

# Heavy Vehicle National Law and Other Legislation Amendment Act 2016

Explanatory notes for SL 2018 No. 142

made under the

*Heavy Vehicle National Law and Other Legislation Amendment Act 2016*

## General Outline

### Short title

Proclamation to commence provisions of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*.

### Authorising law

Section 2 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* (the Amendment Act).

### Policy objectives and the reasons for them

The objective of the proclamation is to commence Chapter 2 of the Amendment Act on 1 October 2018.

The Amendment Act received assent on 9 December 2016. Chapter 2 amendments are of a machinery nature and their proclamation is a simple administrative process.

In November 2015, the Transport and Infrastructure Council (the Council) approved detailed policy recommendations and a three-phased approach to reform chain of responsibility (CoR) and executive officer liability (EOL) provisions within the *Heavy Vehicle National Law Act 2012* (HVNL). In May 2016, Council agreed that these reforms would commence as one package in mid-2018.

Following consultation between industry associations, jurisdictions, the National Transport Commission (NTC) and the National Heavy Vehicle Regulator (NHVR), the Queensland Minister for Transport and Main Roads determined that 1 October 2018 was the preferred date for commencement of all three phases of CoR and EOL reforms.

The first phase of amendments are contained in Chapter 2 of the Amendment Act.

Amendments contained within Chapter 2 implement reforms for the national heavy vehicle industry to better align the obligations of CoR parties and executive officers with national safety laws, improve compliance and simplify enforcement.

Chapter 2 amendments reformulate existing HVNL obligations on all current chain of responsibility parties as an overarching and positive duty of care, consistent with the duty of care approach adopted in other national safety laws, such as the *Work Health and Safety Act 2011*. In particular these reforms amend the HVNL so that each party in the chain of responsibility has a primary duty of care to ensure the safety of their transport activities ‘so far as reasonably practicable’ and includes appropriate penalties for breaches of those primary duties. To further ensure consistency with national safety laws, a positive due diligence obligation on executive officers is introduced in relation to the new primary duties obligation.

These changes will address issues identified with the HVNL which create complexity and unnecessary compliance costs for industry. That is where:

- it is inconsistent with other national safety laws;
- the penalties are inadequate to address offending that results in death or serious injury;
- the duties on chain of responsibility parties are duplicated for different subject matters; and
- there are inconsistencies in these duties.

## **Achievement of policy objectives**

The policy objective is achieved by the proclamation commencing Chapter 2 provisions of the Amendment Act on 1 October 2018.

The amendments contained in Chapter 2 will enable a more flexible approach to compliance, reduce the regulatory burden and more closely align the approach to chain of responsibility and executive officer liability in the HVNL with other safety legislation.

These reforms will contribute to improvements in safety outcomes in the road transport sector by requiring parties in the chain of responsibility, and executive officers, to focus on overall safety outcomes, and will enable parties to be more innovative in responding to safety concerns. Reframing duties as a positive ‘must ensure’ obligation with a reasonable excuse defence will create diligence in activities, such as document keeping requirements and facilitate compliance cultures within companies.

The amendments in Chapter 2 will do this by:

- adopting a standard of care of ‘so far as reasonably practicable’ for the primary duty, to align with the standard of care applied in other national safety laws;
- adopting a similar positive duties approach and standard of care for those chain of responsibility party offences not subsumed into the primary duty;
- applying the same approach to all offences in the HVNL for consistency and to reduce complexity in compliance and enforcement by replacing the current standard of ‘all reasonable steps’ and the reasonable steps defence wherever possible, with the ‘so far as reasonably practicable’ standard;
- introducing penalties for breach of the primary duty of care that align with the penalties for breach of duty under other national safety laws

- creating a positive executive officer due diligence obligation to ensure chain of responsibility parties comply with their primary duty of care, to complement the existing executive officer liability provisions for other offences; and
- specifically incorporating heavy vehicle roadworthiness and vehicle standards into the primary duty of care.

These amendments have significant benefits. They are designed to:

- improve safety through a more proactive, outcomes-focused approach to managing the risks associated with the transport task;
- simplify obligations on parties in the chain of responsibility, remove duplication and consolidate requirements;
- minimise complexity and difficulty in the interpretation of chain of responsibility obligations;
- align obligations with those found in other national safety legislation, including adopting significant penalties for offences resulting in death or serious injury;
- promote proactive enforcement; and
- impose no greater burden on chain of responsibility parties, the NHVR, or enforcement agencies.

## **Consistency with policy objectives of authorising law**

The proclamation is consistent with the policy objectives of Chapter 2 of the Amendment Act.

## **Inconsistency with policy objectives of other legislation**

The proclamation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The reform of CoR requirements and related obligations under the HVNL will require the development of reference material and training for authorised officers, as well as education and compliance guidelines for the heavy vehicle industry.

Implementation costs will be met within existing budget allocations by the NHVR and state and territory agencies.

While terms and concepts, such as ‘reasonably practicable’ and ‘due diligence’, are new to the HVNL, they are familiar to transport operators. The proposed amendments act to harmonise safety initiatives within the national law with the *Work Health and Safety Act 2011* by using the same framework and principles.

Due to the familiarity of these concepts and their current application through workplace health and safety legislation nationally, the regulatory burden on industry, the NHVR, and enforcement agencies will decrease.

The proposed reforms will benefit governments by reducing the requirements and costs associated with enforcing and prosecuting breaches of the HVNL.

Overall, Chapter 2 amendments will lead to improved safety outcomes in the heavy vehicle industry by more closely aligning the responsibilities of executive officers in the HVNL with national safety legislation, and will ensure the HVNL accords with contemporary regulatory best practice.

## **Consistency with fundamental legislative principles**

The proclamation is consistent with fundamental legislative principles.

## **Consultation**

Following consultation between industry associations, jurisdictions, and the NTC and NHVR, the Honourable Mark Bailey MP, Minister for Transport and Main Roads, determined that 1 October 2018 was the preferred date for commencement of all three phases of CoR and EOL reforms.

In accordance with *The Queensland Government Guide to Better Regulation*, the Department of Transport and Main Roads applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category G – Regulatory proposals that are of a machinery nature).