

# National Transport Reform Implementation Monitoring Report

Report to the Transport and  
Infrastructure Council

2020

# Contents

<b>Abbreviations .....</b>	<b>3</b>
<b>Executive summary .....</b>	<b>4</b>
<b>1 Introduction .....</b>	<b>6</b>
1.1 Purpose	6
1.2 Method	6
1.3 Reforms and projects for monitoring	6
1.4 Structure of report	6
1.5 Indicator of implementation status	7
1.6 Future Reports	8
<b>2 Heavy vehicle reforms .....</b>	<b>9</b>
2.1 Amendments to Heavy Vehicle National Law	9
2.2 Implementation analysis	14
<b>3 Rail reform .....</b>	<b>15</b>
3.1 Amendments to Rail Safety National Law	15
3.2 Implementation analysis	17
<b>4 Maintenance of existing reforms .....</b>	<b>18</b>
4.1 Australian Road Rules	18
4.1.1 About the Australian Road Rules amendment package	18
4.1.2 Implementation analysis	20
4.2 Australian Light Vehicle Standards Rules	21
4.2.1 About the Australian Light Vehicle Standards Rules	21
4.2.2 Implementation analysis	23
4.3 Transport of Dangerous Goods laws	24
4.3.1 About the Transport of Dangerous Goods Model Regulations and Code	24
4.3.2 Implementation analysis	26
<b>Appendix A: Derogations for the Heavy Vehicle National Law .....</b>	<b>28</b>
<b>Appendix B: Summary of derogations for the Rail Safety National Law .....</b>	<b>47</b>
<b>List of tables .....</b>	<b>50</b>

# Abbreviations

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

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

# Executive summary

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The National Transport Commission (NTC) is a national transport reform agency that works with all Australian governments to advance social and economic outcomes through an efficient, integrated and nationally consistent land transport system. The NTC provides advice to the Infrastructure and Transport Ministers Meeting (ITMM) on regulatory and operational transport reforms.

Each year the NTC provides a progress report to the Council on the implementation status of nationally agreed reforms. The 2020 National Transport Reform Implementation Monitoring Report is the seventh report produced. The reporting period is from 1 July 2019 to 30 June 2020. Any implementation progress after 30 June 2020 will be included in the 2021 monitoring report.

## Key points of this report

Jurisdictions have made good progress over the 2019–20 period with implementing agreed reforms in the face of unforeseen challenges. Importantly, during this reporting period no amendment package to either the Heavy Vehicle National Law (HVNL) or Rail Safety National Law (RSNL) commenced, although Council did approve amendments to RSNL that took effect from 1 July 2020, outside the reporting period for this report. In the case of HVNL, any amendments are being considered as part of the HVNL review. This has meant that some jurisdictions have used 2019–20 to catch up with previous amendment packages and the backlog of reforms to be implemented has reduced.

This ‘catching up’ has taken place against the backdrop of COVID-19, which has had an impact on the pace of implementation, with several jurisdictions pointing to response and recovery activities taking precedence over implementing agreed reforms. In some jurisdictions this has meant policy and drafting resources have been diverted to more immediate matters, while others have experienced an understandable refocus of parliamentary business onto COVID-19 related issues.

## Heavy Vehicle National Law

All the participating jurisdictions to the Heavy Vehicle National Law (HVNL) scheme have implemented or are on track to implementing the most current amendment packages described at Table 2 of this report. Appendix A provides a high-level analysis of HVNL derogations by jurisdictions.

All participating jurisdictions have adopted and commenced HVNL amendments contained in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages at the same time those amendments commenced in Queensland, the host jurisdiction.

Since 1 July 2019, the ACT has become a full participating jurisdiction in the HVNL scheme through incorporation of those chapters of the law that were previously disappplied.

Subject to ITMM consideration of the NTC’s review of HVNL currently scheduled for May 2021, the next package of amendments is likely to be introduced in late 2021 or early 2022,

and subject to the scope of the agreed reforms should be more substantial than previous amendment packages.

### **Rail Safety National Law**

All the participating jurisdictions to the Rail Safety National Law (RSNL) scheme, except WA, have implemented the fourth amendment package described at Table 4 of this report. The WA Government has approved a request to amend the Rail Safety National Law (WA) to include all outstanding amendments, which will better align WA with the scheme.

Appendix B provides a summary of derogations for the RSNL scheme.

### **Australian Road Rules**

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

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

### **Australian Light Vehicle Standards Rules**

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

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

### **Australian Dangerous Goods Code**

All jurisdictions have implemented edition 7.6 of the Australian Dangerous Goods Code. The NT and ACT are yet to implement some or all of the model subordinate law changes. Both jurisdictions are committed to implementing outstanding amendment packages subject to government legislative program priorities.

Implementation of edition 7.6 by all jurisdictions means that most of the reforms relating to the transport of limited quantities of dangerous goods that provide productivity benefits are realised.

Implementation of edition 7.7 will be included in the 2021 Reform Implementation Monitoring Report.

# 1 Introduction

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## 1.1 Purpose

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

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

## 1.2 Method

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The report presents progress of national reforms by using 'traffic light' indicators and brief commentaries describing achievements, impediments and recommends corrective actions where required. The report also highlights state or territory-based variations to national laws that may affect the realisation of expected benefits of national reforms. In July 2020 the NTC sought updates on the progress of reforms or tasks from the states and territories.

## 1.3 Reforms and projects for monitoring

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

## 1.4 Structure of report

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This report is divided into four areas:

- **Heavy vehicle reforms** – monitors the heavy vehicle regulatory reform and amendments to the Heavy Vehicle National Law (HVNL) and regulations.
- **Rail reforms** – monitors the amendments to the Rail Safety National Law (RSNL) and regulations.
- **Maintenance of existing reforms** – monitors implementation of:
  - the Australian Road Rules
  - Australian Light Vehicle Standards Rules
  - Heavy Vehicle – Vehicle Standards Rules
  - the Code for the Transport of Dangerous Goods by Road and Rail and model legislation.

- **Derogations** – assesses derogations to the Heavy Vehicle National Law and Rail Safety National Law (Attachments A and B).

## 1.5 Indicator of implementation status

Each state and territory were asked to provide implementation status indicators and where relevant describe:

- implementation progress
- variations to the national approach and/or implementation challenges
- possible solutions against each of the current national transport reforms and projects included in this report.

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

**Table 1. Reform implementation status indicators**

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

## 1.6 Future reports

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Appendices A and B provide details on derogations from the Heavy Vehicle National Law scheme and Rail Safety National Law, which provides both government and industry with a useful snapshot of where the respective laws are implemented differently.

In late 2020, the NTC completed a review of the Land Transport of Dangerous Goods which has indicated that a similar list of derogations of the Code for the Transport of Dangerous Goods by Road and Rail and model legislation would be particularly useful. Accordingly, this will be included in the 2021 report.

## 2 Heavy vehicle reforms

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### Key points

- The 5<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*, was passed by the Queensland Parliament (host jurisdiction) in December 2016.
- The 6<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018*, was passed by the Queensland Parliament in June 2018.
- The 7<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law Amendment Act 2018*, was passed by the Queensland Parliament in September 2018.
- The 8<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law Amendment Bill 2019*, was introduced into the Queensland Parliament in April 2019 and was assented to on 26 September 2019.
- The registration related provisions contained in the 6<sup>th</sup> amendment package commenced on 1 July 2018.
- The Council agreed that a common implementation date in the second half of 2018 should apply to all chain of responsibility and executive officer liability amendments included in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages. These amendments commenced on 1 October 2018.
- No further substantive amendments to the HVNL are scheduled until late 2021 or, subject to the review of the NTC's review of the HVNL that will be presented to ministers in May 2021.

### 2.1 Amendments to Heavy Vehicle National Law

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The 5<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* was passed by the Queensland Parliament and assented to in December 2016. Key items in the 5<sup>th</sup> amendment package include: changes to the chain of responsibility, executive officer liability obligations, investigation and enforcement powers, self-clearing defect notices and display of accreditation labels. Chapter 3 (maintenance amendments) commenced on 1 July 2017.

The 6<sup>th</sup> Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* was passed and assented to in June 2018. Key items in the 6<sup>th</sup> amendment package include:

- extension of executive officers' due diligence obligation to incorporate other safety related offences

- amendments to the heavy vehicle national registration provisions that will enable consolidation of heavy vehicle registration information from jurisdictions in a single database.

Amendments related to heavy vehicle registration commenced on 1 July 2018. Extension of executive officers' due diligence obligations amendments commenced on 1 October 2018 as part of the chain of responsibility reform. The 7th Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law Amendment Act 2018*, was passed and assented to in September 2018 and commenced on 1 October 2018. Key items in the 7<sup>th</sup> amendment package include:

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

In November 2018, the Council approved an 8th amendment package of the Heavy Vehicle National Law. The *Heavy Vehicle National Law Amendment Bill 2019* was introduced into the Queensland Parliament in April 2019 and was assented to on 26 September 2019. All provisions, other than sections 10 and 11 (that have been further deferred by the (Qld) *Heavy Vehicle National Law and Other Legislation Amendment (Postponement) Regulation 2020* until 6 September 2021) relating to amendment of sections 96 and 102 about compliance with mass and dimension requirements for PBS vehicles, commenced on 28 February 2020.

The amendments include:

- harmonised penalties and make-good provisions for vehicles that exceed the general mass limits
- consequential amendments arising from the enactment of the *Commonwealth Road Vehicles Standards Act 2018*, which will repeal the *Motor Vehicle Standards Act 1989* (Cth)
- changes to improve consistency between a vehicle defect notice and a self-clearing defect notice
- enabling recognition of modifications to heavy vehicles approved in non-participating jurisdictions
- providing that the giving of advice, information and education are functions of the Regulator and authorised officers
- changes to improve productivity by allowing certain semitrailers greater access to the road network where mass is not a constraint.

Tables 2 and 3 provide an overview of the progress of implementing the HVNL amendments.

Subject to the current review of the HVNL, the next package of proposed amendments to the HVNL is likely to be introduced in late 2021. Given the rationale and scope of the review, this is likely to be a more significant package of reforms and implementation monitoring will become significant.

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

Heavy Vehicle National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Heavy Vehicle National Law and Other Legislation Amendment Act 2016 (5 <sup>th</sup> amendment package) <b>(Council approved draft amendments in May 2016)</b>	✓	✓	✓	✓	✗	✓	✗	✓
Heavy Vehicle National Law and Other Legislation Amendment Act 2018 (6 <sup>th</sup> amendment package) <b>(Council approved draft amendments in May 2017)</b>	✓	✓	✓	✓	✗	✓	✗	✓
Heavy Vehicle National Law Amendment Act 2018 (7 <sup>th</sup> amendment package) <b>(Council approved November 2017)</b>	✓	✓	✓	✓	✗	✓	✗	✓
Heavy Vehicle National Law Amendment Bill 2019 (8 <sup>th</sup> amendment package) <b>(Council approved November 2018)</b>	✓	✓	✓	✓	✗	✓	✗	✓

**Table 3. Participating jurisdictions' comments on adopting the National Heavy Vehicle Law 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Amendment Packages**

Jurisdiction	Implementation comments
NSW	<p>Relevant amendments (as per Heavy Vehicle Amendment Regulation 2019 [QLD]) to Heavy Vehicle (Mass Dimension and Loading) National Regulation NSW and Heavy Vehicle (Vehicle Standards) National Regulation NSW commenced in NSW on 10 December 2019.</p> <p>Relevant amendments (as per Heavy Vehicle Amendment Regulation 2020 [QLD]) to Heavy Vehicle (Mass Dimension and Loading) National Regulation NSW and Heavy Vehicle (Vehicle Standards) National Regulation NSW commenced in NSW on 28 February 2020.</p> <p>Relevant provisions of the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2019</i> commenced on 28 February 2020 as required. This includes changes to provide for issuing of penalty notices for additional fatigue offences.</p>
VIC	<p>The registration-related provisions contained in the 6<sup>th</sup> and 7<sup>th</sup> amendment packages commenced on 1 July 2018.</p> <p>The Chain of Responsibility amendments contained in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages commenced on 1 October 2018, along with the remaining provisions of the 7<sup>th</sup> amendment package.</p> <p>The 8th amendment package was assented to on 26 September 2019 as part of the Heavy Vehicle National Law and Other Legislation Amendment Act 2019. The majority of amendments to the Heavy Vehicle National Law (HVNL) commenced in two packages on 10 December 2019 and 28 February 2020.</p> <p>Commencement of sections 10 and 11 of the Heavy Vehicle National Law and Other Legislation Amendment Act 2019, which amend sections 96 (Compliance with mass requirements) and 102 (Compliance with dimension requirements) of the HVNL respectively, have been postponed to September 2021 to allow time to resolve an issue relating to unintended and inconsistent consequences in the enforcement outcomes for off route Performance Based Standards vehicles.</p>

<p><b>SA</b></p>	<p>Part of the 5<sup>th</sup> amendment package commenced on 1 July 2017, while the remainder commenced on 1 October 2018.</p> <p>Similarly, part of the 6<sup>th</sup> amendment package commenced on 1 July 2018, while the remainder commenced on 1 October 2018.</p> <p>The 7<sup>th</sup> amendment package commenced on 1 October 2018.</p> <p>Part of the 8<sup>th</sup> amendment package commenced operating in SA on 28 February 2020, with the Part 2, Division 1 changes in the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2019</i> (Qld) due to commence in SA on the same day that section 15 of the <i>Road Vehicle Standards Act 2018</i> of the Commonwealth comes into operation (1 July 2021 at the latest). Sections 10 and 11 of the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2019</i> (Qld) are also yet to commence operating in SA, with these amendments due to start on the same day that they come into operation in Queensland*.</p> <p>*Processes are currently underway nationally to seek approval to omit sections 10 and 11.</p>
<p><b>QLD</b></p>	<p>The 8<sup>th</sup> amendment package was assented to on 26 September 2019 as part of the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2019</i>. The majority of amendments to the Heavy Vehicle National Law (HVNL) commenced in two packages on 10 December 2019 and 28 February 2020.</p> <p>Commencement of sections 10 and 11 of the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2019</i>, which amend sections 96 (Compliance with mass requirements) and 102 (Compliance with dimension requirements) of the HVNL respectively, have been postponed to September 2021 to allow time to resolve an issue relating to unintended and inconsistent consequences in the enforcement outcomes for off route Performance Based Standards vehicles.</p>
<p><b>TAS</b></p>	<p>The remainder of the 5<sup>th</sup> and 6<sup>th</sup> amendment packages commenced in Tasmania upon proclamation in October 2018.</p> <p>The registration-related provisions contained in the 6<sup>th</sup> and 7<sup>th</sup> amendment packages commenced on 1 July 2018.</p> <p>The Chain of Responsibility amendments contained in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages commenced on 1 October 2018, along with the remaining provisions of the 7<sup>th</sup> amendment package.</p> <p>The 8<sup>th</sup> amendment package was incorporated into the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2019</i>, which was tabled in Tasmania on 14 November 2019.</p>

<b>ACT</b>	<p>The <i>Heavy Vehicle National Law (ACT) Act 2013</i> (the Act) which commenced on 10 February 2014 provides that the Heavy Vehicle National Law set out in the schedule to the Queensland Act, as amended from time to time, applies as a territory law, as modified by schedule 1 of the Act, and may be referred to as the <i>Heavy Vehicle National Law (ACT)</i>.</p> <p>Amendments to the <i>Heavy Vehicle National Law</i> (HVNL) and regulations (while needing to be tabled in the ACT Legislative Assembly and being subject to disallowance) under the HVNL are adopted automatically in the ACT.</p> <p>As such HVNL and regulation amendments commence in the ACT at the same time as they commence in Queensland.</p> <p>The registration-related provisions contained in the 6<sup>th</sup> and 7<sup>th</sup> amendment packages commenced on 1 July 2018.</p> <p>The Chain of Responsibility amendments contained in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages commenced on 1 October 2018, along with the remaining provisions of the 7<sup>th</sup> amendment package.</p> <p>Disapplied chapters of the HVNL were applied in the ACT on 1 July 2019 coinciding with transition of functions from Access Canberra to the National Heavy Vehicle Regulator.</p> <p>The 8<sup>th</sup> amendment package as part of the <i>(Qld) Heavy Vehicle National Law and Other Legislation Amendment Act 2019</i> progressed through the Queensland Parliament and was assented to on 26 September 2019. All provisions, other than sections 10 and 11 (that have been further deferred by the <i>(Qld) Heavy Vehicle National Law and Other Legislation Amendment (Postponement) Regulation 2020</i> until the end of 26 September 2021) relating to amendment of sections 96 and 102 about compliance with mass and dimension requirements for PBS vehicles, commenced on 28 February 2020.</p>
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## 2.2 Implementation analysis

All participating jurisdictions have adopted and commenced HVNL amendments contained in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> amendment packages at the same time those amendments commenced in Queensland, the host jurisdiction.

Since 1 July 2019, the ACT has become a full participating jurisdiction in the HVNL scheme through incorporation of those chapters of the law that were previously disapplied.

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

## 3 Rail reform

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### Key points

The Council approved the 4th RSNL amendment package in November 2018. The *Rail Safety National Law (South Australia)(Miscellaneous) Amendment Act 2019* was assented to on 11 April 2019 and commenced on 1 July 2019.

Council approved the 5<sup>th</sup> amendment package in November 2019 *Rail Safety National Law (South Australia)(Rail Safety Work) Amendment Act 2019*, but as the Act commenced on 1 July 2020 it is out of scope for this report and implementation will be reported in the 2021 report.

### 3.1 Amendments to Rail Safety National Law

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The *Rail Safety National Law (South Australia)(Miscellaneous) Amendment Act 2019* commenced in RSNL participating jurisdictions, except WA, on 1 July 2019. Changes include:

- enabling the ONRSR to use oral fluid, urine or blood for drug testing
- mandating drug and alcohol testing by operators following prescribed incidents where ONRSR or police do not test except for NSW where arrangements for operator testing remain unchanged.
- offence provisions for tampering or interfering with a sample
- amendments to improve the application of the *Freedom of Information Act 1991* (SA)
- technical clarifications and administrative improvements.

The WA Government has approved a request to amend the Rail Safety National Law (WA) to include all outstanding amendments, which will better align WA with the scheme.

In November 2019, Council approved the *Rail Safety National Law (South Australia)(Rail Safety Work) Amendment Act 2019*, the fifth amendment package to RSNL. The amendments ensure the definition of 'rail safety work' aligns with the objects of the RSNL, captures only work that could pose a risk to railway operations, current or future, and clearly distinguish between risk from the work and risk to the person performing the work. The amendments also remove risks to workers that are not specific to railway operations and therefore are adequately addressed under workplace health and safety laws. As the Act commenced on 1 July 2020 it is out of scope for this report but is mentioned for completeness.

Tables 4 and 5 provide an overview of jurisdictional progress in implementing RSNL amendments.

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

Rail Safety National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
The Rail Safety National Law (South Australia)(Miscellaneous) Amendment Act 2019 4 <sup>th</sup> Amendment package ( <b>Council approved November 2018</b> )	✓	✓	✓	✓	●	✓	✓	✓

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

Jurisdiction	Implementation comments
<b>WA</b>	The WA Government has approved a request to amend the Rail Safety National Law (WA) to include all outstanding amendments. Pursuant to the priority given, it has been deemed a long-term project which will be drafted in the current year for introduction in future years. Ministerial and legislative priority will dictate the timeframe for introduction of the amendments.
<b>NSW</b>	The 4 <sup>th</sup> Amendment Package commenced on 1 July 2019, the same day as it commenced in South Australia. Some changes to drug and alcohol provisions do not apply in NSW because NSW did not accept all recommendations from the drug and alcohol review.
<b>VIC</b>	The 4 <sup>th</sup> amendment package commenced on 1 July 2019.
<b>SA</b>	The 4 <sup>th</sup> amendment package commenced on 1 July 2019.
<b>QLD</b>	The 4 <sup>th</sup> package of amendments to the Rail Safety National Law came into effect on 1 July 2019. The Rail Safety National Law is applied in Queensland by the <i>Rail Safety National Law (Queensland) Act 2017</i> .
<b>TAS</b>	The components of the 4 <sup>th</sup> amendment package were tabled in Parliament over July/August 2019. The <i>Rail Safety National Law (South Australia) (Rail Safety Work) Amendment Act 2020</i> commenced on 1 July 2020 and is due to be tabled in each House of Parliament in Tasmania on 16 and 18 September 2020.

<b>NT</b>	<p>The Rail Safety National Law National Regulations (Fees and other measures) Variation Regulations 2020 is proposed to be tabled in the first Northern Territory Legislative Assembly post the August 2020 election.</p> <p>Amendments to the Rail Safety National Law (SA) are adopted automatically in the NT and commence at the same time as they commence in South Australia.</p>
<b>ACT</b>	<p>The <i>Rail Safety National Law (ACT) Act 2014</i> (the Act) which commenced in May and November 2014, adopts the Rail Safety National Law set out in the schedule to the <i>Rail Safety National Law (South Australia) Act 2012</i> (SA). This schedule as amended from time to time, applies as a territory law, and may be referred to as the Rail Safety National Law (ACT).</p> <p>Amendments to the Rail Safety National Law (SA) are adopted automatically in the ACT and commence at the same time as they commence in South Australia.</p> <p>National regulations made under the RSNL must be tabled in the ACT Legislative Assembly within 20 sittings day of being notified. All national regulations have been tabled:</p> <p>The ACT in adopting the RSNL, adopted its own alcohol and drug testing provisions to align with its road drink and driving laws.</p>

## 3.2 Implementation analysis

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As noted in table 5 above, there has been progress with the WA Government approving a request to amend the Rail Safety National Law (WA) to include all outstanding amendments, noting that ministerial and legislative priority will dictate the timeframe for implementation. The delay in implementation means that the ONRSR and industry continue to operate under differing requirements in WA compared to the rest of Australia. Appendix B provides a summary of derogations for the RSNL scheme.

As the most recent amendments commenced on 1 July 2020, implementation of these will be reported on in the next Reform Implementation Monitoring Report.

# 4 Maintenance of existing reforms

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## 4.1 Australian Road Rules

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### Key points

- Most jurisdictions have implemented the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> amendment packages.
- The 13<sup>th</sup> amendment package was endorsed by Council in November 2019 and is being progressively implemented by jurisdictions. Most jurisdictions will have implemented the amendments by early 2021.

### 4.1.1 About the Australian Road Rules amendment package

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

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

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

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

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

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

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

In November 2019, Council approved the 13<sup>th</sup> amendment package to the Australian Road Rules, which includes:

- creating an offence for a driver to interrupt a funeral procession
- inserting technology neutral terminology about payment of parking fees
- providing model rules about the use of 'Bus Only' lanes
- providing model rules and signage about parking of electric vehicles, including when being charged
- clarifying rules about motorcyclists with respect to signalling a change of direction and removal of feet from footrests.

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

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

Adopt Australian Road Rule amendment packages	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Adopt the 9 <sup>th</sup> amendment package (Council approved December 2011)	✓	✓	✓	✓	✓	✓	✓	✓
Adopt the 10 <sup>th</sup> amendment package (Council approved November 2013)	✓	✓	✓	✓	✓	✓	✓	✓
Adopt the 11 <sup>th</sup> amendment package (Council approved November 2015)	✓	✓	✓	✓	●	✓	✓	✓
Adopt the 12 <sup>th</sup> amendment package (Council approved November 2017)	✓	✓	✓	✓	●	✓	✓	✓
Adopt the 13 <sup>th</sup> amendment package (Council approved November 2019)	✓		✓	●	●	●	✓	✓

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

Jurisdiction	Implementation comments
<b>NSW</b>	Road Transport Amendment (Miscellaneous) Regulation 2020, commencing on 14 August 2020, includes amendments to implement the 12 <sup>th</sup> amendment package. NSW (TfNSW) is in the process of developing an amending regulation which will include proposed amendments from the 13 <sup>th</sup> amendment package.
<b>VIC</b>	The new Victorian Road Safety Road Rules 2017, which commenced on 1 July 2017, includes the 11th amendment package of changes. The 12th

	amendment package was incorporated into the Victorian Road Safety Rules 2017 which commenced on 26 June 2018. The 13 <sup>th</sup> package will be implemented before the end of 2020, and consultation with stakeholders is underway.
<b>SA</b>	SA is aiming to implement the amendments associated with the 13 <sup>th</sup> package by the end of 2020.
<b>QLD</b>	Queensland implemented the relevant sections of the 12 <sup>th</sup> amendment package on 23 November 2018. Only minor drafting variations are present, preserving the intent of the national rules.  Queensland is yet to implement the agreed elements of the 13 <sup>th</sup> package of Road Rules amendments. Implementation is likely to be late 2020 or early 2021, depending on the timing of other Queensland Road Rules amendments.
<b>WA</b>	The 11 <sup>th</sup> and 12 <sup>th</sup> packages will be considered together for implementation. Given other high priority matters on the Government's legislative reform agenda, the packages are unlikely to be implemented until 2020-21.
<b>TAS</b>	The remaining elements of the 12 <sup>th</sup> amendment package were implemented with the remake of the Tasmanian Road Rules in 2019. Adoption of the 13 <sup>th</sup> amendment package will occur when the Road Rules are next amended, which will likely be in early-mid 2021.
<b>NT</b>	The 13 <sup>th</sup> amendment package was adopted in the Northern Territory and commenced on 5 August 2020.
<b>ACT</b>	Amendments from the 12 <sup>th</sup> package were incorporated into the <i>Road Transport (Road Rules) Regulation 2017</i> and commenced on 1 July 2019. In adopting the 12 <sup>th</sup> package a minor variation to the lane filtering requirements were maintained to keep the existing ACT conditions relating to lane filtering.  It is expected that amendments from the 13 <sup>th</sup> package will be progressed in 2021.

#### 4.1.2 Implementation analysis

The 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> and 12<sup>th</sup> amendment packages have now been implemented by all jurisdictions except WA.

For WA, the 11<sup>th</sup> and 12<sup>th</sup> packages will be considered together for implementation. Given other high priority matters on the Government's legislative reform agenda, the packages are unlikely to be implemented until 2020–21.

Most jurisdictions have clear plans to implement the 13<sup>th</sup> package in either late 2020 or 2021, or indeed already have.

### Key points

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

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

## 4.2 Australian Light Vehicle Standards Rules

### 4.2.1 About the Australian Light Vehicle Standards Rules

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

The 3<sup>rd</sup> amendment package was approved in November 2018. This package better aligns the Australian Light Vehicle Standards Rules with the Australian Design Rules, clarifies requirements and terminology, introduces safety improvements and amends requirements for labelling for hydrogen and electric vehicles.

The 4<sup>th</sup> amendment package was approved in November 2019. These better align both the Light Vehicle Standards Rules with the Heavy Vehicle National Law with the Australian Design Rules and clarify requirements and terminology and introduce safety improvements.

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

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

Adoption of amendment packages	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Adopt the Australian Light Vehicle Standards Rules (Council approved November 2015)	✓	✓	✓	✓	✓	✓	●	●

Adopt the 1 <sup>st</sup> amendment package to the Australian Light Vehicle Standards Rules <b>(Council approved May 2016)</b>	✓	✓	✓	✓	✓	✓	●	●
Adopt the 2 <sup>nd</sup> amendment package to the Australian Light Vehicle Standards Rules <b>(Council approved May 2017)</b>	✓	✓	✓	✓	●	✓	●	●
Adopt the 3 <sup>rd</sup> amendment package to the Australian Light Vehicle Standards Rules <b>(Council approved November 2018)</b>	✓	✓	✓	✓	●	●	●	●
Adopt the 4 <sup>th</sup> amendment package to the Australian Light Vehicle Standards Rules <b>(Council approved November 2019)</b>	✓	●	✓	●	●	●	●	●

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

Jurisdiction	Implementation comments
<b>NSW</b>	The 4 <sup>th</sup> amendment package to the Australian Light Vehicle Standards Rules came into force on 29 May 2020 through the Road Transport Legislation Amendment (Light Vehicle Standards Rules) Regulation 2020.
<b>VIC</b>	The majority of package 3 has been implemented in Victoria. The final aspect to do with vehicle labels will be implemented in early October 2020 when the operation of the Road Safety (Vehicles) Regulations are extended.
<b>SA</b>	The 3 <sup>rd</sup> package was implemented on 1 July 2019. The 4 <sup>th</sup> package is not being implemented at this stage, as the <i>Road Vehicle Standards Act 2018</i> (Cth) is yet to commence. SA is aiming to implement the amendments associated with the 5 <sup>th</sup> package by the end of 2020.
<b>QLD</b>	The 2 <sup>nd</sup> and 3 <sup>rd</sup> light vehicle standards amendment packages will be adopted into Queensland's Vehicle Standards and Safety (VSS) Regulation 2010 in October 2020. TMR is consulting with the NTC on the 4 <sup>th</sup> amendment package for subsequent inclusion within the VSS which will be targeted for inclusion in 2020/21.

<b>WA</b>	WA has amended the regulations to be consistent with the Australian Light Vehicle Standards Rules (ALVSR) 2015 and the 1st amendment package. WA is preparing a regulatory reform package for the 2 <sup>nd</sup> and 3 <sup>rd</sup> packages and plans to carry this out during 2020–21.
<b>TAS</b>	Tasmania implemented the 2016 ALVSR and both the 1 <sup>st</sup> and 2 <sup>nd</sup> amendment packages in 2018. Implementation of the 3 <sup>rd</sup> and 4 <sup>th</sup> amendment packages is still to be determined, subject to business and legislative priorities.
<b>NT</b>	The NT has commenced analysis of options for either adapting its combined in-service light and heavy vehicle standards regulations to reflect amendments in the outstanding packages (of the Australian Vehicle Standards Rules and Australian Light Vehicle Standards Rules) or separating the light and heavy vehicle standards to allow direct adoption of the Australian Light Vehicle Standards Rules including any outstanding packages. Timing of implementation is subject to advice on the options and the government’s legislative drafting priorities.
<b>ACT</b>	The ACT has begun work to progress adoption of the Australian Light Vehicle Standards Rules and the 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> amendment packages to those rules. It is now expected that this work will be completed through 2020–21, noting that the existing standards for light vehicles in the <i>Road Transport (Vehicle Registration) Regulation 2000</i> are already very similar to the requirements of the Australian Light Vehicle Standards Rules, and relaxations to vehicle standards as a result of those packages have been managed through an exemption instrument until regulation changes can be progressed. The requirements for labelling electric and hydrogen powered vehicles has been progressed out of sequence and commenced 1 January 2019, noting the ACT has not, as yet, been able to identify a supply of labels that owners of affected vehicles can purchase to fit to their vehicles.

#### 4.2.2 Implementation analysis

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

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

## 4.3 Transport of Dangerous Goods laws

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

#### Key points

- All jurisdictions apart from the Australian Capital Territory and the Northern Territory have implemented the Dangerous Goods model regulations and Code. These two territories will progress implementation when resources are available.
- The most recent package of amendments, which addresses inconsistencies between Australian-specific requirements and UN requirements, including in particular changes to the regulation of limited quantity dangerous goods.

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

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

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

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

In June 2020, Council endorsed the most recent amendment package to the model regulations and code (edition 7.7 of the code) which includes:

- the removal of inconsistencies between Australian specific requirements and UN requirements to prevent an unfair advantage to overseas manufacturers
- amendments to minimum fire extinguisher requirements and personal protective and safety equipment
- extend offences that previously only applied to the driver of a vehicle about where a road vehicle may be parked, unloading of dangerous goods and detaching of trailers, to the prime contractor responsible for the transport of the dangerous goods.

The changes reduce the compliance burden for duty holders by removing previously introduced sub-categories of limited quantity dangerous goods, that resulted in disproportionately complex compliance requirements. The amendments make requirements

for the transport of limited quantity dangerous goods in Australia consistent with accepted overseas practice, with minor differences aimed at addressing risks that are unique to the Australian transport environment (e.g. the use of higher capacity vehicles).

Progress with implementing the 2020 changes will be reported in the 2021 Reform Implementation Monitoring Report.

**Table 10. Implementation summary of the Transport of Dangerous Goods model regulations and Code**

Model Subordinate Law and Australian Dangerous Goods Code Amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Amendments to the Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 3) <b>(Council approved May 2015)</b>	✓	✓	✓	✓	✓	✓	✓	●
Edition 7.5 of the Australian Dangerous Goods code <b>(Council approved November 2016)</b>	✓	✓	✓	✓	✓	✓	✓	✓
Amendments to the Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 4) <b>(Council approved November 2016)</b>	✓	✓	✓	✓	✓	✓	●	●
Amendments to the Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 5) <b>(Council approved May 2018)</b>	✓	✓	✓	✓	✓	✓	●	●
Edition 7.6 of the Australian Dangerous Goods code <b>(Council approved May 2018)</b>	✓	✓	✓	✓	✓	✓	✓	✓

**Table 11. Jurisdictions' comments on implementing the Australian Dangerous Goods Code**

Jurisdiction	Implementation comments
<b>NSW</b>	NSW amended its regulation to reflect changes in the model subordinate law, with changes taking effect from 22 February 2019.  Edition 7.6 of the ADG Code took effect on 1 July 2018 in NSW.
<b>VIC</b>	Victoria remade the Dangerous Goods (Transport by Road or Rail) Regulations 2018 incorporating Amendment package 5 and it commenced on 25 October 2018. The ADG Code Edition 7.6 came into force on 25 October 2018 with a transition period of 12 months.
<b>SA</b>	The 5 <sup>th</sup> amendment package commenced on 1 July 2019.
<b>QLD</b>	Amendment Package 5 and Edition 7.6 commenced operation on 31 August 2018.
<b>WA</b>	The 5 <sup>th</sup> reform package of amendment regulations and ADG7.6 commenced on 1 September 2018.
<b>TAS</b>	ADG Code Edition 7.6 took effect on 1 July 2018 and became mandatory on 1 July 2019. Amendments to the <i>Dangerous Goods (Road and Rail Transport) Regulations 2010</i> adopting Amendment Package 5 commenced on 8 May 2019.
<b>NT</b>	Code 7.6 implemented. Implementation of updated model subordinate law are on NT Worksafe's reform agenda. Timing will be subject to Government's legislative drafting priorities.
<b>ACT</b>	The <i>Dangerous Goods (Road Transport) Regulation 2010</i> provides that the code in force in the ACT is the Australian Code for the Transport of Dangerous Goods by Road and Rail, 7th edition, as approved from time to time. As such, edition 7.6 is in force in the ACT.  The ACT is also committed to progressing amendments to the model subordinate law on the transport of dangerous goods by road or rail, however a timeline for progressing amendment packages 3, 4 and 5 has yet to be determined.

#### 4.3.2 Implementation analysis

All jurisdictions have implemented ADG Code 7.6 that took effect from 1 July 2018 with a transition period of 12 months until 1 July 2019 when compliance became mandatory.

Progress with implementing the 2020 changes will be reported in the 2021 Reform Implementation Monitoring Report.

# Appendix A: Derogations for the Heavy Vehicle National Law

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

- **Addition:** refers to the inclusion of a new section or subsection by the adopting jurisdiction that was not included in the model law.
- **Omission:** refers to the exclusion of a section or subsection of the model law by the adopting jurisdiction.
- **Alteration:** refers to the amendment of a specific detail in a section or subsection of the model law by the adopting jurisdiction.

**Reference:** refers to a clarifying note that explains how a related piece of legislation is affected by the adoption of the HVNL in that jurisdiction.

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.
<b>NSW derogations: Heavy Vehicle (Adoption of National Law) Act 2013 No 42</b>
<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.
<b>Addition of definition of hire vehicle:</b> This definition is not in the HVNL. It is defined as a hire vehicle within the meaning of the <i>Point to Point Transport (Taxis and Hire Vehicles) Act 2016</i> of New South Wales. <b>Description:</b> This definition relates to a derogation under section 26J and 222B of the Heavy Vehicle National Law (NSW), where hire vehicles are exempt from certain provisions in relation to speed and fatigue. The definition is inserted to reflect NSW legislation.
<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.
<b>Queensland derogations: Heavy Vehicle National Law Act 2012 (Qld)</b>
<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>

**Description:** These definitional derogations facilitate a derogation under s 118 of the Queensland legislation.

### 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

**Addition of schedule 1 section 26I:** Exemptions for emergency services from the operation of section 26C of the HVNL.

**Description:** This provision exempts emergency service operators from the primary duty in the chain of responsibility duties, but only in relation to speed and fatigue

**Addition of schedule 1 section 26J:** Exemptions for hire vehicles and buses.

**Description:** 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).

### Chapter 3 – Vehicle operations – standards and safety

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.

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

**Addition of section 93(8A) Person must not tamper with speed limiter fitted to heavy vehicle:** *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.*

**Addition of section 93A: Monitoring of heavy vehicles and vehicles carrying dangerous goods:** *(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.  
(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.*

**Section 157 of the Road Transport Act 2013 No 18:** 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.

**SA derogations: Heavy Vehicle National Law (South Australia) Act 2013**

**Omission - section 93 (Person must not tamper with speed limiter fitted to heavy vehicle)**—*applies as if subsection (8) were deleted.*

**Description:** 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.

**Addition to section 20—Person must not possess certain devices:** *(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.*

**Description:** 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.

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

### **Addition - section 40 Commissioner consent for grant of blue light vehicle standards exemption**

(1) *The Regulator may, under the Law, grant a blue light vehicle standards exemption only with the consent of the commissioner.*

(2) *The Regulator must ask the commissioner for the consent.*

(3) *The commissioner must decide to give or not to give the consent within 28 days after the request is made.*

(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.*

(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*

*(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. enforcement or for an emergency.*

(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.*

(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.*

(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.*

(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.*

(11) *This section applies in relation to a blue light whether or not it is a light that flashes.*

### **Addition - section 41 Commissioner permission for fitting of blue light if vehicle standards exemption is not required**

(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.*

(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.*

(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 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).*

(4) *This section applies in relation to a blue light whether or not it is a light that flashes.*

(5) *In this section—police vehicle means a heavy vehicle driven by a police officer in the course of the police officer's duty.*

**Description:** 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.

## Chapter 4 – Vehicle operations – mass, dimension and loading

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.

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

### **Alteration of s 118: Commissioner's consent required for a mass or dimension exception notice.**

*(1) For section 118(1)(c) of the Law, the consent of the commissioner is required for a mass or dimension exemption (notice).*

*(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—*

*(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; (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.*

*(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.*

**Description:** This derogation materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place for a s 118 mass or dimension exemption notice.

### **Alteration of s 124: Other consents under s 124 of the Law**

*(1) For section 124(1)(c) of the Law, the consent of the commissioner is required for a mass or dimension exemption (permit).*

*(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—*

*(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.*

*(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.*

**Description:** This derogation materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place for a s 124 mass or dimension exemption notice.

**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).**

**Description:** 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.

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

#### **Addition of s 24 Determination of wheel load, single axle load, axle group load or aggregate axle load:**

(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).

(2) The local application regulations may make provision in relation to –

- (a) methods for determining the mass and dimensions of vehicles, combinations and their loads; and
- (b) the issue of certificates in relation to wheel, single axle, axle group and aggregate axle loads; and
- (c) methods for testing instruments used for determining the mass and dimensions of vehicles, combinations and their loads.

**Description:** 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.

#### **Alteration of section 25 Contravening condition of mass or dimension exemption relating to escort vehicle**

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 –

- (a) is an authorised officer; and
- (b) does not comply with a condition of the mass or dimension exemption that relates to –
  - (i) the positioning of the escort vehicle; or
  - (ii) the escorting distance; and
- (c) is satisfied that the failure to comply with the condition is necessary for public safety.

**Description:** 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.

### Chapter 6 – Vehicle operations – driver fatigue

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.

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

#### **Addition of section 222A Exemptions for accredited service operators and their drivers:**

(1) Section 459 (3) and (4) do not apply in relation to an accredited service operator.

(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.

(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—

- (a) the bus is on a journey that is less than 100 kilometres from the driver's base; or
- (b) the bus is being used to provide a regular bus service under a service contract (regardless of the distance travelled).

*(4) In this section—*

*accredited service operator, regular bus service and service contract have the same meanings as in the Passenger Transport Act 1990 of New South Wales.*

**Description:**

**s 222A(1):** 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).

**s 222A(2):** 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.

**s 222(3):** 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 bus travelling less than 100km or, a bus being used to provide a regular bus service under a service contract.

**Addition of section 222B Exemptions for certain buses and private hire vehicles:**

*(1) 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.*

*(2) Subsection (1) does not apply to the driving of a bus for the purpose of providing a public passenger service.*

**Description:** 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).

**Alteration of section 246 Counting periods of less than 15 minutes:**

*(6) 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.*

**Description:** 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.

**Addition of section 248A Occupying driver's seat to count as rest time in certain circumstances:**

*(1) 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—*

*(a) the vehicle is stationary during that period; and*

*(b) the driver is not subject to work demands during that period; and*

*(c) the period is at least 15 minutes or forms part of a period of rest time of at least 15 minutes.*

*Note— Section 246 provides for the manner in which periods of rest time are to be calculated.*

*(2) This section has effect despite paragraph (d) of the definition of work in section 221.*

*Note— This section is inserted for New South Wales.*

**Description:** This provision provides for circumstances in which occupying a driver's seat may be counted as rest time.

**Addition of section 248B Certain personal activities may be counted as part of rest time:**

*(1) 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—*

- (a) the permitted personal activity is not done at the direction of the driver's employer or for fee or reward; and*
- (b) the beginning of the period of permitted personal activity occurs at least 3 hours after the beginning of the 24-hour rest period; and*
- (c) the end of the period of permitted personal activity occurs at least 3 hours before the end of the 24-hour rest period.*

*(2) A permitted personal activity means any of the following—*

- (a) cleaning or refuelling a fatigue-regulated heavy vehicle;*
- (b) driving a fatigue-regulated heavy vehicle.*

*(3) This section has effect despite the definitions of rest and work in section 221.*

**Description:** This section makes provision for certain personal activities to be counted as rest time.

**Alteration of section 265 Exemptions for emergency services:**

*(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.*

*(2) An emergency service is any of the following—*

- (a) the NSW State Emergency Service established under the State Emergency Service Act 1989 of New South Wales;*
- (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;*
- (c) the NSW Rural Fire Service established by the Rural Fires Act 1997 of New South Wales;*
- (d) the Ambulance Service of NSW within the meaning of the Health Services Act 1997 of New South Wales;*
- (e) the NSW Police Force established by the Police Act 1990 of New South Wales;*
- (f) New South Wales Volunteer Rescue Association Inc;*
- (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.*

*(3) The exemption provided by this section is in addition to, and does not limit the effect of, the exemption provided by section 265A.*

**Description:** This provision exempts emergency services staff from obligations concerning fatigue compliance, but only in the course of undertaking work for an emergency service.

**Addition of section 265A Exemptions in relation to emergencies:**

*(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.*

*(2) Any record that would be required to be made under this Chapter if the exemption under subsection (1) were not available—*

*(a) must be made as soon as practicable after the journey from the emergency is completed; and*

*(b) must include a record of the following—*

*(i) the time, date, location and nature of the emergency;*

*(ii) if the person was asked by another person to attend the emergency, the name and contact details of that other person.*

*(3) In this section, emergency means an event (or an anticipated event) that—*

*(a) endangers, or may endanger, life, property or the environment; or*

*(b) has disrupted, or may disrupt, communications, energy, water supply or sewerage services; or*

*(c) is declared to be an emergency or disaster by—*

*(i) the Commonwealth or a State or Territory; or*

*(ii) a Commonwealth, State or Territory authority responsible for managing responses to emergencies or disasters.*

**Description:** 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.

**Victorian derogations: Heavy Vehicle National Law Application Act 2013 (Vic)**

**Alteration of section 7 - Rail replacement buses and buses responding to an emergency exemption**

*(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—*

*(a) a driver for a rail replacement bus service who is responding to a rail disruption; or*

*(b) a driver for a bus service who is responding to an emergency.*

**Description:** This derogation relieves both rail replacement buses and bus drivers responding to an emergency, of the requirements of chapter six.

**Chapter 8 – Accreditation**

**Purpose of chapter 8:** 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.

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

### **Addition of section 462A Conditions imposed on AFM accreditations by responsible Minister:**

(1) *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.*

(2) *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—*

*(a) conditions specifying different AFM hours to those that would otherwise apply to drivers of heavy vehicles while operating under the accreditation in this jurisdiction;*

*(b) 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.*

(3) *A condition imposed under this section has effect (and must be complied with) despite anything to the contrary in any of the following—*

*(a) the AFM accreditation (including any conditions referred to in section 462 to which the accreditation is subject);*

*(b) the AFM standards and business rules;*

*(c) Chapter 6 (particularly, section 257) and this Chapter;*

*(d) an exemption, notice or permit issued or granted under Division 8 of Part 6.3.*

(4) *The responsible Minister for this jurisdiction may, by further notice given to the holder, revoke a condition that has been imposed under this section.*

(5) *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.*

**Description:** 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.

### **Alteration of 464 Accreditation certificate for heavy vehicle accreditation etc**

*Insert "or by the responsible Minister for this jurisdiction under section 462A" after "the Regulator" in section 464 (2) (c).*

**Description:** This derogation is necessary to operationalise the 462A derogation (above).

### **Addition of 464 (2A)**

*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. **Analysis:** This derogation is necessary to operationalise the 462A derogation (above).*

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

**Omission from section 497 General power to enter places:** Omit section 497 (8). *Insert instead: (8) An authorised officer may use force that is reasonably necessary for exercising a power under this section.*

**Description:** This allows authorised officers to use force in relation to exercising a power under section 497.

**Omission from section 498 Power to enter a place if evidence suspected to be at the place:** Omit section 498 (6) and (7). *Insert instead: (6) An authorised officer may use force that is reasonably necessary for gaining entry to a place under this section.*

**Description:** 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".

**Omission from section 499 Power to enter particular places if incident involving death, injury or damage:** *Omit section 499 (7). Insert instead: (7) An authorised officer may use force that is reasonably necessary for exercising a power under this section.*

**Description:** 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.

**Omission from section 500 General powers after entering a place:** *Omit “section 497 (1) (c)” from section 500 (2) (c). Insert instead “section 497, 498 or 499”.*

**Description:** 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).

**Omission from section 521 Power to enter and search heavy vehicle involved, or suspected to be involved, in an offence etc.:** *Omit section 521 (6).*

**Description:** 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.

#### **SA derogations: Heavy Vehicle National Law (South Australia) Act 2013**

**Alteration of section 498(1)(b) (Power to enter a place if evidence suspected to be at the place):** *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.;*

**Description:** 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 derogation under South Australian legislation takes this requirement away and simply requires that there *may* be at the place evidence of an offence against the HVNL.

**Alteration of section 499(1)(d) (Power to enter particular places if incident involving death, injury or damage)—***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).*

**Description:** 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 *may* be at the place evidence of an offence under the HVNL.

**Alteration of section 517(1) (Direction to move heavy vehicle if causing harm etc)—***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.*

**Description:** 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.

**Alteration of Section 572 (Improvement notices)**— applies (i) as if subsections (1) and (2) were deleted and the following subsections substituted:

(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.

(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.

(ii) as if paragraphs (a) to (d) (inclusive) of subsection (4) were deleted and the following paragraphs substituted:

(a) that the authorised officer reasonably believes the person has contravened, is contravening, or is likely to contravene, a provision of this Law

(b) the reasons for that belief

(c) the provision of this Law in relation to which that belief is held

(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;

**Description:** 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."

**Alteration of section 576(3) (Clearance certificate)**, 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;

**Description:** Definition amendment of relevance for SA.

**Alteration of section 19 Power to enter certain places** - (1) 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 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.

**Description:** This provision is an entirely new provision inserted into the South Australian Act which expands the power of authorised officers to enter certain places.

**Alteration of section - Offence to sell or dispose of heavy vehicle in respect of which vehicle defect notice is in force** - (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.

(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.

**Description:** 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.

**Alteration of section 22 - Moving unattended etc heavy vehicle if danger or obstruction** (long provision - refer to Act)

**Description:** 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 and the authorised officer intends to exercise a power under the HVNL, and the authorised officer reasonably believes it is necessary to move the heavy vehicle in order to exercise the power

#### **Victorian derogations: Heavy Vehicle National Law Application Act 2013 (Vic)**

**Alteration of section 556 - Return of seized things or samples** - 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.*"

**Description:** 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.

**Addition: section 9 Use of certificates in assessing compensation Section 613(1) of the Heavy Vehicle National Law (Victoria):** *applies as if a reference in that section to 28 days were a reference to 60 days.*

**Description:** 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).

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

##### **Addition of section 35 Application of particular provisions to police officers**

*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.*

##### **Addition of section 37 Use of force**

*(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.*

*(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).*

**Description:** These provisions assert that the enforcement powers of police officers are provided for in the *Police Powers and Responsibilities Act 2000*, 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.

**Addition of section B7538 Power to seize**

*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).*

**Description:** This provision renders section 552 of the HVNL null and void, and deviates materially from the intention of the HVNL

**Addition of section 39 Power to require production of driver licence**

*(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.*

*(2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.*

*Maximum penalty—45 penalty units.*

*(3) It is not a reasonable excuse for the person to fail to comply with a requirement made under subsection (1)—*

*(a) that the person does not have the driver licence in his or her immediate possession; or*

*(b) that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.*

*(4) The authorised officer may take a copy of, or an extract from, the driver's driver licence.*

**Description:** This derogation gives an additional power to authorised officers under the HVNL, which may be regarded as deviating from the intent of the HVNL.

**Tasmanian derogations: Heavy Vehicle National Law (Tasmania) Act 2013****Addition of section 21(1) Authority to use force**

*(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).*

*(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)*

**Description:** 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.

**Alteration of section 22 - Amendment or withdrawal of vehicle defect notices**

*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.*

**Description:** 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.

## Chapter 9 – Enforcement

### ACT derogations Heavy Vehicle National Law (ACT)

#### Addition of sections 567A and 567B

In these sections the ACT provides a power to require the production of a driver licence and require people to disclose the identity of a driver of a heavy vehicle.

**Description:** This derogation mirrors provisions in ACT driver licensing legislation applying to all drivers.

## 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.

#### 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.

## 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.

**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.

#### **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.

**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.

**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.*

**Description:** This provision allows for the admission of averments as evidence, which is not specified as allowed by the HVNL.

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

#### **Addition of section 26 Fees for vehicle inspections:**

1) *In this section –*

*approved vehicle examiner means a person approved by the Registrar to undertake vehicle inspections;*

*heavy vehicle inspection services provider means an organisation that has a contract with the Department to undertake heavy vehicle inspection services.*

(2) *The fee payable for an inspection of a heavy vehicle under the Heavy Vehicle National Law (Tasmania) is –*

(a) *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*

(b) *if the inspection is not carried out by or on behalf of a heavy vehicle inspection services provider –*

(i) *in the case of an inspection by an approved vehicle examiner, the fee specified by that examiner; or*

(ii) *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 .*

**Description:** This provision provides a definition for approved vehicle examiner and heavy vehicle inspection services provider and provides arrangements for fees for vehicle inspections.

#### **Addition of section 27 Fees for route assessments:**

1) *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.*

(2) *The road manager may only charge an amount that is no more than the reasonable cost of providing the service.*

**Description:** This provision limits the amount a road manager may charge to the "reasonable cost" of providing the service.

## Appendix B: Summary of derogations for the Rail Safety National Law

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

	Fatigue derogations				
	Derogation	Type	Impact	Description	
	Rail Safety National Law (NSW) (2012 no. 82a)  <b>Part 3 Regulation of rail safety fatigue risk management requirements</b>	Addition	Medium	A rail transport operator must prepare and implement a program, in accordance with the prescribed requirements, for the management of fatigue of rail safety workers who carry out rail safety work in relation to railway operations in respect of which the operator is required to be accredited that complies with the prescribed requirements relating to fatigue risk management programs.	ONRSR completed a review in May 2019 and no change recommendations have been made as any proposed change would be unlikely to gain unanimous agreement.  There are no plans to remove this derogation.
QLD	Fatigue derogations				
	Derogation	Type	Impact	Description	
	Rail Safety National Law Queensland  <b>Part 3 Subdivision 3</b>  Rail Safety National Law National Regulations 2012  <b>Schedule 2 Part 2</b>	Addition	Medium	Under the RSNL, a rail transport operator must prepare and implement a program for the management of fatigue of rail safety workers.  The RSNL does not prescribe limits on train driver hours; however, Queensland's application of the RSNL includes specified provisions about standard work hours and rest periods for drivers of passenger or freight trains, light rail vehicles or other rolling stock such as track maintenance machines.	ONRSR completed a review in May 2019 and no change recommendations have been made as any proposed change would be unlikely to gain unanimous agreement.  There are no plans to remove this derogation.

Drug and alcohol management derogations				
Derogation	Type	Impact	Description	
Rail Safety National Law (Queensland) Act 2017 <b>Part 3</b>	Alteration	Low	Under the Qld Adoption Act, police officers will continue to conduct drug and alcohol testing of train drivers exercising powers under other legislation. An authorised officer appointed under the RSNL may not perform these tests if a police officer is also performing the same tests under other legislation.	
TAS Drug and alcohol management derogations				
Derogation	Type	Impact	Description	
Rail Safety National Law (Tasmania) Act 2012 <b>Part 4</b>	Addition	Low	Provides for the application of applicable provisions of the <i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas), with appropriate modifications, to and in relation to a rail safety worker carrying out, or attempting to carry out, rail safety work.	

WA	RSNL – Mirror Legislation				
	Derogations	Type	Impact	Description	
	Rail Safety National Law (WA) 2015	Alterations and Additions	High	<p>WA implements the RSNL by enacting it in mirror form to address circumstances in WA. Significant differences are:</p> <ul style="list-style-type: none"> <li>Urine testing may continue as part of drug and alcohol management programs</li> <li>Samples may be used for other purposes</li> <li>The Governor of WA will continue to make regulations under the law rather than the Governor of SA and may do so without the unanimous recommendation of Ministers of relevant jurisdictions</li> <li>Changes to the RSNL WA will be able to be made by the legislation of WA and not SA legislation.</li> </ul>	<p>The WA Government has approved a request to amend the Rail Safety National Law (WA) to include all outstanding amendments and address ongoing legislative inconsistency issues. Ministerial and legislative priority will dictate the timeframe for introduction of the amendments.</p>

# List of tables

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## Tables

Table 1.	Reform implementation status indicators	7
Table 2.	Implementation summary of Heavy Vehicle National Law amendments	11
Table 3.	Participating jurisdictions' comments on adopting the National Heavy Vehicle Law 5th, 6th, 7 <sup>th</sup> and 8th Amendment Packages	12
Table 4.	Implementation summary of amendments to Rail Safety National Law	16
Table 5.	Jurisdictions' comments on amendments to Rail Safety National Law	16
Table 6.	Implementation summary of the Australian Road Rules amendment package	19
Table 7.	Jurisdictions' comments on implementing the Australian Road Rules amendment package	19
Table 8.	Implementation summary of the Australian Light Vehicle Standards Rules and amendment packages	21
Table 9.	Jurisdictions' comments on implementing the Australian Light Vehicle Standards Rules and amendment packages	22
Table 10.	Implementation summary of the Transport of Dangerous Goods model regulations and Code	25
Table 11.	Jurisdictions' comments on implementing the Australian Dangerous Goods Code	26

