officer may seize, retain and test any device that he or she has reasonable cause to suspect is a tampering device. (3) A court that has convicted a person of an offence against this section may order that the tampering device in relation to which the offence was committed be forfeited to the Crown. (4) In proceedings for an offence against this section, an allegation in the complaint that a specified device is designed, or is adapted, to enable tampering with a speed limiter is, in the absence of proof to the contrary, proof of the matter so alleged. (5) For the purposes of this section, a reference to a tampering device includes a reference to a computer or other electronic device on which a software program that is intended, or able, to be used to tamper with a speed limiter is installed or stored.</p> <p><b>Description:</b> This provision is an additional provision, inserted into the South Australian Act to create an offence for possessing a device that enables tampering with a speed limiter.</p>	<p><b>Medium severity:</b> This provision may create confusion for operators who are unaware that in South Australia it is an offence to even possess a device which may tamper with a speed limiter.</p>
Queensland derogations: Heavy Vehicle National Law Act 2012 (Qld)	
<p><b>Addition - section 40 Commissioner consent for grant of blue light vehicle standards exemption</b></p> <p>(1) The Regulator may, under the Law, grant a blue light vehicle standards exemption only with the consent of the commissioner.</p> <p>(2) The Regulator must ask the commissioner for the consent.</p> <p>(3) The commissioner must decide to give or not to give the consent within 28 days after the request is made.</p> <p>(4) The commissioner may decide to give the consent only if the commissioner is satisfied that the blue light vehicle standards exemption will not, or is not likely to, adversely affect public safety.</p> <p>(5) Without limiting subsection (4), the commissioner must be satisfied that the exemption will not, or is not likely to, operate to reduce the effectiveness of using blue lights to clearly identify to other road users' vehicles being used for law</p> <p>(6) Also, in deciding whether or not to give the consent, the commissioner must have regard to the approved guidelines for granting vehicle standards exemptions.</p> <p>enforcement or for an emergency.</p> <p>(7) The commissioner may decide to consent to the grant of a blue light vehicle standards exemption subject to a condition that a stated public safety condition is imposed on the exemption.</p> <p>(8) If the commissioner decides to consent in a way mentioned in subsection (7), the Regulator must impose the public safety condition on the exemption.</p> <p>(9) Section 26 applies to a blue light vehicle standards exemption (notice) as if the exemption were a mass or dimension exemption (notice) for which the commissioner's consent was given.</p> <p>(10) Section 27, other than section 27(5)(b) and (c), applies to a blue light vehicle standards exemption (permit) as if the exemption were a mass or dimension exemption (permit) for which the commissioner's consent was given.</p> <p>(11) This section applies in relation to a blue light whether or not it is a light that flashes.</p> <p><b>Addition - section 41 Commissioner permission for fitting of blue light if vehicle standards exemption is not required</b></p> <p>(1) This section applies to a heavy vehicle, other than a police vehicle, that under the heavy vehicle standards may be fitted with a blue light.</p> <p>(2) The heavy vehicle standards are taken to further provide that the heavy vehicle may be fitted with a blue light only if the commissioner has given written permission for the fitting of the light.</p> <p>(3) A written permission for the fitting with a blue light of a heavy vehicle to which this section applies, given by the commissioner before the commencement of</p>	<p><b>Low severity:</b> This is a local Queensland issue relating to Queensland light vehicle standards and heavy vehicle standards</p>

<p><i>this section and still in force immediately before the commencement, is taken to be a written permission for the fitting of the light given under subsection (2).</i></p> <p><i>(4) This section applies in relation to a blue light whether or not it is a light that flashes.</i></p> <p><i>(5) In this section—police vehicle means a heavy vehicle driven by a police officer in the course of the police officer's duty.</i></p> <p><b>Description:</b> These provisions prevent heavy vehicles from being fitted with blue lights unless there is consent for a blue light vehicle standards exemption from the Commissioner. This is a local Queensland issue relating to Queensland light vehicle standards and heavy vehicle standards.</p>	
<b>Chapter 4 - Vehicle operations - mass, dimension and loading</b>	
<p>Chapter 4 is about minimising the risk to public safety caused by excessively loaded or large heavy vehicles. This chapter also recognises that the use of particular heavy vehicles that do not comply with mass and dimension requirements, may be permitted on roads in particular circumstances and subject to particular conditions.</p>	
<b>Queensland derogations: Heavy Vehicle National Law Act 2012 (Qld)</b>	
<p><b>Alteration of s 118: Commissioner's consent required for a mass or dimension exception notice.</b></p> <p><i>(1) For section 118(1)(c) of the Law, the consent of the commissioner is required for a mass or dimension exemption (notice).</i></p> <p><i>(2) However, a consent is required under subsection (1) for a mass or dimension exemption (notice) only to the extent the exemption applies to any of the following—</i></p> <p><i>(a) the use of class 1 heavy vehicles, of more than a width or length prescribed under a regulation for this paragraph, in a critical area or on a critical road;</i></p> <p><i>(b) the use of class 1 heavy vehicles, of more than a width or length prescribed under a regulation for this paragraph, in the non-critical area.</i></p> <p><i>(3) To remove any doubt, it is declared that subsection (1), as limited by subsection (2), is, for section 167(2)(d) of the Law, a law of this jurisdiction that requires consultation with third parties.</i></p> <p><b>Description:</b> This derogation materially changes the intent an operation of the HVNL by putting another layer of statutory consent requirements in place for a s 118 mass or dimension exemption notice.</p>	<p><b>High severity:</b> provisions create a scheme which materially changes the application of the HVNL and impose an additional layer of statutory consent requirements for a mass or dimension exemption notice or permit.</p>
<p><b>Alteration of s 124: Other consents under s 124 of the Law</b></p> <p><i>(1) For section 124(1)(c) of the Law, the consent of the commissioner is required for a mass or dimension exemption (permit).</i></p> <p><i>(2) However, a consent is required under subsection (1) for a mass or dimension exemption (permit) only to the extent the exemption applies to any of the following—</i></p> <p><i>(a) the use of a class 1 heavy vehicle, of more than a width or length prescribed under a regulation for this paragraph, in a critical area or on a critical road; (b) the use of a class 1 heavy vehicle, of more than a width or length prescribed under a regulation for this paragraph, in the non-critical area.</i></p> <p><i>(3) To remove any doubt, it is declared that subsection (1), as limited by subsection (2), is, for section 167(2)(d) of the Law, a law of this jurisdiction that requires consultation with third parties.</i></p> <p><b>Description:</b> This derogation materially changes the intent an operation of the HVNL by putting another layer of statutory consent requirements in place for a s 124 mass or dimension exemption notice.</p>	
<p><b>Addition of sections: s 22 (Deciding request for consent generally), 23 (Imposition of conditions), 24 (Information notice for decision to refuse application because commissioner did not give consent), 25 (Information notice for imposition of condition requested by commissioner), 26 (Amendment or cancellation of mass or dimension exemption (notice) on request by commissioner), 27 (Amendment or cancellation of mass or dimension exemption (permit) on request by commissioner), 28 (Reviewable decision), 29 (Applying review and appeal provisions of the Law).</b></p> <p><b>Description:</b> The addition of these provisions is a necessary consequence of the derogations which alter sections 118 and 124 (above). Together these sections create a scheme that materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place for a mass or dimension exemption notice or permit.</p>	<p><b>High severity:</b> Same comment above applies.</p>
<b>Tasmanian derogations: Heavy Vehicle National Law (Tasmania) Act 2013</b>	
<p><b>Addition of s 24 Determination of wheel load, single axle load, axle group load or aggregate axle load:</b></p>	<p><b>Medium severity:</b> Additional</p>

<p>(1) An authorised officer may, in accordance with the local application regulations, determine the wheel load, single axle load, axle group load or aggregate axle load of a vehicle or combination for the purposes of the Heavy Vehicle National Law (Tasmania).</p> <p>(2) The local application regulations may make provision in relation to –</p> <p>(a) methods for determining the mass and dimensions of vehicles, combinations and their loads; and</p> <p>(b) the issue of certificates in relation to wheel, single axle, axle group and aggregate axle loads; and</p> <p>(c) methods for testing instruments used for determining the mass and dimensions of vehicles, combinations and their loads.</p> <p><b>Description:</b> This derogation is likely related to historical, local practice of authorised officers in determining wheel load, single axle load, axle group load or aggregate axle load, and to put beyond doubt that regulations may be made with respect to testing methods and the issuing of certificates on these matters.</p>	<p>powers for authorised officers in Tasmania may create confusion for operators and affects consistency of enforcement across Australia.</p>
<p><b>Alteration of section 25 Contravening condition of mass or dimension exemption relating to escort vehicle</b></p> <p><i>Section 130 of the Heavy Vehicle National Law, as that Law applies as a law of this jurisdiction, does not apply to the driver of the escort vehicle accompanying the heavy vehicle, and the operator of the heavy vehicle, if the driver of the escort vehicle –</i></p> <p>(a) is an authorised officer; and</p> <p>(b) does not comply with a condition of the mass or dimension exemption that relates to –</p> <p>(i) the positioning of the escort vehicle; or</p> <p>(ii) the escorting distance; and</p> <p>(c) is satisfied that the failure to comply with the condition is necessary for public safety.</p> <p><b>Description:</b> This derogation effectively means that an authorised officer driving a pilot or escort vehicle must comply with the conditions of the mass or dimension exemption of that vehicle, unless the condition relates to the positioning or distance of the escort vehicle, and breaching a condition is necessary for public safety. The policy intent of this derogation is to preserve public safety.</p>	<p><b>Medium severity:</b> Additional powers for authorised officers in Tasmania may create confusion for operators and affects consistency of enforcement across Australia.</p>
<p><b>Chapter 6 - Vehicle operations - driver fatigue</b></p>	
<p>The purpose of chapter 6 of the HVNL is to provide safe management of the fatigue of drivers of fatigue-regulated heavy vehicles while they are driving on the road.</p>	
<p><b>NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42</b></p>	
<p><b>Addition of section 222A Exemptions for accredited service operators and their drivers:</b></p> <p>(1) Section 459 (3) and (4) do not apply in relation to an accredited service operator.</p> <p>(2) The BFM standards and AFM standards relating to assessing a driver's health to determine his or her fitness to drive do not apply in relation to an accredited service operator to the extent that those standards are relevant for the purposes of sections 459 and 467.</p> <p>(3) Section 468 does not apply to the driver of a bus that is a fatigue-regulated heavy vehicle when the driver is driving the bus for an accredited service operator if—</p> <p>(a) the bus is on a journey that is less than 100 kilometres from the driver's base; or</p> <p>(b) the bus is being used to provide a regular bus service under a service contract (regardless of the distance travelled).</p> <p>(4) In this section—</p> <p>accredited service operator, regular bus service and service contract have the same meanings as in the Passenger Transport Act 1990 of New South Wales.</p> <p><b>Description:</b></p> <p><b>s 222A(1):</b> has the effect that an operator who applies for heavy vehicle accreditation under the HVNL does not need to include a declaration that they have not committed a crime against the HVNL or a crime of fraud or dishonesty (punishable on conviction by imprisonment for 6 months or more).</p> <p><b>s 222A(2):</b> has the effect that for an application for heavy vehicle accreditation under the HVNL, the BFM and AFM standards relating to assessing a driver's health to determine his or her fitness to drive, do not apply.</p> <p><b>s 222(3):</b> has the effect that the offence under section 468 of the HVNL (relating to failure to carry certain documents) does not apply in relation to a driver of a</p>	<p><b>High severity:</b> Exceptions under 222A create inconsistent standards for operators across Australia. Work is required to examine rationale for these derogations.</p>

bus travelling less than 100km or, a bus being used to provide a regular bus service under a service contract.	
<p><b>Addition of section 222B Exemptions for certain buses and private hire vehicles:</b></p> <p>(1) <i>A person is exempt from the requirements of this Chapter (other than those of Division 2 of Part 6.2) in relation to the driving of a private hire vehicle, or the driving of a bus, that is a fatigue-regulated heavy vehicle.</i></p> <p>(2) <i>Subsection (1) does not apply to the driving of a bus for the purpose of providing a public passenger service.</i></p> <p><b>Description:</b> section 222B has the effect that private hire vehicles or buses that are fatigue related heavy vehicles, are excluded from the requirements of Chapter 6 (which contains duties and requirements in relation to fatigue).</p>	<p><b>High severity:</b> Exceptions under 222B create inconsistent standards for operators of certain buses and private hire vehicles.</p>
<p><b>Alteration of section 246 Counting periods of less than 15 minutes:</b></p> <p>(6) <i>This section does not apply to the work time and rest time of a driver of a fatigue-regulated heavy vehicle that is a bus on a journey undertaken in accordance with a service contract entered into under Part 3 of the Passenger Transport Act 1990 of New South Wales.</i></p> <p><b>Description:</b> Section 246(6) exempts certain fatigue related buses 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 actual time of work for these periods.</p>	<p><b>High severity:</b> Excluding the 15-minute rounding rule may create confusion for operators travelling between jurisdiction, and results in inconsistent application of HVNL.</p>
<p><b>Addition of section 248A Occupying driver's seat to count as rest time in certain circumstances:</b></p> <p>(1) <i>A period during which the driver of a fatigue-regulated heavy vehicle occupies the driver's seat of the vehicle while its engine is running counts as rest time rather than work time if—</i></p> <p>(a) <i>the vehicle is stationary during that period; and</i></p> <p>(b) <i>the driver is not subject to work demands during that period; and</i></p> <p>(c) <i>the period is at least 15 minutes or forms part of a period of rest time of at least 15 minutes.</i></p> <p><i>Note— Section 246 provides for the manner in which periods of rest time are to be calculated.</i></p> <p>(2) <i>This section has effect despite paragraph (d) of the definition of work in section 221.</i></p> <p><i>Note— This section is inserted for New South Wales.</i></p> <p><b>Description:</b> This provision provides for circumstances in which occupying a driver's seat may be counted as rest time.</p>	<p><b>High severity:</b> Derogation provides more flexibility than HVNL and an inconsistent application of HVNL across jurisdictions.</p>
<p><b>Addition of section 248B Certain personal activities may be counted as part of rest time:</b></p> <p>(1) <i>A rest period of at least 24 continuous hours of stationary rest time that is required to be taken by a driver of a fatigue-regulated heavy vehicle under this Chapter may include a period of up to one continuous hour of permitted personal activity that is to be treated as part of that rest time, but only if—</i></p> <p>(a) <i>the permitted personal activity is not done at the direction of the driver's employer or for fee or reward; and</i></p> <p>(b) <i>the beginning of the period of permitted personal activity occurs at least 3 hours after the beginning of the 24-hour rest period; and</i></p> <p>(c) <i>the end of the period of permitted personal activity occurs at least 3 hours before the end of the 24-hour rest period.</i></p> <p>(2) <i>A permitted personal activity means any of the following—</i></p> <p>(a) <i>cleaning or refuelling a fatigue-regulated heavy vehicle;</i></p> <p>(b) <i>driving a fatigue-regulated heavy vehicle.</i></p> <p>(3) <i>This section has effect despite the definitions of rest and work in section 221.</i></p> <p><b>Description:</b> This section makes provision for certain personal activities to be counted as rest time.</p>	<p><b>High severity:</b> Derogation provides more flexibility than HVNL and an inconsistent application of HVNL across jurisdictions.</p>

<p><b>Alteration of section 265 Exemptions for emergency services:</b></p> <p>(1) A person who is an officer, member or member of staff of an emergency service is exempt from the provisions of this Chapter, but only in relation to the driving of a fatigue-regulated heavy vehicle in the course of undertaking work for an emergency service.</p> <p>(2) An emergency service is any of the following—</p> <p>(a) the NSW State Emergency Service established under the State Emergency Service Act 1989 of New South Wales;</p> <p>(b) Fire and Rescue NSW and any permanent fire brigade or volunteer fire brigade within the meaning of the Fire Brigades Act 1989 of New South Wales;</p> <p>(c) the NSW Rural Fire Service established by the Rural Fires Act 1997 of New South Wales;</p> <p>(d) the Ambulance Service of NSW within the meaning of the Health Services Act 1997 of New South Wales;</p> <p>(e) the NSW Police Force established by the Police Act 1990 of New South Wales;</p> <p>(f) New South Wales Volunteer Rescue Association Inc;</p> <p>(g) a government agency of another jurisdiction, or a body authorised under the law of another jurisdiction, that has corresponding functions to the bodies referred to in any of the above paragraphs.</p> <p>(3) The exemption provided by this section is in addition to, and does not limit the effect of, the exemption provided by section 265A.</p> <p><b>Description:</b> This provision exempts emergency services staff from obligations concerning fatigue compliance, but only in the course of undertaking work for an emergency service.</p>	<p><b>Medium severity:</b> Emergency services are exempt under the HVNL however, the definition of emergency services is broader in NSW.</p>
<p><b>Addition of section 265A Exemptions in relation to emergencies:</b></p> <p>(1) A person who is attending an emergency and who is undertaking activities with respect to the control of the emergency in the course of his or her employment or usual business activities is exempt from compliance with this Part in relation to the driving of a fatigue-regulated heavy vehicle to and from the emergency so long as subsection (2) is complied with.</p> <p>(2) Any record that would be required to be made under this Chapter if the exemption under subsection (1) were not available—</p> <p>(a) must be made as soon as practicable after the journey from the emergency is completed; and</p> <p>(b) must include a record of the following—</p> <p>(i) the time, date, location and nature of the emergency;</p> <p>(ii) if the person was asked by another person to attend the emergency, the name and contact details of that other person.</p> <p>(3) In this section, emergency means an event (or an anticipated event) that—</p> <p>(a) endangers, or may endanger, life, property or the environment; or</p> <p>(b) has disrupted, or may disrupt, communications, energy, water supply or sewerage services; or</p> <p>(c) is declared to be an emergency or disaster by—</p> <p>(i) the Commonwealth or a State or Territory; or</p> <p>(ii) a Commonwealth, State or Territory authority responsible for managing responses to emergencies or disasters.</p> <p><b>Description:</b> This provision applies to the record keeping provisions under the HVNL, and essentially states that exempt emergency service providers must still comply with record keeping obligations, but that these records can be made as soon as is practicable after the journey from an emergency is completed.</p>	<p><b>Medium severity:</b> This derogation links to the overall exemption of emergency services, which is more broadly defined in NSW.</p>
<p><b>Victorian derogations: Heavy Vehicle National Law Application Act 2013 (Vic)</b></p>	
<p><b>Alteration of section 7 - Rail replacement buses and buses responding to an emergency exemption</b></p> <p>(1) Chapter 6 of the Heavy Vehicle National Law (Victoria) does not apply to a person in the course of carrying out his or her duties as—</p> <p>(a) a driver for a rail replacement bus service who is responding to a rail disruption; or</p> <p>(b) a driver for a bus service who is responding to an emergency.</p> <p><b>Description:</b> This derogation relieves both rail replacement buses and bus drivers responding to an emergency, of the requirements of chapter six.</p>	<p><b>Medium severity:</b> This derogation is likely to confuse users as drivers of rail replacement buses and buses responding to emergencies are unlikely to cross jurisdictions.</p>



<b>ACT derogations: Heavy Vehicle National Law (ACT) Act</b>	
<b>Entire chapter omitted:</b> The ACT does not apply this chapter.	<b>High severity:</b> Derogation creates confusion and undermines fundamental principles of the HVNL.
<b>Chapter 8 - Accreditation</b>	
<b>Purpose of chapter 8:</b> The purpose of chapter 8 is to make provisions about accreditation, which is; to allow certain operators to operate under alternative requirements under the HVNL in order to meet business needs and operations.	
<b>NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42</b>	
<p><b>Addition of section 462A Conditions imposed on AFM accreditations by responsible Minister:</b></p> <p>(1) <i>Apart from the conditions referred to in section 462, an AFM accreditation is also subject to any conditions that may be imposed by the responsible Minister for this jurisdiction under this section.</i></p> <p>(2) <i>The responsible Minister for this jurisdiction may, by notice given to the holder, impose either or both of the following kinds of conditions on an AFM accreditation—</i></p> <p>(a) <i>conditions specifying different AFM hours to those that would otherwise apply to drivers of heavy vehicles while operating under the accreditation in this jurisdiction;</i></p> <p>(b) <i>conditions that require compliance with different or additional standards or business rules (or both) to the AFM standards and business rules in relation to heavy vehicles while operating under the accreditation in this jurisdiction.</i></p> <p>(3) <i>A condition imposed under this section has effect (and must be complied with) despite anything to the contrary in any of the following—</i></p> <p>(a) <i>the AFM accreditation (including any conditions referred to in section 462 to which the accreditation is subject);</i></p> <p>(b) <i>the AFM standards and business rules;</i></p> <p>(c) <i>Chapter 6 (particularly, section 257) and this Chapter;</i></p> <p>(d) <i>an exemption, notice or permit issued or granted under Division 8 of Part 6.3.</i></p> <p>(4) <i>The responsible Minister for this jurisdiction may, by further notice given to the holder, revoke a condition that has been imposed under this section.</i></p> <p>(5) <i>The responsible Minister for this jurisdiction must, as soon as practicable, notify the Regulator, in writing, of any condition imposed or revoked under this section.</i></p> <p><b>Description:</b> This derogation enables the relevant NSW Minister to impose conditions on an AFM accreditation, whereas under the HVNL this function is solely in the domain of the Regulator.</p>	<b>Medium severity:</b> This derogation has potential to affect the function of the regulator and enable the Minister to override certain findings of the Regulator.
<p><b>Alteration of 464 Accreditation certificate for heavy vehicle accreditation etc</b></p> <p><i>Insert “or by the responsible Minister for this jurisdiction under section 462A” after “the Regulator” in section 464 (2) (c).</i></p> <p><b>Description:</b> This derogation is necessary to operationalise the 462A derogation (above).</p>	
<p><b>Addition of 464 (2A)</b></p> <p><i>If an AFM accreditation certificate inaccurately states the conditions applicable to the accreditation because of the imposition or revocation of a condition under section 462A, the Regulator is to issue a replacement certificate to the holder as soon as practicable after the Regulator is informed by the responsible Minister for this jurisdiction of the imposition or revocation of the condition. <b>Analysis:</b> This derogation is necessary to operationalise the 462A derogation (above).</i></p>	

<b>ACT derogations: Heavy Vehicle National Law (ACT) Act</b>	
Entire chapter omitted.	<b>High severity:</b> Derogation creates confusion and undermines fundamental principles of Accreditation in the HVNL.
<b>Chapter 9 - Enforcement</b>	
Chapter 9 sets out the function and powers of authorised officers, including their powers in relation to places, heavy vehicles, equipment, seizure and embargo notices, and information. This chapter contains provisions about the exercises of powers	
<b>NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42</b>	
<b>Omission from section 497 General power to enter places:</b> Omit section 497 (8). <i>Insert instead: (8) An authorised officer may use force that is reasonably necessary for exercising a power under this section.</i> <b>Description:</b> This derogation is fundamentally inconsistent with the HVNL, which, under s 497(8) provides that an authorised officer is not authorised to use force for exercising a power under s 497.	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<b>Omission from section 498 Power to enter a place if evidence suspected to be at the place:</b> Omit section 498 (6) and (7). <i>Insert instead: (6) An authorised officer may use force that is reasonably necessary for gaining entry to a place under this section.</i> <b>Description:</b> This section derogates from the HVNL by providing greater powers to authorised officers, to use force that is reasonably necessary in relation to any of the locations mentioned in section 498. The HVNL confines this power to a "place that is required to be open for inspection under this Law".	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<b>Omission from section 499 Power to enter particular places if incident involving death, injury or damage:</b> Omit section 499 (7). <i>Insert instead: (7) An authorised officer may use force that is reasonably necessary for exercising a power under this section.</i> <b>Description:</b> This section derogates from the HVNL by enabling an authorised officer to use force that is reasonably necessary for exercising powers under this section. It is fundamentally inconsistent with the HVNL, which states that an authorised officer is not authorised to use force when exercising a power under this section.	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<b>Omission from section 500 General powers after entering a place:</b> Omit "section 497 (1) (c)" from section 500 (2) (c). <i>Insert instead "section 497, 498 or 499".</i> <b>Description:</b> This section provides for the powers of an authorised officer once they have entered a place. This section derogates from the HVNL by enabling an authorised officer to use force that is reasonably necessary in relation to powers exercised under s 497, 498, or 499, whereas the HVNL only enables force that is reasonably necessary in relation to powers used under s 497(1)(c).	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<b>Omission from section 521 Power to enter and search heavy vehicle involved, or suspected to be involved, in an offence etc.:</b> Omit section 521 (6). <b>Description:</b> This section derogates from the HVNL by enabling an authorised officer to exercise powers under s 521 in relation to an incident that involves the death of, or injury to a person. Under the HVNL, only police officers have this power.	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<b>SA derogations: Heavy Vehicle National Law (South Australia) Act 2013</b>	
<b>Alteration of section 498(1)(b) (Power to enter a place if evidence suspected to be at the place):</b> <i>applies —as if paragraph (b) were deleted and the following paragraph substituted: (b) there may be at the place evidence of an offence against this Law.;</i> <b>Description:</b> Section 498(1)(b) of the HVNL creates a power to enter a place if there is evidence suspected to be at the place. Under the HVNL this power may only be exercised if the evidence at the place may be concealed or destroyed unless the place is immediately entered and searched. The	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.

derogation under South Australian legislation takes this requirement away and simply requires that there <i>may</i> be at the place evidence of an offence against the HVNL.	
<p><b>Alteration of section 499(1)(d) (Power to enter particular places if incident involving death, injury or damage)</b>—as if paragraph (d) were deleted and the following paragraph substituted: (d) there may be at the place evidence of the offence mentioned in paragraph (b).</p> <p><b>Description:</b> Section 499(1)(d) of the HVNL creates a power to enter a place if incident involving death, injury, or damage. Under the HVNL this power may only be exercised if the evidence at the place may be concealed or destroyed unless the place is immediately entered and searched. The derogation under South Australian legislation takes this requirement away and simply requires that there <i>may</i> be at the place evidence of an offence under the HVNL.</p>	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<p><b>Alteration of section 517(1) (Direction to move heavy vehicle if causing harm etc)</b>—as if paragraph (b) were deleted and the following paragraphs substituted: (b) obstructing, or likely to obstruct, traffic or any event lawfully authorised to be held on the road; or (c) obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road.</p> <p><b>Description:</b> Section 517 of the HVNL limits the power to direct to move a heavy vehicle if causing harm, to circumstances where a vehicle is a) causing, or creating a risk of, serious harm to public safety, the environment or road infrastructure; or b) obstructing traffic or likely to obstruct traffic. The South Australian derogation adds further circumstances in which the power may be used, including any event lawfully authorised to be held on a road, and vehicles obstructing or hindering vehicles from entering or leaving adjacent land.</p>	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<p><b>Alteration of Section 572 (Improvement notices)</b>— applies (i) as if subsections (1) and (2) were deleted and the following subsections substituted:</p> <p>(1) This section applies if an authorised officer reasonably believes a person has contravened, is contravening, or is likely to contravene, a provision of this Law.</p> <p>(2) The authorised officer may give the person a notice (an improvement notice) requiring the person to take action within a stated period to stop the contravention from occurring, continuing or occurring again or to remedy the matters or activities occasioning, or that would occasion, the contravention or likely contravention.</p> <p>(ii) as if paragraphs (a) to (d) (inclusive) of subsection (4) were deleted and the following paragraphs substituted:</p> <p>(a) that the authorised officer reasonably believes the person has contravened, is contravening, or is likely to contravene, a provision of this Law</p> <p>(b) the reasons for that belief</p> <p>(c) the provision of this Law in relation to which that belief is held</p> <p>(d) that the person must take action within a stated period to stop the contravention from occurring, continuing or occurring again or to remedy the matters or activities occasioning, or that would occasion, the contravention or likely contravention;</p> <p><b>Description:</b> Section 572 of the HVNL creates a power for an authorised officer to issue an improvement notice, in certain circumstances. The power is limited to where "it is likely that the contravention will continue or be repeated." The South Australian derogation omits this requirement. The power arises where "an authorised officer reasonably believes a person has contravened, is contravening, or is likely to contravene, a provision of this Law."</p>	<b>High severity:</b> results in inconsistent application of HVNL enforcement powers.
<p><b>Alteration of section 576(3) (Clearance certificate),</b> definition of approved authorised officer, (a)—as if "police officer and" were deleted and "police officer, or a police officer of a class," were substituted;</p> <p><b>Description:</b> Definition amendment of relevance for SA.</p>	<b>Low severity:</b> This derogation relates to the definition and classing of police officers in SA.
<p><b>Alteration of section 19 Power to enter certain places - (1)</b> At any time when a place where heavy vehicles are exhibited or kept for sale or hire is open for business, an authorised officer may, for the purposes of determining whether a vehicle exhibited or kept for sale or hire at that place is a defective heavy vehicle (within the meaning of section 525 of the Heavy Vehicle National Law (South Australia), inspect the vehicle or direct the</p>	<b>High severity:</b> This derogation means that authorised officers have



<p>owner, the registered operator or the person in charge of the vehicle to produce it for inspection at a time and place stated by the authorised officer.</p> <p><b>Description:</b> This provision is an entirely new provision inserted into the South Australian Act which expands the power of authorised officers to enter certain places.</p>	<p>greater enforcement powers in SA, with potential confusion for operators due to inconsistent application of the HVNL.</p>
<p><b>Alteration of section - Offence to sell or dispose of heavy vehicle in respect of which vehicle defect notice is in force -</b> (1) A person must not sell or otherwise dispose of a heavy vehicle in respect of which a vehicle defect notice has been issued if the vehicle defect notice has not been cleared under the Heavy Vehicle National Law of a participating jurisdiction. Maximum penalty: \$3000.</p> <p>(2) It is a defence to a charge under subsection (1) of having sold or otherwise disposed of a heavy vehicle in respect of which a vehicle defect notice is in force if the defendant satisfies the court that at the time of the sale or disposal he or she had reason to believe that the vehicle was not intended to be used on a road after the sale or disposal.</p> <p><b>Description:</b> This provision is an entirely new provision inserted into the South Australian Act which creates an offence for selling or disposing of a vehicle that is subject to a defect notice.</p>	<p><b>High severity:</b> The creation of a new offence means there are inconsistent standards for the application of the HVNL across Australia.</p>
<p><b>Alteration of section 22 - Moving unattended etc heavy vehicle if danger or obstruction</b> (long provision - refer to Act)</p> <p><b>Description:</b> This provision is an entirely new provision that seems to be a modification of section 518 of the HVNL. There are fundamental differences between s 22 of the SA Act and section 518 of the HVNL. The SA act allows an authorised officer to drive the vehicle that must be moved even if they are not qualified to do so. The SA provision is prescriptive in terms of the circumstances in which this power can arise (with a number of factual scenarios listed), whereas the HVNL provides that this power arises if the authorised officer reasonably believes a heavy vehicle is unattended <u>and the authorised officer intends to exercise a power under the HVNL</u>, and the authorised officer reasonably believes it is necessary to move the heavy vehicle in order to exercise the power</p>	<p><b>High severity:</b> Section 22 of the SA Act potentially renders section 518 of the HVNL null and void.</p>
<p><b>Victorian derogations: Heavy Vehicle National Law Application Act 2013 (Vic)</b></p>	
<p><b>Alteration of section 556 - Return of seized things or samples</b> - applies as if after section 556(4) there were inserted— "(4A) If the relevant tribunal or court is not satisfied as set out in subsection (4), it may— (a) make an order for the return of the thing or sample to the person from whom it was seized or to the owner if that person is not entitled to possess it; or (b) make an order that the thing or sample be forfeited to the State and— (i) destroyed in accordance with the order; or (ii) sold in accordance with the order and the proceeds of the sale paid into the Consolidated Fund. (4B) An order made under subsection (4A)(b) cannot take effect before the end of any applicable appeal period or the determination of any appeal made within that period."</p> <p><b>Description:</b> While s 556(4) makes provision for This derogation makes provision for when a tribunal or tribunal is satisfied that a thing or sample does not need to be retained, section 556(4A) makes provision for when a tribunal or Court is not satisfied that a thing or sample should not be retained.</p>	<p><b>Medium severity:</b> This derogation does not affect the overall operation s 556 of the Act but makes provision for a scenario that does not seem to be addressed by the HVNL.</p>
<p><b>Addition: section 9 Use of certificates in assessing compensation Section 613(1) of the Heavy Vehicle National Law (Victoria):</b> applies as if a reference in that section to 28 days were a reference to 60 days.</p> <p><b>Description:</b> This derogation requires a public authority who proposes to submit a s 612(2)(c ) certificate in a proceeding for the making of a compensation order, to provide that certificate to the defendant at least 60 days, and not 28 days (as under the HVNL).</p>	<p><b>High severity:</b> This derogation creates an inconsistent application of natural justice requirements under the HVNL.</p>
<p><b>Queensland derogations: Heavy Vehicle National Law Act 2012 (Qld)</b></p>	
<p><b>Addition of section 35 Application of particular provisions to police officers</b> A provision of Chapter 9 of the Heavy Vehicle National Law (Queensland) that corresponds to a provision of the Police Powers and Responsibilities Act 2000 does not apply to an authorised officer who is a police officer.</p> <p><b>Addition of section 37 Use of force</b></p>	<p><b>Low severity:</b> Derogation serves to preserve the operation of the provisions of the Police Powers and</p>

<p>(1) For section 491(2) of the Law, a police officer is authorised to use force against a person in the exercise or purported exercise of a function under Chapter 9 of the Law if the Police Powers and Responsibilities Act 2000 authorises the police officer to use the force against the person.</p> <p>(2) For section 492(1)(b) of the Law, the exercise of the power to use force against property is authorised for the purposes of the following provisions of the Law—(section 497(4)(a); (b)section 498(6); (c)section 500(2)(c);(d)section 518(6)(b); (e)section 519(7); section 521(1); section 523(2).</p> <p><b>Description:</b> These provisions assert that the enforcement powers of police officers are provided for in the <i>Police Powers and Responsibilities Act 2000</i>, except for those provisions of the HVNL which do not correspond with the provisions of that Act. This derogation is unlikely to have a significant impact on the consistent application of the HVNL.</p>	<p><i>Responsibilities Act</i></p>
<p><b>Addition of section B7538 Power to seize</b></p> <p><i>If, apart from section 552(1) of the Law, a heavy vehicle, or a thing mentioned in section 552(1)(b) of the Law, is a thing that may be seized under Chapter 9 of the Law, it may be seized under Chapter 9 of the Law despite section 552(1).</i></p> <p><b>Description:</b> This provision renders section 552 of the HVNL null and void, and deviates materially from the intention of the HVNL</p>	<p><b>High severity:</b> Direct inconsistency with HVNL.</p>
<p><b>Addition of section 39 Power to require production of driver licence</b></p> <p>(1) An authorised officer may, for compliance purposes, require the driver of a heavy vehicle to produce for inspection by the officer the driver's driver licence.</p> <p>(2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.</p> <p>Maximum penalty—45 penalty units.</p> <p>(3) It is not a reasonable excuse for the person to fail to comply with a requirement made under subsection (1)—</p> <p>(a) that the person does not have the driver licence in his or her immediate possession; or</p> <p>(b) that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.</p> <p>(4) The authorised officer may take a copy of, or an extract from, the driver's driver licence.</p> <p><b>Description:</b> This derogation gives an additional power to authorised officers under the HVNL, which may be regarded as deviating from the intent of the HVNL.</p>	<p><b>High severity:</b> authorised officers (who are not police officers) have different powers in QLD.</p>
<p><b>Tasmanian derogations: Heavy Vehicle National Law (Tasmania) Act 2013</b></p>	
<p><b>Addition of section 21(1) Authority to use force</b></p> <p>(1) An authorised officer who is a police officer is authorised to use force against a person in the exercise, or purported exercise, of a function under the Heavy Vehicle National Law (Tasmania).</p> <p>(2) An authorised officer is authorised to use force against property in the exercise, or purported exercise, of a function under the Heavy Vehicle National Law (Tasmania)</p> <p><b>Description:</b> S 21(1) enables police to use force against a person in the exercise of a function under the HVNL. S 21(2) expands, quite significantly, the powers of authorised officers to use force against property in the exercise of powers under the HVNL.</p>	<p><b>High severity:</b> Expansion of both police and authorised officer powers under the HVNL.</p>
<p><b>Alteration of section 22 - Amendment or withdrawal of vehicle defect notices</b></p> <p><i>For the purposes of section 531 of the Heavy Vehicle National Law (Tasmania), a police officer of another jurisdiction may amend or withdraw a vehicle defect notice that has been issued in this jurisdiction by an authorised officer who is a police officer.</i></p> <p><b>Description:</b> This provision puts beyond doubt that a police officer in a jurisdiction that is not Tasmania, may withdraw or amend a vehicle defect notice issued in Tasmania. The intent of this derogation makes good operational sense, as it would be absurd for a vehicle in Victoria to travel back to Tasmania to organise an inspection by a police officer to withdraw or amend a defect notice. Given this absurdity, this derogation raises the question of why other jurisdictions have not derogated in a similar way, and whether it is necessary at all.</p>	<p><b>Low severity:</b> Derogation makes good operational sense. Ensures defect notices issued in Tasmania can be dealt with by enforcement in other jurisdictions.</p>

## Chapter 10 - Sanctions and provisions about liability for offences

### Tasmanian derogations: Heavy Vehicle National Law (Tasmania) Act 2013

#### Addition of section 23 - Infringement notices

- (1) In this section – *demerit points*, in relation to an offence, means the demerit points fixed in relation to that offence in the demerits points schedule, within the meaning of the Vehicle and Traffic Act 1999 .
- (2) For the purposes of the Heavy Vehicle National Law (Tasmania), the Monetary Penalties Enforcement Act 2005 is declared to be the Infringement Notice Offences Law for this jurisdiction.
- (3) For the purposes of section 591 of the Heavy Vehicle National Law (Tasmania), a prescribed offence is an offence prescribed, for the purposes of that section, in the local application regulations.
- (4) A penalty specified in an infringement notice issued under section 591 of the Heavy Vehicle National Law (Tasmania) is to be an amount equal to 10% of the maximum penalty for the offence.
- (5) An infringement notice issued under section 591 of the Heavy Vehicle National Law (Tasmania) is to specify the number of demerit points (if any) in respect of the offence or offences to which the notice relates.
- (6) An infringement notice issued under section 591 of the Heavy Vehicle National Law (Tasmania) is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .
- (7) Any payments in respect of an infringement notice are payable into the Consolidated Fund.

**Description:** This derogation reflects local legislative arrangements with respect to monetary penalties.

**Low severity:** Derogation does not result in practical inconsistencies with respect to enforcement of penalties.

#### Addition of section 28 - No double jeopardy

- If – (a) an act or omission is an offence against the Heavy Vehicle National Law (Tasmania) or the Heavy Vehicle National Regulations (Tasmania) and is also an offence against a law of another participating jurisdiction; and
- (b) the offender has been punished for that offence under the law of the other jurisdiction –
- the offender is not liable to be punished for the offence against the Heavy Vehicle National Law (Tasmania) or the Heavy Vehicle National Regulations (Tasmania), as the case may be.

**Description:** This provision prevents a person from being charged twice for the same offence in different jurisdictions.

**Medium severity:** Derogation suggests that Tasmania is the only jurisdiction in which a person cannot be charged for the same offence twice in different jurisdictions.

## Chapter 12 - Administration

Chapter 13 sets out general offences including discrimination, victimisation, false or misleading information, as well as industry codes of practice, and matters relating to legal proceedings and evidence relating to offences under the Act.

### NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42

#### Addition of section 711 Evidence by certificate by Regulator and RMS generally: Insert before section 711(1)(e):

- (a) a stated vehicle was or was not registered on the basis it is a heavy vehicle; or
- (b) a stated vehicle registered was or was not registered as a heavy vehicle of a stated category; or
- (c) a stated person was or was not the registered operator of a stated registered vehicle; or
- (d) a stated registration was or was not amended, suspended or cancelled; or

**Description:** This section sets out a list of statements that can be considered as evidence of a matter. This section derogates from the HVNL by adding the above four statements to the list.

**Medium severity:** Results in inconsistent evidentiary scheme which may be confusing for operators.

#### Section 711(1A) Evidence by certificate by Regulator and RMS generally: (1A) Without limiting section 712, a certificate purporting to be issued by RMS and stating a matter referred to in section 711 (1) (a)–(d) or (h) at a stated time, or during a stated period, is evidence of the matter.

**Description:** This section allows certificates issued by RMS, stating certain matters, to be evidence of a matter.

**Medium severity:** Results in inconsistent evidentiary scheme which may be confusing for operators.

**Queensland derogations: Heavy Vehicle National Law Act 2012 (Qld)**

**Addition of section 30 (Additional Regulator certificates): 30 Additional Regulator certificates**

(1) A certificate purporting to be issued by the Regulator and stating that, at a stated time or during a stated period or by a stated day—

- (a) a stated thing was the property of the Regulator; or
  - (b) a stated sign was or was not an official traffic sign, contained stated words or was on a stated place; or
  - (c) a stated vehicle was or was not inspected under the Law; or
  - (d) a stated vehicle was or was not inspected in compliance with a stated requirement made by an authorised officer; or
  - (e) an inspection of a stated vehicle under the Law gave stated results; or
  - (f) a stated application, or another stated document required to be lodged under the Law, was or was not received by the Regulator; or
  - (g) a stated report or stated information required to be given to the Regulator under the Law was received or was not received by the Regulator; or
  - (h) no report or information of a stated type, required to be given to the Regulator under the Law, was received by the Regulator; or
  - (i) a stated vehicle was or was not of a stated type, or was carrying stated goods; or
  - (j) a stated heavy vehicle was or was not, whether generally or for the purposes of stated circumstances, insured in accordance with the requirements of any third party insurance legislation applying to the vehicle; or
  - (k) a stated copy of a document was a copy of a document issued, or required to be kept, under the Law; or
  - (l) a stated document was a manufacturer's specification for a stated type of vehicle;
  - (m) a stated vehicle's GCM or GVM was a stated amount, and how the amount was identified;
- is evidence of the matter.

(2) Subsection (1) does not limit section 711 of the Law.

(3) Section 715 of the Law applies to a matter mentioned in subsection (1)(a) to (m) as if the matter was stated in a certificate under section 711 of the Law.

**Description:** This section sets out a list of statements on a certificate issued by the Regulator, that can be considered as evidence of a matter, in addition to those statements already provided for under s 711 of the Act. Inconsistent evidentiary requirements is confusing for operators and arguably the above requirements deviate from the intent of the HVNL for evidentiary requirements.

**Medium severity:** Results in inconsistent evidentiary scheme which may be confusing for operators.

**Addition of section 32 Evidence of contents of document examined by authorised officer**

Evidence by an authorised officer of the contents of a document issued, or required to be kept, under the Law, that was examined by the officer while it was in someone else's possession, may be given by the officer without the document being produced.

**Description:** This provision would, for example, allow an authorised officer to give evidence of the contents of a work diary, which the officer examined by then returned to the holder. This derogation adds to the list of evidence and results in an inconsistent application of evidentiary requirements across jurisdictions.

**Medium severity:** Results in inconsistent evidentiary scheme which may be confusing for operators.

**Addition of section 33 Averments**

(1) In a proceeding for an offence against the Law, a statement in the complaint for the offence that—

- (a) at a stated time or during a stated period—
    - (i) a stated person was or was not the holder of a driver licence under the Transport Operations (Road Use Management) Act 1995 of any particular class or type; or
    - (ii) a stated person was or was not the holder of a driver licence under the Transport Operations (Road Use Management) Act 1995 authorising the holder to drive a motor vehicle on a stated road; or
  - (b) any distance mentioned in the complaint is or was a stated distance or is or was greater or less than a stated distance;
- is evidence of the matter.

(2) Section 715 of the Law applies to the matter mentioned in subsection (1)(b) as if the matter were a matter stated in a certificate to which the section applies.

**Medium severity:** Results in inconsistent evidentiary scheme which may be confusing for operators.

<p><b>Description:</b> This provision allows for the admission of averments as evidence, which is not specified as allowed by the HVNL.</p>	
<p><b>Tasmanian derogations: Heavy Vehicle National Law (Tasmania) Act 2013</b></p>	
<p><b>Addition of section 26 Fees for vehicle inspections:</b>  1) <i>In this section –</i>  <u>approved vehicle examiner</u> means a person approved by the Registrar to undertake vehicle inspections;  <u>heavy vehicle inspection services provider</u> means an organisation that has a contract with the Department to undertake heavy vehicle inspection services.  (2) <i>The fee payable for an inspection of a heavy vehicle under the Heavy Vehicle National Law (Tasmania) is –</i>  (a) <i>if the inspection is carried out by or on behalf of a heavy vehicle inspection services provider, the fee specified by that heavy vehicle inspection services provider; or</i>  (b) <i>if the inspection is not carried out by or on behalf of a heavy vehicle inspection services provider –</i>  (i) <i>in the case of an inspection by an approved vehicle examiner, the fee specified by that examiner; or</i>  (ii) <i>in the case of an inspection by an authorised officer, the fee, if any, prescribed for the purposes of section 58A(a) of the Vehicle and Traffic Act 1999 .</i>  <b>Description:</b> This provision provides a definition for approved vehicle examiner and heavy vehicle inspection services provider and provides arrangements for fees for vehicle inspections.</p>	<p><b>Low severity:</b> These provisions reflect local arrangements in place prior to compliance activities in Tasmania being carried out directly by the Regulator.</p>
<p><b>Addition of section 27 Fees for route assessments:</b>  1) <i>If a route assessment is required under the Heavy Vehicle National Law (Tasmania), the road manager supplying the route assessment may charge and recover a fee for the route assessment.</i>  (2) <i>The road manager may only charge an amount that is no more than the reasonable cost of providing the service.</i>  <b>Description:</b> This provision limits the amount a road manager may charge to the "reasonable cost" of providing the service.</p>	

## Appendix C Comparison of regulatory styles

Law	Principles / performance-based	Prescriptive	Other
<b>Heavy Vehicle National Law</b>	Sections: 22-23; 26-59; 80; 89; 94; 110-111; 115; 117-118; 122-123; 129-130; 134; 138; 143-144; 157; 228; 342-343; 409-410; 412; 427-428; 441-442; 461; 578.	Sections: 20-21; 24-25A; 60-79; 81-83; 85-87A; 90-93; 95-96; 98-102; 105-109; 112-114; 119-121; 124-128; 131-133; 137; 139-142A; 145-152; 156-156A; 158-167; 169-187; 190-201; 243-248; 250-252; 254-256; 258; 260-288; 293-299; 301-303; 305-315; 319-319A; 321-332; 335-341; 344-399; 404-408; 411; 413-424; 429-439; 443-455; 459-460; 462-466; 468-478; 495-500; 502-510; 513-514; 516-524; 526-531B; 533-536; 538-576; 576B-576C; 577; 579-598; 600-605; 607-617; 627-639; 641-650; 756-759.	Sections: 1-19; 84; 88; 97; 103-104; 116; 135-136; 153A-155; 168; 188-189; 220-226; 249; 253; 257; 259; 289-292; 300; 304; 316-318; 320; 333-334; 400-403; 425-426; 440; 456-458; 467; 479-494; 501; 511-512; 515; 525; 532; 537; 576A; 576D-576E; 599; 606; 626; 640; 651-755; Schedules 1-4.
<b>Rail Safety National Law</b>	Sections: 6; 13; 17-21; 25-32; 35-40; 44-48; 50-56; 58-75; 77-78; 80-84; 92-94; 96-96A; 99-119; 121-125; 134-135; 138-148; 153; 157-161; 163-166; 169-170; 172-175; 179; 182; 185; 189; 193-194; 198-202; 209-212; 234; 243; 258-259.	Sections: 7; 9; 22-24; 33-34; 41-43; 49; 76; 79; 85-91; 95; 97-98; 120; 126-129; 131-133; 137-138; 149-152; 154-156; 162; 167-168A; 171; 176-178; 180-181; 183-184; 187-188; 190-192; 195; 197; 203; 205-208; 213-232; 235-242; 244-257; 260-262; 264.	Sections: 1-5; 8; 10-12; 14-16; 57; 130; 186; 196; 204; 233; 263; 265; Schedule 2.
<b>Model Work Health and Safety Law</b>	Sections: 17-29; 39; 46-48; 50-58; 61; 64; 66-70; 75-78; 82; 84-90; 93-97; 99-101; 104; 106-108; 111; 117-122; 135; 137-138; 140-148; 154-156; 159; 163-166; 176; 182-187; 191; 195; 198-201; 204-206; 209-212; 215-218; 220-222; 224-225; 235-238.	Sections: 38; 41-45; 49; 60; 62-63; 65; 71-74; 79; 81; 91-92; 98; 102; 110; 112-115; 123-134; 136; 139; 149-153; 157-158; 160-162; 167-175; 177-181; 188-190; 192-194; 196-197; 203; 207-208; 213; 219; 223; 226-233; 239-242; 244-248; 250-253; 255-267.	Sections: 1-16; 30; 35-37; 40; 59; 80; 83; 103; 105-106; 116; 202; 214; 234; 243; 249; 254; 268-276; Schedules 1-3.



# Appendix D Amendments to the Heavy Vehicle National Law

Number	Commencement	Summary of amendment package content
1	10 February 2014	First stage of national system; established the NHVR.
2	Various chapters, parts and provisions commenced at different times prior to go-live date of 10 February 2014	Resolved outstanding policy or technical matters. Substituted the HVNL due to significant renumbering and inclusion of additional sections.
3	29 September 2014	Technical amendments to correct errors regarding accreditation for BFM and AFM provisions.
4	6 February 2016	EWDs; harmonisation of penalties; and maintenance.
5	CoR stage 1 – 1 October 2018	Chain of responsibility (CoR) stage 1 (primary duty for safety)
6	Maintenance – 1 July 2017	Maintenance included self-clearing defect notices, NHVR business improvements and automatic CPI increase of new and revised penalty amounts.
7	Registration-related provisions – 1 July 2018	CoR stage 2 (extended executive officer liability to other safety-related offences), omitted uncommenced vehicle registration provisions (Chapter 2) and added new provisions providing for the regulator to keep a register of heavy vehicles, maintenance.
8	CoR stage and other maintenance provisions – 1 October 2018	
9	1 October 2018	CoR stage 3 (investigation and enforcement provisions, including new prohibition notices), moved loading performance standards into law, permitted PBS vehicle at or below general mass limits to have general access, limited road manager discretion to refuse access on mass basis where previous consent at that mass has been given, maintenance.

## Appendix E BITRE fatal crashes data

BITRE fatal crashes by state/territory (BITRE 2013 and 2018) [*A = articulated, R = rigid, B = bus*]

		Participating jurisdictions																		Non-participating jurisdictions					
		NSW			Vic			Qld			SA			Tas			ACT			WA			NT		
Date		A	R	B	A	R	B	A	R	B	A	R	B	A	R	B	A	R	B	A	R	B	A	R	B
Pre-HVNL	2010	51	20	9	36	19	2	29	12	3	7	2	3	3	4	1	1	1	1	15	11	0	1	0	1
	2011	47	15	11	23	14	5	39	13	7	13	6	0	2	2	0	0	0	0	14	5	1	3	2	0
	2012	50	22	6	30	16	3	45	23	6	10	6	1	3	2	0	0	1	0	8	15	1	2	1	0
	2013	32	24	2	14	15	3	35	11	5	11	4	0	2	0	0	0	0	0	11	15	0	1	0	1
Post-HVNL	2014	28	21	6	25	23	3	26	8	1	10	10	1	4	3	0	2	0	1	6	11	4	0	0	0
	2015	31	22	5	21	18	6	23	15	2	12	2	1	2	5	1	1	0	1	12	9	2	0	1	1
	2016	22	30	10	20	17	2	23	12	3	10	4	3	3	1	1	1	0	0	10	11	3	4	0	1
	2017	39	31	6	20	19	7	17	11	8	6	5	0	1	6	1	0	0	0	9	16	3	0	0	2
	2018	23	26	7	12	10	5	25	15	5	6	4	0	2	4	1	0	1	1	9	5	2	1	0	0



# Common terms and abbreviations

Term	Definition
ABS	Australian Bureau of Statistics
CASA	Civil Aviation Safety Authority
EWD	electronic work diary
HVNL	Heavy Vehicle National Law
HV(FM)NR	Heavy Vehicle (Fatigue Management) National Regulation
HV(G)NR	Heavy Vehicle (General) National Regulation
HV(MDL)NR	Heavy Vehicle (Mass, Dimension and Loading) National Regulation
HV(R)NR	Heavy Vehicle (Registration) National Regulation
HV(VS)NR	Heavy Vehicle (Vehicle Standards) National Regulation
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
OSOM	Oversize Overmass
RSNL	Rail Safety National Law
WHS	work health and safety

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