



# Heavy Vehicle National Law – Extension of Executive Officer Due Diligence Obligation Decision Regulatory Impact Statement

November 2016



National Transport Commission

# Report outline

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<b>Title</b>	Heavy Vehicle National Law – Extension of Executive Officer Due Diligence Obligation
<b>Type of report</b>	Decision Regulatory Impact Statement
<b>Purpose</b>	For decision
<b>Abstract</b>	<p>This document is a decision Regulation Impact Statement (RIS). It describes changes – known as ‘options’ – that could be made to reform the executive officer liability provisions of Australia’s Heavy Vehicle National Law (HVNL) and recommends a preferred option.</p> <p>Organisations and individuals with an interest in the HVNL were invited to review the options and provide feedback through a national consultation process. The feedback was used to update the RIS and assist governments in making decisions about what changes will be made.</p>
<b>Key words</b>	Heavy Vehicle National Law, chain of responsibility, executive officer liability, primary duty of care, primary duties
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<b>ISBN</b>	978-1-921604-95-9

# Foreword

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

In November 2015 Australia's transport ministers agreed on reforms to the Heavy Vehicle National Law (HVNL) chain of responsibility (CoR) obligations to better align with national safety laws. Fundamental to these reforms is ensuring that executive officers, including senior managers and board members, are focused on the safety and compliance of their organisations. To encourage executive officers to adopt a more proactive approach to safety and compliance, ministers agreed to reformulate the executive officer liability obligations of the HVNL as a positive due diligence obligation.

These executive officer liability reforms have been undertaken in two phases:

- Phase 1: A due diligence obligation on executive officers of CoR parties for the primary safety duties – to be delivered as part of the bill with other CoR amendments agreed by ministers in May 2016.
- Phase 2: Consideration of extending the due diligence obligation across the entire HVNL – to be subject to the outcomes of a regulatory impact statement (RIS) process.

This decision RIS therefore sets out and analyses options and makes recommendations for the second phase of executive officer liability reforms. It has been prepared in accordance with the requirements of the Council for Australian Governments *Best Practice Regulation: A Guide for Ministerial Council* and the Australian Government's *Guide to Regulation*.

The recommendations in this decision RIS are informed by stakeholder feedback on the NTC's consultation regulatory impact statement that was released for public consultation in March 2016.

I would like to thank the jurisdictions, stakeholders and NTC staff for their work in preparing this decision RIS.



**David Anderson PSM**  
Chairman



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# Executive summary

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This decision Regulatory Impact Statement (RIS) has been prepared on the executive officer liability and due diligence requirements under the Heavy Vehicle National Law (HVNL). The RIS sets out and analyses options for reformulating the executive officer liability provisions of the HVNL in accordance with the Council for Australian Governments' (COAG) *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* and the Australian Government's *Guide to Regulation*.

This decision RIS takes into account the stakeholder submissions received in response to the consultation RIS on this topic, which was published on the National Transport Commission's (NTC's) website for public consultation in March 2016.

## Scope and objectives of the regulatory impact statement process

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In November 2015 Australia's transport ministers agreed to a series of reforms to both the chain of responsibility (CoR) and executive officer liability aspects of the HVNL. 'Executive officer liability' refers to the personal liability imposed on individuals who are concerned with, or who take part in, the management of corporations.

The November 2015 reforms include the introduction of a due diligence obligation for executive officers to ensure corporations comply with the HVNL. This due diligence obligation is intended to encourage a more proactive approach to safety and compliance by executive officers and will initially apply only to the CoR aspects of the law (the phase 1 reforms).

A consultation RIS and this subsequent decision RIS have been prepared to investigate and assess a proposed second phase of reforms to executive officer liability (phase 2), which would involve extending the executive officer due diligence obligation to apply to 'any persons' with a duty or obligation under the HVNL (as opposed to only CoR parties).

The proposed second phase of reform requires a RIS process to be undertaken because it involves an extension of the existing obligations of executive officers in relation to parts of the HVNL where they do not currently have any existing liabilities.

The key questions for this reform are: What should be the responsibilities of executive officers under the HVNL? And under what circumstances should such executive officers be held liable?

## Nature and extent of the problem

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The phase 1 reforms of the HVNL are intended to achieve greater alignment between the HVNL and other national safety laws, improve compliance, and simplify enforcement. However, a number of problems are created by limiting the introduction of the executive officer due diligence obligation to only CoR parties.

These problems can be classified as either 'regulatory failures' or the creation of an 'unacceptable hazard or risk'. These are outlined below, in order of importance.

### *Unacceptable hazard or risk*

- Inconsistency in the approach to executive officer liability within the HVNL – this is created by introducing a requirement for positive due diligence by executive officers in relation to some offences under the HVNL and retaining existing requirement for others.
- Different approaches to liability within the HVNL contribute to risk – the dual approach to executive officer liability within the HVNL adds an unnecessary layer of complexity to the requirements. This complexity may hamper organisations' abilities to effectively manage their safety risks.

### *Regulatory failure*

- Inconsistency between the HVNL approach and national safety laws – this can create an unnecessary regulatory burden on executive officers and corporations, particularly where the laws are dealing with similar issues.

- Aspects of the existing approach are inflexible and do not promote innovation – some provisions within the HVNL that attract executive officer liability are overly prescriptive and do not provide enough flexibility to allow for innovative approaches to improving safety outcomes.

## Regulatory reform options

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The NTC has assessed four options in the decision RIS (these were the same options considered in the consultation RIS):

1. **Option 1 (the base case):** A positive due diligence obligation is to be placed on executive officers to ensure CoR parties comply with their primary duty of care (the phase 1 reforms). This due diligence obligation applies only to the CoR primary duty offence, irrespective of whether the corporation has been convicted or found guilty of an offence. Phase 2 of the reforms to executive officer liability is not implemented. Executive officer liability for non-CoR offences (the s 636(2) offences that remain in column 3, Schedule 4 after the incorporation of some existing duties and responsibilities into the primary duty of care) is not changed, although the provision is recast as a positive duty to exercise reasonable diligence.
2. **Option 2:** In addition to option 1, all executive officer liability for non-CoR offences are removed (by repealing s 636(2) and column 3 of Schedule 4 of the HVNL).
3. **Option 3:** In addition to option 1, the positive due diligence obligation for executive officers is extended to cover all non-CoR offences that executive officers currently have liability for under s 636(2) and column 3 of Schedule 4 of the HVNL. This includes repealing s 636(2) of the HVNL.
4. **Option 4:** In addition to option 1, the positive due diligence obligation is extended to include the executive officers of anyone with a duty or obligation under the HVNL. This would cover all aspects of the HVNL including the non-CoR offences that executive officers currently have liability for under s 636(2) and column 3 of Schedule 4. This includes repealing s 636(2) of the HVNL.

The proposed regulatory amendments are principally concerned with amending an existing regulatory framework where the intent of government action is to improve the effectiveness of the current regulatory framework in achieving its objectives. As such, no viable non-regulatory option was considered.

## Stakeholder consultation

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The NTC has conducted a comprehensive consultation process to enable affected stakeholders to provide input into the policy development process. This has included:

- consultations conducted in relation to the NTC *Review of Chain of Responsibility Duties* (2014), *Executive Officer Liability Assessment* (2015) and the *Primary Duties for Chain of Responsibility Parties and Executive Officer Liability Discussion Paper* (2015)
- consultations conducted by NERA Economic Consulting during the development of the consultation RIS – these consultations focused on developing potential reform options; the underlying costs and benefits associated with the proposed reforms; and additional data sources to assess the impact of the reforms
- submissions received on the consultation RIS. The NTC received 15 submissions including four confidential submissions. These submissions came from industry associations, the National Heavy Vehicle Regulator (NHVR), government departments and agencies and transport businesses.

The majority of submissions indicated their support for the role that executive officer liability and due diligence provisions play in encouraging improved road safety outcomes. However, there was divergence in stakeholders' opinions on the impacts of the options and which option was the preferred option. Where possible, the decision RIS has incorporated the feedback provided in the consultations and submissions and has used these to inform its conclusions.



## Cost-benefit analysis

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The following costs and benefits have been identified and assessed as part of the RIS process:

- The impact on the **cost of compliance** with executive officer due diligence requirements under the HVNL. An overall less prescriptive approach to compliance is expected to be a key driver in reducing the regulatory compliance burden and aligning approaches to executive officer liability across the HVNL and other safety legislation.
- The impact on the **level of risk** associated with the use of heavy vehicles. It is anticipated that the proposed reforms will lead to a greater focus by executive officers on overall safety outcomes, enabling executive officers to be more innovative in responding to safety concerns.
- The impact on the **cost of administering the regulations**. The proposed reforms are expected to benefit governments by reducing the requirements and costs associated with enforcing prosecution of breaches of the law.

The groups that have been identified as being affected by the proposed reforms to executive officer liability under the HVNL include:

- **businesses** – particularly those that must comply with the due diligence regulatory requirements in the HVNL for executive officers (these businesses include road transport businesses and other businesses involved in the operation of heavy vehicles)
- **the community** – including road users who may be affected by the safety outcomes achieved in the heavy vehicle sector and consumers, who ultimately bear the costs of any additional regulatory requirements placed on the operation of heavy vehicles – to the extent that businesses pass on these costs
- **governments** – including the NHVR and other state and territory enforcement agencies that bear the cost of undertaking compliance activities in relation to the executive officer requirements of the HVNL for undertaking enforcement actions where noncompliance is identified.

There was insufficient data to complete a full cost-benefit analysis. The main reasons for this were:

- the base case has yet to come into effect (the phase 1 reforms), hence it has not been possible to get accurate costs in relation to the base case
- the transport sector is made up of more than 125,000 businesses, of which between 40,000 and 60,000 are involved in road transport, with very different operations and therefore differing impacts for different businesses
- it is difficult to quantify how the impacts of the actions of executive officers flow through to the actions of their corporations and eventually affect safety outcomes on the road.

Additional information on the costs and benefits of each option was sought from stakeholders as part of the consultation RIS. However, the information provided by stakeholders in their submissions was 'qualitative' rather than 'quantitative'. Despite the specific request in the consultation RIS, the stakeholder submissions received did not include any additional information or data to enable any further quantification of the costs and benefits of each option.

In the absence of appropriate data to quantify the costs and benefits of the proposed options, the approach adopted in the decision RIS has been to rely on a qualitative assessment of the costs and benefits supported by quantitative information to give evidence of the scale of the issues being discussed, where this information was available.

Table 1 summarises the expected impacts on compliance costs, safety impacts and administrative costs of each of the options.

**Table 1. Summary of expected impacts**

Option	Compliance costs	Safety impacts	Administrative costs
Option 1	<ul style="list-style-type: none"> <li>Some implementation costs but an expected reduction in overall compliance costs compared with the status quo</li> <li>Benefits potentially reduced by the complexity caused by retaining two sets of executive officer requirements</li> </ul>	<ul style="list-style-type: none"> <li>Modest improvement in safety outcomes as part of the overall package of reforms</li> <li>Potentially reduced by the complexity caused by retaining two sets of executive officer requirements</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Benefits limited to the new primary safety duty</li> </ul>
Option 2	<ul style="list-style-type: none"> <li>Possible reduction in compliance costs due to a narrowing of the scope of executive officer liability</li> </ul>	<ul style="list-style-type: none"> <li>Likely reduction in safety associated with heavy vehicle use due to the removal of an incentive for executive officers to ensure compliance with 34 serious offences</li> </ul>	<ul style="list-style-type: none"> <li>Possible decrease in costs associated with administering two separate approaches to executive officer liability within the HVNL</li> </ul>
Option 3	<ul style="list-style-type: none"> <li>No change in the scope of executive officer liability as the remaining non-CoR executive officer liability offences in s 636(2) are reformulated as a due diligence obligation</li> <li>Unlikely to increase compliance costs</li> <li>Reduces complexity by adopting a consistent approach to executive officer liability within the HVNL</li> <li>Potential for some implementation costs</li> </ul>	<ul style="list-style-type: none"> <li>Implementing a consistent approach to executive officer liability in the HVNL is likely to provide modest improvements in safety outcomes by encouraging a more proactive approach to managing safety risks, rather than focusing on compliance</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Potential for some implementation costs</li> </ul>
Option 4	<ul style="list-style-type: none"> <li>An increase in the scope of executive officer liability is likely to result in an increase in compliance costs</li> <li>Increased costs may be partially offset by achieving more consistency with the requirements for executive officers under the Model Work Health and Safety Act and by having a single approach to executive officer liability in the</li> </ul>	<ul style="list-style-type: none"> <li>No clear evidence of beneficial impacts on safety</li> <li>A consistent approach to executive officer liability (with a broader scope) may contribute to cultural change and improved safety outcomes</li> <li>Including a wide range of offences that do not pose a safety risk, and for which executive officers do not currently have liability,</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Potential for some implementation costs</li> </ul>

	<p>HVNL</p> <ul style="list-style-type: none"> <li>Increased compliance costs for organisations without a direct role in road transport or the CoR, without any additional safety improvements</li> <li>Guidance materials will be required to minimise implementation costs</li> </ul>	<p>may increase the focus on compliance at the expense of safety outcomes</p>	
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While the costs and benefits were not quantifiable, it is important to note that the cost of executive officers undertaking any unnecessary compliance activities associated with the HVNL could be substantial. Based on average managerial wage rates and the number of road transport businesses, each additional unnecessary hour of a single executive officer's time could cost businesses between \$3.9 million and \$5.9 million. If the activity is an ongoing requirement, this cost would be repeated annually (or as frequently as the activity is required to be undertaken). By contrast, the benefits of increased heavy vehicle safety may be around \$5 million per fatal crash avoided.

## Conclusions of the analysis

### ***Option 1: no additional changes to the HVNL***

Option 1 (the base case) will come into effect when the phase 1 reforms are introduced into law. As the base case, option 1 is the reference point for assessing the remaining options.

The phase 1 reforms are expected to contribute to an overall improvement in safety outcomes for CoR-related offences (compared with the HVNL today). However, when option 1 comes into effect there will effectively be two approaches to executive officer liability operating under the HVNL. This approach is considered undesirable because it will increase regulatory complexity and has the potential to lead to an increase in compliance costs. Some stakeholders have raised concerns that the additional complexity of this option may also undermine the safety improvements sought by the phase 1 reforms. However, a number of stakeholders supported this option as it would allow time for the phase 1 reforms to bed down.

### ***Option 2: remove non-CoR executive officer requirements***

Option 2 involves removing executive officer liability for the non-CoR executive officer liability offences that remain under the base case. Option 2 would involve a reduction in the current scope of executive officer liability, including in relation to some important safety obligations for which executive officers should continue to have responsibility. Although this option has the potential to reduce some compliance costs for businesses, it is inconsistent with the intent of the phase 1 reforms to executive officer liability and is also inconsistent with the findings of the NTC's 2015 *Executive Officer Liability Assessment*.

In submissions to the consultation RIS, this option was the least supported of the four proposed options.

### ***Option 3: a limited extension of due diligence requirements***

Option 3 involves extending the positive due diligence requirements to the non-CoR offences that executive officers will remain liable for under the base case by reformulating these non-CoR executive officer liability offences as a due diligence obligation. These are generally safety-related offences, often committed by – as described in the legislation – ‘a person’, which may be an individual or a corporation.

This option does not change the overall scope of offences that executive officers can be potentially liable for and is therefore unlikely to result in any significant increase in ongoing compliance costs for businesses. Option 3 would also ensure that executive officer liability

obligations are consistent throughout the HVNL, avoiding the regulatory complexity and compliance costs that would be associated with having two approaches to executive officer liability under the HVNL as would be the case under option 1.

Option 3 is anticipated to drive modest improvements in safety outcomes as the positive due diligence obligation for the non-CoR offences encourages a more proactive approach to safety by executive officers.

This option would also bring executive officer liability under the HVNL more in line with the officers' duty provisions under the Model Work Health and Safety Act (Model WHS Act) by focusing the obligations of executive officers on public safety-related matters.

Under this option, the HVNL executive officer positive due diligence obligation will apply only to an identified suite of HVNL offences. Compared with the Model WHS Act, which has broader officer due diligence obligations, variations in the executive officer requirements between the laws will therefore remain. These differences may cause some confusion for executive officers who have duties under both the Model WHS Act and the HVNL. However, as the scope of the HVNL extends beyond worker health and safety to include infrastructure and environmental protection, and also public amenity, executive officers will still need to take different matters into consideration.

Option 3 was supported by a range of stakeholders including industry representatives and government.

#### ***Option 4: extension of due diligence obligation***

Option 4 involves extending the executive officer due diligence obligation to include anyone with a duty or obligation under the HVNL. Like option 3, option 4 would result in a consistent approach to executive officer liability. Unlike option 3, option 4 would apply across all aspects of the HVNL, which some stakeholders believe would help promote a 'safety culture' across the industry and would be most consistent with the approach adopted to executive officer due diligence under the Model WHS Act. For a number of stakeholders, option 4 is considered the best option to embed a proactive and systems-based approach to managing safety risks as it would remove any doubt about the extent of executive officers' responsibilities under the HVNL.

However, unlike the Model WHS Act, the objects of the HVNL go beyond safety to include the protection of the environment, road infrastructure and public amenity. Accordingly, option 4 would extend executive officer liability into a number of areas of the HVNL that do not have a direct link to the safety of road transport operations, such as record keeping and the Intelligent Access Program (IAP), as well as some driver obligations. Although some stakeholders consider that these areas of the HVNL also have indirect safety benefits, other stakeholders are concerned that the extension of executive officer liability into these areas may result in increased compliance costs for business, particularly for those businesses without a direct role in road transport or the CoR, with no significant safety improvements. In addition this option may also raise the cost of the IAP, which is concerned with the protection of infrastructure, not safety.

As such, option 4 and the extension of the executive officer due diligence obligation to include anyone with a duty or obligation under the HVNL is inconsistent with the findings of the NTC's 2015 *Executive Officer Liability Assessment*, which recommended the scope of executive officer liability be limited to only the most serious safety-related offences.

Option 4 was supported by the NHVR and Safe Work Australia, as well as a number of states and territories but received no support from industry.

## **Recommendations – the preferred option**

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Based on a qualitative assessment of the options' impacts on safety outcomes, compliance costs, and the extent to which each option addresses the problems identified with the status quo, option 3 is the preferred option. Option 3 is supported by a broad range of stakeholders including both industry and government.

Option 3 addresses many of the problems with the existing regulatory approach identified in chapter 3, without adding costs. By expanding the coverage of the due diligence obligation of

executive officers to include 34 of the most serious non-CoR offences, option 3 will encourage a more proactive approach to addressing heavy vehicle safety risks. It will also avoid the additional regulatory complexity and compliance costs that would be associated with having two different approaches to executive officer liability under the HVNL (option 1), which may reduce the focus on improving safety outcomes.

While option 3 stops short of applying a positive due diligence across the *entire* HVNL (option 4), it will make the HVNL's approach to executive officer liability more consistent with national safety laws than it is currently. Option 3 aligns with the recommendations of the NTC's *Executive Officer Liability Assessment*, whereby the obligations on executive officers are limited to those obligations that have a direct safety link and that executive officers are able to manage as part of their role – the Transport and Infrastructure Council endorsed this assessment in May 2015.

Option 3 will not increase the range of parties or the scope of executive liability and is therefore not expected to contribute to any increases in ongoing compliance costs. In comparison, option 4 may result in significant increases in compliance costs for businesses, including non-CoR parties such as Transport Certification Australia and IAP providers, that do not have a direct role in influencing safety outcomes.

Option 3 is anticipated to drive modest improvements in safety outcomes as a positive due diligence obligation for the non-CoR offences and will encourage a more proactive approach to safety by executive officers. Although some stakeholders considered that option 4 would result in greater safety outcomes, there was little evidence provided to support this. Indeed, some industry and government stakeholders were concerned that option 4 could significantly increase compliance costs and may actually negatively impact on safety outcomes due to its very broad scope and coverage of a number of non-safety-related offences.

# 1 Introduction

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NERA Economic Consulting has been engaged by the National Transport Commission (NTC) to prepare this decision regulatory impact statement (RIS) in relation to an extension of the positive due diligence obligation on executive officers liability under the Heavy Vehicle National Law (HVNL).

This decision RIS sets out and analyses options for reforming the regulation for executive officer liability of corporations for heavy vehicles. It follows the Australian Government's *Guide to Regulation* by:

- describing the problem this reform is seeking to address and establishing why action is needed
- identifying policy options that would address the problem
- describing the net benefit of these policy options
- describing who was consulted on the options, how they were consulted and setting out the issues raised in consultation
- choosing the best option from those identified
- setting out the process for implementing and evaluating the preferred option.

The decision RIS also adheres to the Council of Australian Governments' (COAG) *Best Practice Regulation: A Guide for Ministerial Councils and National Standards Setting Bodies*.

## 1.1 Consultation with stakeholders on this issue

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The NTC has undertaken extensive consultation with key stakeholders to inform the development of the proposed regulatory options in this decision RIS. This includes the consultation that was undertaken as part of past projects such as the *Chain of Responsibility Taskforce Review*, the NTC's *Chain of Responsibility Duties Review* and the NTC's *Executive Officer Liability Assessment*.

NERA undertook consultations in late 2015, which informed the development of a consultation RIS. The consultations focused on collecting information about the proposed reforms to the executive officer liability provisions, identifying other regulatory options and identifying and collecting data to inform the evaluation of different regulatory options.

The consultation RIS was published on the NTC's website in March 2016. Comment was sought on the contents of the consultation RIS between 2 March and 22 April 2016, resulting in 15 submissions from a range of stakeholders, including four confidential submissions.

This decision RIS reflects the additional information and feedback provided in the stakeholder submissions to the consultation RIS.

## 1.2 Structure of this decision RIS

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This decision RIS is structured as follows:

- Chapter 2 provides contextual information in relation to executive officer liability provisions under the HVNL, primary duties of chain of responsibility parties and the regulatory environment
- Chapter 3 describes the nature of the problem and sets out the issues with the current regulatory approach
- Chapter 4 outlines the objectives of government action
- Chapter 5 describes the options available to government to address the problem
- Chapter 6 summarises stakeholders' comments on the proposed options
- Chapter 7 assesses the costs and benefits of these options

- Chapter 8 assesses the competition impacts of the proposed changes
- Chapter 9 outlines the stakeholder consultation approach adopted
- Chapter 10 discusses the conclusions of the analysis and outlines the preferred option
- Chapter 11 outlines the intended process for implementation and review.



## 2 Context

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This chapter sets out the context for this decision RIS. It covers the current regulatory requirements for executive officers under the HVNL and the reforms to these requirements that were agreed by Australian transport ministers in November 2015.

### 2.1 Executive officer liabilities under the HVNL

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#### What is executive officer liability?

Executive officer liability refers to the personal liability imposed on individuals who are concerned with, or who take part in, managing corporations. This can include company directors and other individuals involved in managing a corporation. Executive officer liability includes liability for both their own actions as an individual executive officer and, in some circumstances, liability for the actions or omissions by their corporation.

The public purpose underpinning executive officer liability is twofold. First, executive officer liability lifts the 'corporate veil' that may otherwise shield individuals from responsibility for decisions that may harm others. Second, executive officer liability encourages executive officers to proactively establish effective systems and arrangements to ensure the corporations they manage comply with their legislative obligations. There is therefore a strong public interest in ensuring corporations, and the individuals within them, are accountable for corporate misconduct, particularly for individuals who possess the influence and power to ensure corporate compliance with legislative obligations. Against these important factors we must balance concepts of justice for the individual executive officers and what are reasonable expectations for an executive officer within a corporation.

#### Executive officer liability in the HVNL

Throughout the HVNL, the term 'executive officer' is used to refer to both a director of a corporation and a person concerned in the management of a corporation. The HVNL recognises that executive officers have the ability to manage or influence the behaviour of corporations and, as such, it contains provisions that allow executive officers to be held liable for certain breaches of the law committed by corporations. This includes:

- offences where the executive officer knowingly authorised or permitted the conduct constituting the offence (s 636(1) and column 2 of Schedule 4 of the HVNL)
- offences where the executive officer knew or ought reasonably to have known of the conduct constituting the offence, or that there was a substantial risk the offence would be committed (s 636(2) and column 3 of Schedule 4 of the HVNL).

Overall, there are currently 171 offences under s 636(1) of the HVNL and 129 offences under s 636(2) that apply to executive officers. These offences deal with a range of serious safety issues such as breaches of vehicle standards, vehicle mass/dimensions, speeding and driver fatigue.

This decision RIS is concerned with the executive officer offences under s 636(2) of the HVNL only. The executive officer offences under s 636(1) are not the subject of this review, as it is considered reasonable for the HVNL to continue to hold executive officers responsible for offences they knowingly authorised or permitted.

Under s 637 and s 638 of the HVNL respectively, partners of unincorporated partnerships and management members of unincorporated associations are treated in the same way as executive officers. For convenience, in both the consultation RIS and this decision RIS, references to 'executive officer' are intended to incorporate references to these roles as well.

#### Current due diligence requirements of executive officers in the HVNL

For the offences where the executive officer 'knew or ought reasonably to have known' of the conduct constituting the offence, it is a defence for executive officers to prove that they exercised 'reasonable diligence' to ensure the corporation complied with the provision, or that they were not



in a position to influence the conduct of the corporation in relation to the offence (see s 636(3) of the HVNL).

The way the HVNL operates today, executive officers can only be held liable where an offence has been committed by a corporation. There are no separate requirements for executive officers to proactively undertake due diligence (to ensure no offence is committed in the first instance).

## **Executive officer liability and chain of responsibility duties**

The HVNL also places specific obligations on members of the transport supply chain, known as 'chain of responsibility' (CoR) parties, to ensure breaches of the HVNL do not occur. CoR parties are defined in the HVNL and comprise:

- employers
- prime contractors
- operators
- schedulers
- loading managers
- consignors and consignees
- packers, loaders and unloaders.

The HVNL CoR requirements apply in relation to all heavy vehicles with a gross vehicle mass (GVM) over 4.5 tonnes except for the fatigue requirements, which only apply in relation to vehicles with a GVM over 12 tonnes.

The purpose of these CoR obligations is to ensure that any party who is in a position to control and influence on-road behaviour is identified and held accountable for their actions. For example, CoR obligations are intended to prevent a consignor of goods from placing unreasonable demands on a driver that could result in the driver speeding or driving while fatigued.

Under the HVNL, executive officers can be liable for CoR offences. Of the 129 offences that currently apply to executive officers under s 636(2) and column 3 of Schedule 4, 46 are also CoR offences.

## **2.2 CoR and executive officer liability reform to date**

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There have recently been substantial examinations of both the CoR and executive officer liability aspects of the HVNL, and both are the subject of ongoing reforms.

### **Request for review of the CoR provisions and the CoR Taskforce Review**

On 14 September 2012 the Australian Trucking Association, Australian Logistics Council and Australian Livestock and Rural Transporters Association jointly wrote to Commonwealth and state ministers requesting that CoR and executive officer liability provisions in the HVNL be redrafted based on affirmative duties, consistent with the approach adopted by the Model Work Health and Safety Act (Model WHS Act).

In November 2012 ministers established a taskforce to review the HVNL CoR provisions (the CoR Taskforce Review). The taskforce comprised representatives from industry, regulators, the Transport Workers Union and Safe Work Australia and reported to ministers in May 2014.

The CoR Taskforce Review recommended further investigation of both the existing duties regime and executive officer liability. Ministers accepted this recommendation and asked the NTC to conduct the investigation.

### **CoR duties review**

In November 2014 the NTC released the *Chain of Responsibility: Duties Review Discussion Paper* for public consultation. The paper acknowledged the stakeholder view that, although CoR was achieving its objectives, there was an opportunity to improve the regime to remove inconsistencies and allow the National Heavy Vehicle Regulator (NHVR) and enforcement agencies to target all

behaviours that might adversely influence road safety. There were 25 written submissions received in response to the discussion paper.

Most stakeholders supported the need for legislative reform to remove inconsistencies and ensure that off-road behaviours are appropriately managed, with significant and broad support for a more general, less prescriptive approach to duties. Based on this stakeholder feedback, the NTC recommended that a primary duties regime be developed for CoR parties. In the NTC's view this option would best clarify existing responsibilities and ensure regulators can target behaviours that might adversely influence road safety better. Ministers endorsed this recommendation in May 2015.

## Executive Officer Liability Review

In 2014 the NTC assessed the HVNL's executive officer liability provisions (s 636 and Schedule 4) for consistency with the COAG agreed principles for assessing directors' liability provisions, as set out in the 2012 COAG *Personal Liability for Corporate Fault: Guidelines for applying the COAG Principles*.

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

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

In particular the NTC found that many of the underlying offences in Schedule 4 of the HVNL did not appear to have been assessed against all the elements of principle 4 and the guidelines as COAG requires. In addition the NTC found that because of the reverse onus of proof, the HVNL executive officer liability provisions were not consistent with COAG's principles 5 and 6, which provide that where principle 4 is satisfied and directors' liability is appropriate, directors could be liable where they have encouraged or assisted in the commission of the offence or have been negligent or reckless in relation to the corporations offending. Principles 5 and 6 also provide that, in some instances, it may be appropriate to require directors to prove they have taken reasonable steps to prevent the corporation offending if they are not to be held personally liable.

In May 2015 ministers agreed that 58 of the 129 executive officer liability offences under s 636 of the HVNL should be retained, including key safety offences in the area of vehicle standards, mass, dimension and loading (MDL), speeding and driver fatigue where executive officers may have direct responsibility.

## Roadworthiness review

In October 2013 the New South Wales Minister for Roads and Ports requested that the NTC and NHVR jointly consider a national approach to heavy vehicle maintenance and roadworthiness, and review the National Heavy Vehicle Accreditation Scheme to improve the effectiveness of roadworthiness assurance systems.

The NTC and NHVR established the Heavy Vehicle Roadworthiness Program to analyse options to improve the national heavy vehicle roadworthiness system (Roadworthiness Review). In January 2015 the two agencies released a consultation RIS, in response to which 29 written submissions were received.

As one of the measures to improve heavy vehicle roadworthiness, the Roadworthiness Review recommended CoR obligations be extended to include vehicle standards offences for employers, operators and prime contractors, and that enforceable undertakings also be introduced into the HVNL as an alternative remedy. These recommendations were agreed by ministers in November 2015.

## July 2015 discussion paper

The NTC published the *Primary Duties for Chain of Responsibility Parties and Executive Officer Liability Discussion Paper* in July 2015 as the next stage in both the CoR and executive officer liability assessment processes. This paper provided draft proposals for restructuring and

consolidating existing CoR obligations in the HVNL to include a primary duty on operators, prime contractors and employers to ensure the safety of their road transport operations, with specific role-based duties placed on other CoR parties.

The paper included a discussion of draft general principles and penalties for failing to discharge the primary duties, the standard of care to be applied and the relationship of primary duties to existing CoR offences. These proposals sought to clarify and simplify existing CoR obligations and were not intended to impose a greater burden on CoR parties, the NHVR or enforcement agencies.

The NTC sought stakeholder feedback on these proposals, including through workshops, and received 23 written submissions.

## Recommendations agreed by ministers in November 2015

Following consultation on the discussion paper, the NTC prepared detailed recommendations, which were approved by ministers in November 2015. The recommendations will result in a substantial reformulation of the CoR aspects of the HVNL, including the adoption of a primary duties regime, so that each party in the CoR has a primary duty of care to ensure, so far as is reasonably practicable, the safety of road transport operations. Other important changes to definitions within the HVNL were also agreed by ministers, as well as changes to penalties, investigative powers and some evidentiary practices.<sup>1</sup>

In relation to executive officer liabilities, and as set out in policy recommendation 19 below, ministers have agreed to a phased approach to reformulate the due diligence requirements of executive officers as a positive obligation. The implementation will initially apply only to the CoR aspects of the HVNL (the phase 1 reforms) but later to the entire HVNL (subject to the outcomes of a RIS). It was also agreed that the burden of proof would be shifted to the prosecution for the retained non-CoR executive officer liability offences, to be consistent with the COAG principles (policy recommendation 20 below).

Non-CoR executive officer liability offences are the s 636(2) offences that will remain in column 3, Schedule 4 of the HVNL after the incorporation of some existing duties and responsibilities into the primary duty of care, under the first phase of reforms.

The first phase of these reforms, which are referred to throughout this document as the 'phase 1 reforms', did not require a RIS to be undertaken because the regulatory changes were primarily a reformulation of existing obligations under the HVNL (from specific duties to primary duties and with a requirement for proactive due diligence).

The effect of these phase 1 reforms is shown in Figure 1 and is discussed further as one of the options considered (option 1 (the base case)).

### **Recommendation 19** – application of the proposed primary duties regime to executive officers:

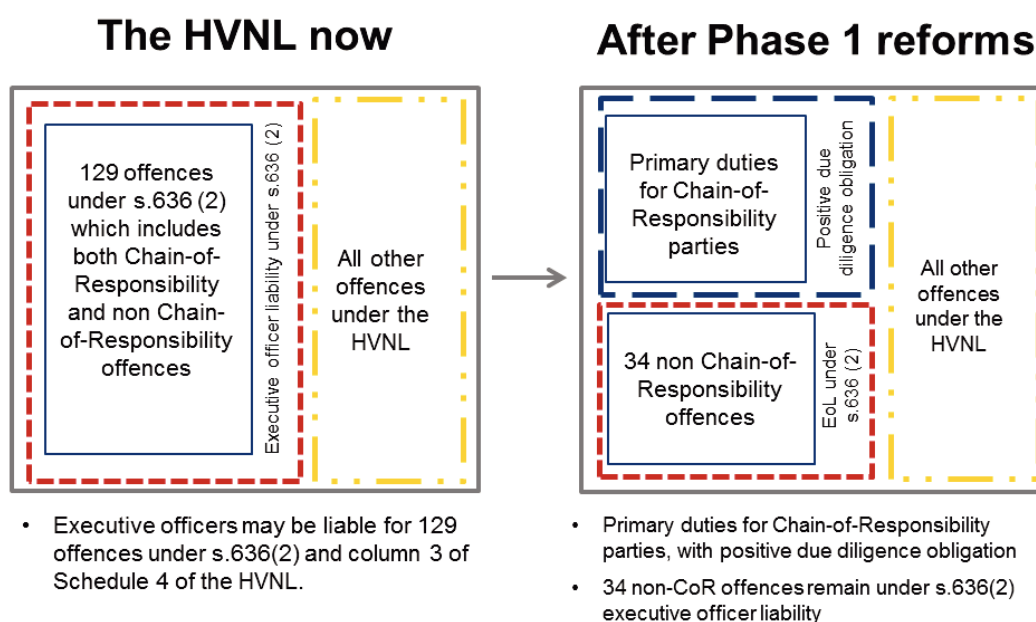
- a) That the primary duties regime be applied to executive officers through the reformulation of the existing executive officer provision in s 636(2) of the HVNL as a positive due diligence obligation.
- b) Noting a phased approach is to be adopted to the implementation this recommendation, as follows:
  - i. Phase 1: a limited due diligence obligation being introduced for executive officers to ensure chain of responsibility parties comply with their primary duty.
  - ii. Phase 2: extension of the executive officer due diligence obligation to include any persons with a duty or obligation under the HVNL, subject to the outcomes of a regulatory impact statement.

<sup>1</sup> The agreed CoR and executive officer liability recommendations are outlined here:  
<http://www.ntc.gov.au/Media/Reports/%28FA1381C0-51C9-44C6-A285-B872C4C53303%29.pdf>




**Recommendation 20 – burden of proof for retained executive officer liability offences**

*That the burden of proof for the retained non-CoR executive officer liability offences rest on the prosecution, consistent with the COAG Personal Liability for Corporate Fault Principles.*

**Figure 1. The effect of the phase 1 reforms, relative to the HVNL today**



**Key**

-  Offences with executive officer liability under section 636(2)
-  Offences with a positive due diligence obligation for executive officers
-  Offences without any executive officer liability provisions

The NTC has worked with jurisdictions to develop a draft Bill to amend the HVNL to implement the phase 1 reforms and other recommendations agreed by ministers in November 2015. This Bill was provided to ministers for consideration out of session in June 2016 and was agreed. The amending Bill is now to be considered by the Queensland Parliament (as host jurisdiction for the HVNL) in the second half of 2016 or early 2017.

## 2.3 Focus of the RIS

This decision RIS has been prepared to progress the second phase of reforms to executive officer liability outlined in recommendation 19 of the November 2015 policy paper – the extension of the executive officer due diligence obligation to include any persons with a duty or obligation under the HVNL. This is referred to throughout this document as the 'phase 2 reforms'.

If the phase 2 reforms were implemented as described in the November 2015 policy paper, the effect would be to extend the executive officer due diligence obligation in the HVNL to include:

- 'persons' the subject of the remaining non-CoR executive officer liability offences in column 3 of Schedule 4 of the HVNL
- any other 'persons' with an obligation or duty under the HVNL.

As a consequence of these reforms, the remaining non-CoR executive officer liability offences in column 3 of Schedule 4 of the HVNL and s 636(2) of the HVNL would be removed.

This proposal requires a RIS to be undertaken because it involves an extension of the existing obligations of executive officers in relation to parts of the HVNL where they have no existing liabilities.

## 3 Statement of the problem

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This chapter sets out the problems that have been identified with the HVNL's approach to executive officer liability (once the phase 1 reforms are implemented), and which the options in this RIS seek to address.

### 3.1 Overview

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The movement of heavy vehicles needs to be regulated to ensure public safety. This includes the safety of drivers, passengers and persons or properties on or in the vicinity of road infrastructure and public places. In Australia, the key instrument for regulating heavy vehicles is the HVNL.<sup>2</sup> The HVNL was implemented in 2014, replacing the previous system of model laws. It is administered by the NHVR.

Many of the obligations in the HVNL apply to corporations. This raises the question of what the responsibilities of executive officers of those corporations should be, and under what circumstances should such executive officers be held liable.

The HVNL executive officer liability provisions, as reformed by the proposed 2016 amendments, are part of a suite of legislative changes (the phase 1 reforms) intended to better align the HVNL with other national safety laws, improve compliance and simplify enforcement. However, the introduction of the executive officer due diligence obligation to CoR offences creates a number of problems. These problems result in 'unacceptable hazards or risks' and 'regulatory failures'. The discussion below provides more details on these problems, in order of their importance.

### 3.2 Unacceptable hazard or risk

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Recent road safety incidents, particularly those relating to the use of unsafe heavy vehicles on the road, highlight the dangers of a corporation's failure to focus on the safety of their road transport operations. From these incidents, and from the feedback of government, the NHVR and enforcement agencies, it is clear there are still corporations in the heavy vehicle industry and executive officers who do not take sufficient responsibility for compliance with the HVNL, either being unaware of it as an issue, or misunderstanding their obligations.

It is important that a strong culture of road safety arises from within corporations. As such it is crucial that executive officers be held accountable to demonstrate the behaviours or culture that ensures the safety of their corporation's road transport operations.

#### **A proactive approach is needed to address heavy vehicle safety risks**

Under the current laws, action can only be taken against executive officers where an offence has also been committed by the corporation. In practice this usually means that executive officers are only ever prosecuted following an offence that has resulted in a serious outcome, such as the death or injury of a heavy vehicle driver or another road user.

As part of the phase 1 reforms, a limited due diligence obligation will be introduced for executive officers to ensure CoR parties comply with their primary duties. This obligation will make executive officers directly accountable for ensuring that the safety risks associated with these aspects of their road transport operations are appropriately managed. It will also mean that action can be taken against executive officers who do not undertake the required due diligence – including in circumstances where no other offence has been committed by the corporation.

The introduction of a due diligence obligation for executive officers in relation to CoR offences is intended to foster a more proactive approach by executive officers to addressing safety risks. However, it is limited to CoR offences. Non-CoR executive officer offences will continue to be

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<sup>2</sup> The HVNL has been adopted by all states and territories except for Western Australia and the Northern Territory, where heavy vehicles are regulated at the state/territory level.

managed under the existing s 636(2) provisions, which require an offence to have been committed by a corporation.

### **Different approaches to liability within the HVNL contributes to risk**

Maintaining two differing approaches to executive officer liability in the HVNL creates regulatory uncertainty and may lead executive officers to overly focus on compliance with their regulatory requirements, rather than on overall safety outcomes. This is inconsistent with the proactive approach to safety that has been agreed as part of phase 1 of the reforms to executive officer liabilities (applying initially only to CoR breaches). It may result in confusion and misunderstanding in regard to how executive officers satisfy their obligations, which in turn reduces the likelihood of a holistic and unified approach to safety outcomes – impacting on on-road safety outcomes.

The approach is also inconsistent with the objectives of the HVNL to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:

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

The following case study illustrates how the current approach to executive officer liability poses risks to road safety because it does not provide for a preventative approach to safety or allow a flexible approach to managing risk.

#### **Case study**

On 10 July 2012 a heavy vehicle was transporting shipping containers from a yard to a seaport in the greater Sydney metropolitan area. One of the shipping containers contained a six-tonne cylindrical roll of sheet metal and the other contained pressed sheet metal, both for sale overseas. As the combination rounded a bend on the approach onto a bridge, the rear trailer collided with the side of the bridge, causing considerable damage to the bridge's structure. The container split open, releasing a roll of steel that travelled by itself along a 50-metre length of the bridge before stopping, causing several hundred thousand dollars' worth of damage. The investigation revealed that the cause of the crash was either (1) the driver was travelling too fast around the bend, or (2) the roll of steel was not adequately restrained inside the container and that either of these failures alone would have been sufficient to cause the crash.

Under the existing CoR regime, there is no obligation on executive officers to identify risks and implement systems to manage and minimise these risks from occurring (for example, to identify the risks both of load restraints failing and of the stability of the combination and implement measures to prevent them). The HVNL does not adequately recognise that inadequate safety systems are a ground for liability, as it focuses on how the corporation complies with prescriptive obligations.

Under a due diligence duty, like the one to be introduced as part of the phase 1 reforms, the executive officer would be required to identify the risks both of load restraints failing and of the stability of the combination, and implement measures to prevent them. Failing to take positive steps to ensure others under their control comply with their obligations would constitute an offence. This far more effectively achieves the objective of public safety.

### **3.3 Regulatory failure**

Regulatory failure results from problems associated with enforcement and legal frameworks. In this case, a regulatory failure results from a lack of consistency and equity in the HVNL, with respect to executive officers and a lack of consistency with national safety laws.



## Inconsistency between the HVNL approach and national safety laws

As noted above, once the phase 1 reforms are introduced there will be two approaches to executive officer liability within the same law. In addition to the internal inconsistency that will result within the HVNL, this dual approach to executive officer liability is also inconsistent with the approach to executive officer liability taken in other national safety laws such as the Model WHS Act and the Rail Safety National Law (RSNL), which adopts a single due diligence approach to executive officer liability. Any business involved in heavy vehicle transport will also be covered by WHS law; a number will also be involved in rail operations and need to also comply with the RSNL. Different approaches under each of these laws create complexity for these businesses.

Both the Model WHS Act and the RSNL place positive duties on officers to ensure 'other persons', who have obligations under the regimes, comply with their obligations. However, the Model WHS Act and the RSNL diverge on the breadth of the due diligence obligation on executive officers, with s 27 of the Model WHS Act requiring an officer to exercise due diligence solely in relation to the person conducting the business or undertaking, whereas s 55 of the RSNL extends the due diligence obligation to officers of 'a person' with 'a duty or obligation' under the RSNL.

Having inconsistent approaches places an unnecessary regulatory burden on executive officers and corporations. Difficulties may arise as executive officers seek to comply with the differing requirements of each approach, particularly where these requirements concern the same or similar subject matters such as fatigue and employee safety. This may lead to unintended contraventions.

Greater consistency between the HVNL, Model WHS Act and other transport laws would enable executive officers and corporations involved in road transport operations to better integrate their compliance systems, making compliance more effective and less costly. Such harmonisation would be conducive to more efficient and effective compliance effort, and regulatory enforcement.

## Aspects of the existing approach are inflexible and do not promote innovation

Due to their prescriptive construction, the remaining non-CoR executive officer liability offences do not enable a proactive and flexible approach for corporations and executive officers in managing their corporation's road transport safety risks. Executive officers must instead address their own and the corporation's compliance on a provision-by-provision and chapter-by-chapter basis, rather than focusing at a higher level on hazards, risks and safety. This impacts negatively on safety and innovation of safe practices as executive officers can be overly focused on compliance.

This approach also means that enforcement agencies often have to prosecute executive officers for many smaller offences, each with relatively low penalties, rather than for a breach of a duty that carries a higher penalty. This results in prosecutors having to charge hundreds of offences to ensure the court has an appropriate picture of the defendant's conduct. This places an unreasonable burden on the NHVR and enforcement agencies to prepare cases, courts to hear them and transport companies to defend them. The following case study illustrates the CoR regime's focus on a party's compliance with prescriptive requirements rather than the overall safety of its operations.

### Case study

On 24 March 2010 a heavy vehicle collided with a light vehicle that had pulled over in a breakdown lane on the M7 in Sydney. The driver of the light vehicle was killed. The driver of the heavy vehicle was charged with a range of offences, including dangerous driving occasioning death. On 10 April 2010 another driver of a heavy vehicle operated by the same company collided with four cyclists riding in the breakdown lane of the M4 in Sydney. One of the cyclists was killed as a result of the crash. The driver was charged with 14 offences, including manslaughter.

The investigation into both incidents found that the directors and scheduler of the company had actively managed work schedules in a way that resulted in drivers driving while impaired by fatigue. NSW Roads and Maritime Services (RMS) identified more than 500 applicable offences. Of these, 112 (or 34 per cent) were identified as critical risk offences. In order to deal



with the seriousness of both incidents, and given the technical prescriptive nature of the HVNL requirements, RMS charged the company, directors and scheduler with 72 individual offences. However, on hearing the matter, the court did not view such a large number of charges favourably and the number of charges was eventually reduced by half.

Under a due diligence obligation the conduct of the director in failing to ensure the driver's or operator's compliance with the fatigue requirements could be charged as a single continuing offence. This approach would allow the regulator and the courts the flexibility to deal with offences in a way that more appropriately reflects the seriousness of offending behaviour.

### **3.4 Significance of the problem**

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The problems identified above are considered significant. Safety risks in the heavy vehicle industry are high. For example, over the 10-year period from 2003 to 2012, 787 workers were killed in truck-related incidents. These deaths amount to 30 per cent of all worker fatalities in Australia over this period, and deaths in this industry are higher than any other. In addition to the workers killed, 298 members of the public were killed in truck-related incidents in the 10 years to 2012, with the majority of these occurring following collisions with cars or pedestrians (Safe Work Australia, 2014).

Executive officers are in the best position to shape the culture of a company and to ensure compliance with the HVNL. Thus there needs to be sufficient incentive in the HVNL to encourage executive officers to proactively consider and participate in decisions that influence road transport safety.

## 4 Objectives of government action

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The objectives of the proposed changes are to improve both the safety and efficiency of heavy vehicle transport in Australia and the regulatory effectiveness of the HVNL.

### 4.1 Objectives of HVNL reforms

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The HVNL is implemented through the *Heavy Vehicle National Law Act 2012* (Qld). The law promotes public safety through a unified and consistent set of national rules on heavy vehicles, and manages road transport and safety risks on public roads in applicable Australian states and territories.

As noted in Chapter 2, the executive officer liability aspects of the HVNL have been recently examined and are the subject of ongoing reforms. The objectives of these reforms are to:

- improve road safety and compliance and encourage a proactive culture of safety
- retain an effective CoR regime capable of holding current identified parties (including executive officers) accountable for the control and influence they have over the compliance and safety of the transport task and, more broadly, the safety of the general public
- ensure the HVNL regulatory regime is more consistent with the Model WHS Act, Marine Safety (Domestic Commercial Vessel) National Law and the RSNL
- promote greater understanding of obligations and responsibilities and reduce complexities within the current structure
- promote proactive enforcement so that obligations are not dependent upon some harm or incident or injury having occurred before action can be taken
- ensure executive officer liability under the HVNL is consistent with the relevant COAG principles and guidelines.

### 4.2 Objective of phase 2 reforms

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Phase 2 of the proposed reforms to the HVNL build on the reforms to the law as agreed by transport ministers in May and November 2015 (to reformulate the existing CoR obligations as a primary duty regime, including creating a positive due diligence obligation for executive officers regarding the primary duty and restructuring the existing liability provisions as a positive duty). As noted earlier, phase 2 of the proposed reforms is concerned with extending the executive officer due diligence obligation to include anyone with a duty or obligation under the HVNL, with phase 1 being limited to the introduction of a limited due diligence obligation for executive officers to ensure CoR parties comply with their primary duty.

The objectives of the phase 2 reforms are therefore consistent with the objectives of the earlier changes to the HVNL and with the overall theme of ensuring safety risks are appropriately managed by parties in a position to influence safety outcomes. The phase 2 reforms also seek to improve the regulatory efficiency and effectiveness of the HVNL.

## 5 Options considered

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In order to address the problems identified in Chapter 3, the options considered in the decision RIS are as follows (these are consistent with the options outlined in the consultation RIS):

1. **Option 1 (the base case):** A positive due diligence obligation is to be placed on executive officers to ensure CoR parties comply with their primary duty of care (the phase 1 reforms). This due diligence obligation applies only to the CoR primary duty offence, irrespective of whether the corporation has been convicted or found guilty of an offence. Phase 2 of the reforms to executive officer liability is not implemented. Executive officer liability for non-CoR offences (the s 636(2) offences that remain in column 3, Schedule 4 after the incorporation of some existing duties and responsibilities into the primary duty of care) is not changed, although the provision is recast as a positive duty to exercise reasonable diligence.
2. **Option 2:** In addition to option 1, all executive officer liability for non-CoR offences are removed (by repealing s 636(2) and column 3 of Schedule 4 of the HVNL).
3. **Option 3:** In addition to option 1, the positive due diligence obligation for executive officers is extended to cover all non-CoR offences that executive officers will have liability for under s 636(2) and column 3 of Schedule 4 of the HVNL. This will involve a repeal of s 636(2) of the HVNL.
4. **Option 4:** In addition to option 1, the positive due diligence obligation is extended to include the executive officers of any person with a duty or obligation under the HVNL. This would cover all aspects of the HVNL, including the non-CoR offences that executive officers currently have liability for under s 636(2) and column 3 of Schedule 4. This will include repealing s 636(2) of the HVNL.

Given the regulatory proposal is principally concerned with an amendment to an existing regulatory framework, where the intent of government action is to improve the effectiveness of the current regulatory framework in achieving its objectives, a viable non-regulatory option has not been considered.

### 5.1 Option 1: no additional changes to the HVNL

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The effect of this option would be that, once the first phase of reform comes into effect, there will be two approaches to executive officer liability within the HVNL:

1. There will be a positive due diligence obligation on executive officers to ensure CoR parties comply with their primary duty of care, with this due diligence obligation applying only to the CoR primary duty offence and irrespective of whether the corporation has been convicted or found guilty of a breach of its primary duty.

As a consequence of the introduction of the primary duty of care, Schedule 4, the existing s 636(2) mechanism of the HVNL for executive officer liability, is to be amended to remove many of the CoR offences specified in column 3. These CoR offences will be repealed, and the obligations will be subsumed into the primary duty obligations.

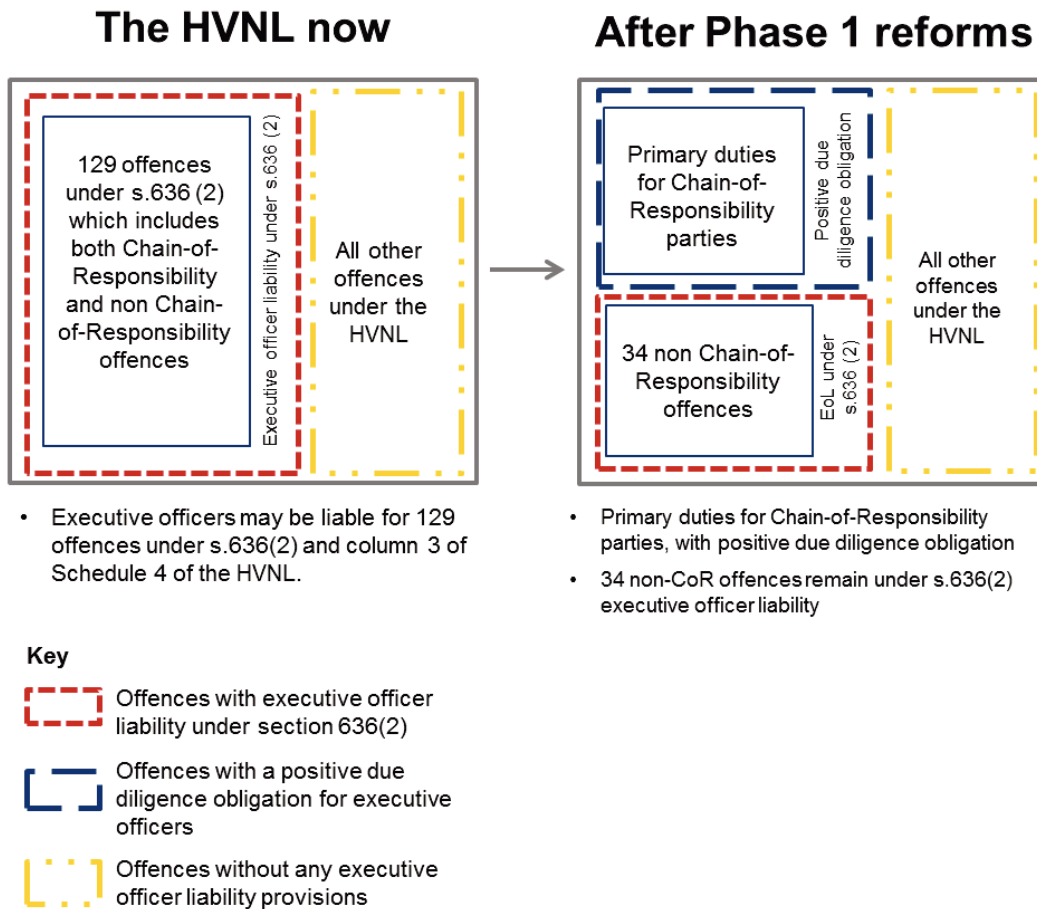
2. The existing s 636(2) HVNL mechanism will continue to apply for the non-CoR executive officer liability offences specified in column 3 of Schedule 4 of the HVNL. There will be approximately 34 offences in this category, including offences related to speeding, driver fatigue and accreditation (see Appendix B). The offences that ministers agreed did not satisfy the COAG requirements for executive officer liability will be removed from Schedule 4 as part the phase 1 reforms.

However, consistent with the May 2015 decision of the Transport and Infrastructure Council, s 636(2) of the HVNL will be amended to provide a burden of proof consistent with the COAG principles and guidelines (that the burden of proof rests with the prosecution and not the defendant).

Under the base case, the reforms to primary duties for CoR parties and executive officer liability agreed in November 2015 are implemented but without the additional phase 2 changes to the scope of executive officer liability.

The changes in the HVNL as a result of the first phase of reforms are illustrated in Figure 2.

**Figure 2. The effect of option 1, relative to the HVNL today**

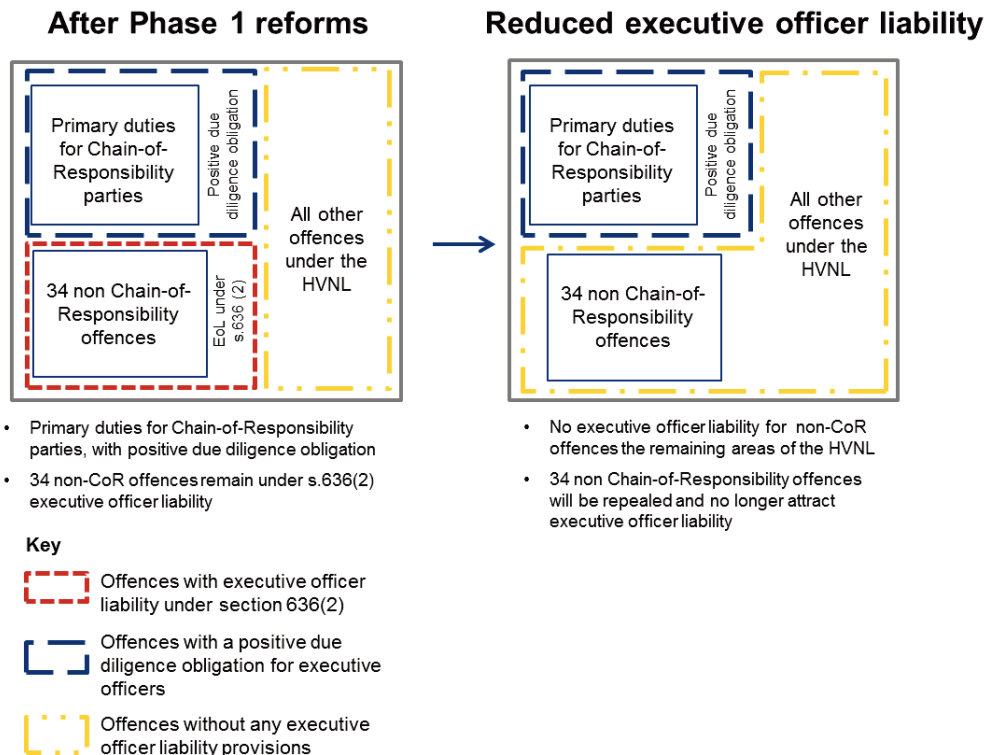


## 5.2 Option 2: remove non-CoR executive officer requirements

Option 2 involves removing all executive officer liability for non-CoR offences. For this option, s 636(2) and column 3 of Schedule 4 of the HVNL would be repealed. These offences would therefore no longer attract executive officer liability, resulting in an overall reduction in the scope of executive officer liability across the HVNL.

The scope of the change under option 2 is shown in Figure 3.

**Figure 3. The effect of option 2, relative to the base case (option 1)**



### 5.3 Option 3: a limited extension of due diligence requirements

Option 3 involves applying the positive due diligence requirement for executive officers to the remaining 34 non-CoR offences, which are covered under the existing s 636(2) and Schedule 4 mechanism. This would occur in addition to the reforms to primary duties for CoR parties and executive officer liability described under option 1. Section 636(2) of the HVNL would be repealed.

The effect of this option would be a consistent, positive due diligence requirement for executive officers under the HVNL. This option would simplify the current law.

The changes would cover the 34 non-CoR offences, which will be retained following the phase 1 reforms.

These offences are generally safety-related offences, often committed by – as described in the legislation – ‘a person’, which may be either an individual or a corporation. The full list of these offences is set out in Appendix B. Examples include:

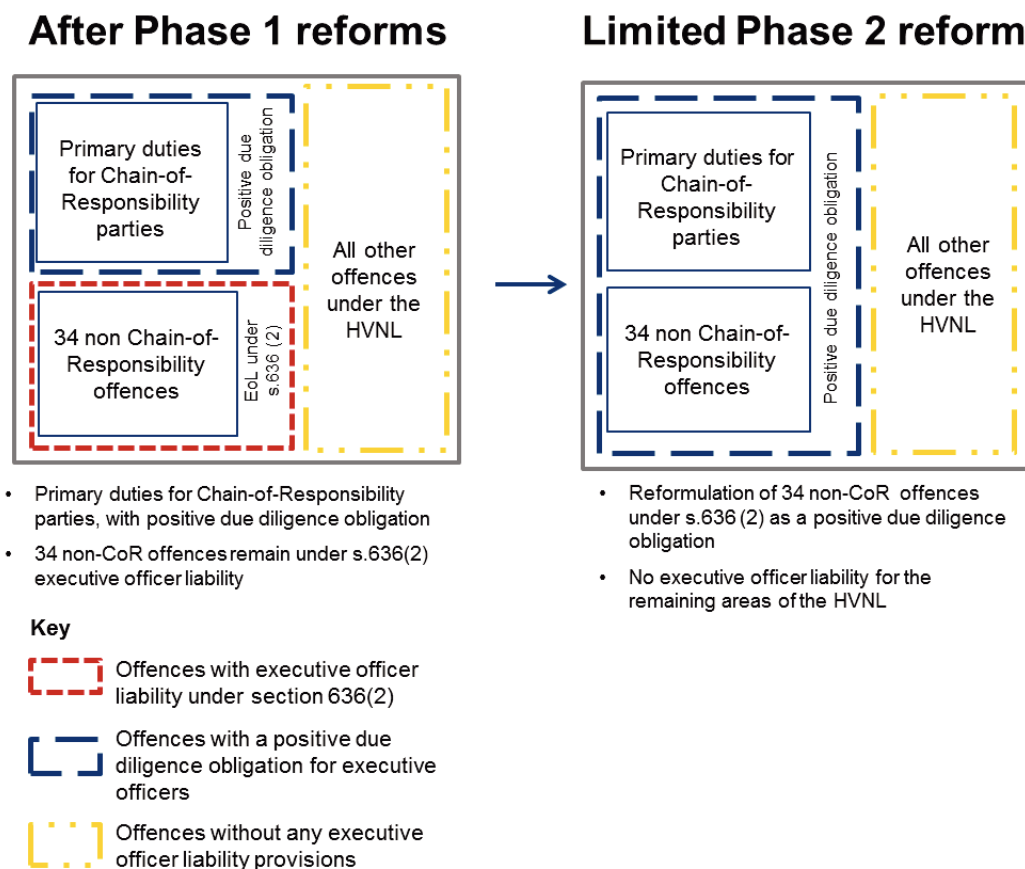
- using or permitting the use of unregistered vehicles (s 30)
- requirements not to tamper with speed limiters (s 93)
- contravening conditions of a mass or dimension exemption (s 129)
- using false or misleading transport documents (s 186).

This option removes the duplication of executive officer offences by reformulating these obligations as a positive due diligence requirement, and is therefore a simplification rather than an extension of responsibilities (as is proposed for option 4).

For enforcement action to be taken against an executive officer for an offence under s 636(2) of the HVNL, an offence must have been committed by the corporation. If option 3 is implemented, this threshold requirement for an offence by a corporation would be removed, providing consistency in obligations for executive officers and simplifying investigations and prosecutions against executive officers for the regulator and enforcement agencies.

The scope of the change under option 3 is shown in Figure 4.

Figure 4. The effect of option 3, relative to the base case (option 1)



## 5.4 Option 4: extension of due diligence obligation

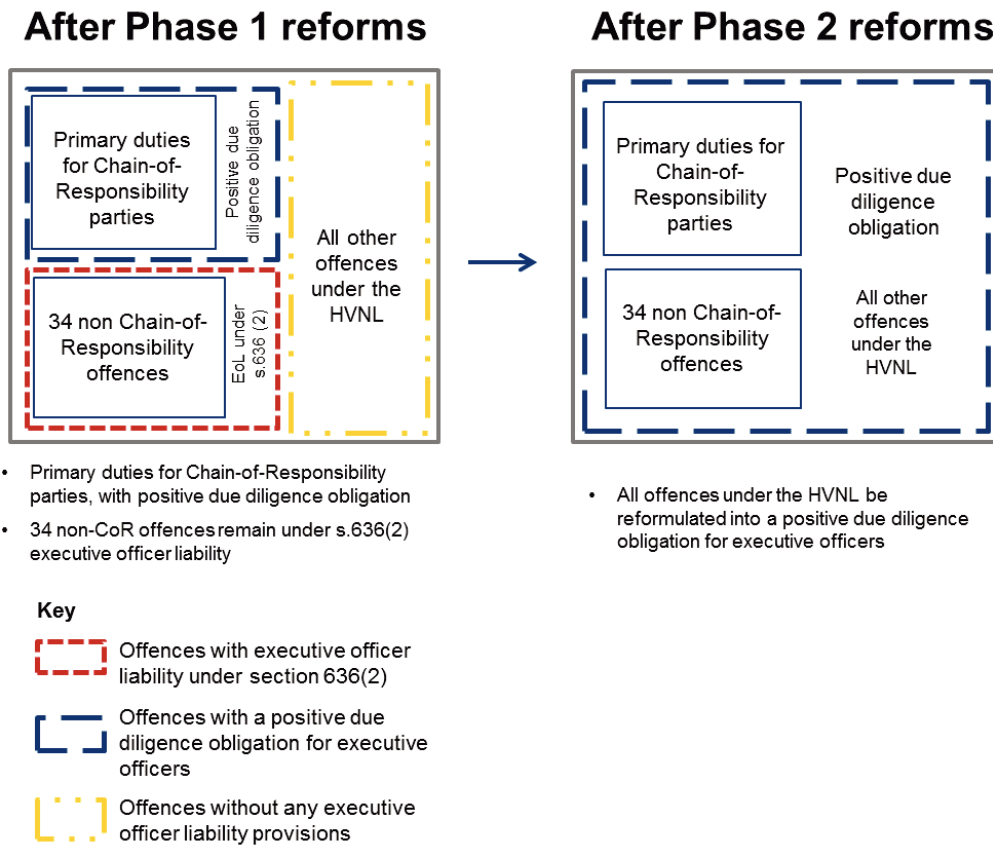
Option 4 would, in addition to option 1, introduce a positive due diligence obligation for the executive officers of any person with a duty or obligation under the HVNL. This would cover all aspects of the HVNL, including the non-CoR offences that executive officers will have liability for under s 636(2) and column 3 of Schedule 4 of the HVNL.<sup>3</sup>

This option would remove legislative complexity as a result of adopting a single approach to executive officer liability within the HVNL. However, while the option would cover serious safety-related offences it would also cover a number of administrative offences that do not pose safety risks.

The scope of the change under option 4 is shown in Figure 4.

<sup>3</sup> This is the option described in Part B of recommendation 19 of the NTC's *Primary Duties for Chain of Responsibility Parties and Executive Officer Liability Policy Paper* (November 2015), which was endorsed by transport ministers in November 2015, subject to the outcomes of a RIS.

Figure 4. The effect of option 4, relative to the base case (option 1)



## 6 Stakeholder feedback on the options

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The majority of submissions indicated their support for the role that executive officer liability and due diligence provisions play in encouraging improved road safety outcomes.

The following section provides a summary of stakeholders' feedback on the options, both informally gathered during the development of the consultation RIS and as publicly stated in the written stakeholder submissions received in response to the consultation RIS. Where possible, the decision RIS has incorporated the feedback provided in the submissions and has used these to inform its conclusions.

The consultation RIS specifically sought additional information and data from stakeholders, noting that if such information of sufficient quality and volume could be obtained from submissions that it would be used to conduct a further quantitative impact analysis on the proposed options for the decision RIS. Despite this request, the stakeholder submissions received did not include any additional information or data to enable the NTC to alter its conclusions about the options.

### 6.1 Option 1: no additional changes to the HVNL

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Several submissions did not support any further changes to executive officer liability arrangements under the HVNL beyond the phase 1 reforms (option 1). These submissions argued that, as the phase 1 reforms are yet to come into effect, there is insufficient evidence to consider the need for further reforms. For example:

- The Australian Logistics Council stated that, 'The HVNL is about to undergo significant change. Given the incapacity to quantify costs and benefits, adding a further layer of change cannot be justified' (ALC submission, p. 4).
- Toll Group supported option 1, stating that, 'Toll believes that a persuasive case for change beyond option 1 has not been made in the RIS' (Toll Group submission, p. 2).
- Transport Compliance Services stated a preference for either option 1 or option 2 on the basis that either option does not 'make onerous impositions on the organisations that are not road transport operators or a party to the Chain of Responsibility' (TCS submission p. 1).

In contrast, other submissions from both government and industry raised concerns that option 1 could lead to confusion by having two approaches to executive officer liability within the HVNL and did not do enough to promote further safety improvements including:

- Safe Work Australia stated that as option 1 is inconsistent with the positive duty requirements under the Model WHS Act, it 'has the potential to cause significant confusion for executive officers' (SWA submission, p. 5).
- The National Road Transport Association stated that option 1 'would be confusing and, in practice, businesses would most probably act on the basis that they had a due diligence obligation across the board anyway' (NatRoad submission, p. 2).
- The Australian Trucking Association stated that option 1 'would unnecessarily complicate the development of corporate safety systems and should not be adopted' (ATA submission, p. 1).

### 6.2 Option 2: remove non-CoR executive officer requirements

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There was very little support from stakeholders for option 2 as the option was seen as a weakening of the current executive officer requirements and could potentially lead to a worsening of safety outcomes.

- The National Road Transport Association stated that option 2 would remove important offences from executive officer liability and 'as a result it threatens to inappropriately reduce safety' (NatRoad submission, p. 2).



- The Australian Trucking Association stated that it was ‘particularly concerned that the option would remove executive officer liability for speed limiter tampering, at least as far as non-chain parties are concerned’ and, as such, was of the view that ‘Option 2 should not be considered further’ (ATA submission, p. 2).
- Toll Group stated that ‘the disadvantage of option 2 is that there are some important safety obligations in among the non CoR offences for which executive officers probably should have responsibility’ (Toll Group submission, p. 3).
- The Australian Livestock and Rural Transporters Association stated that option 2 ‘does not explicitly take into account the influence that executive officers may have in the manifestation of offences’ and that the approach is not acceptable (ALRTA submission, p. 1).

A number of government stakeholders also raised concerns about option 2, in particular that it would result in very different approaches being applied between the HVNL and the Model WHS Act. For example, Safe Work Australia stated that, as with option 1, option 2 ‘has the potential to cause significant confusion for executive officers’ (SWA submission, p. 6).

### 6.3 Option 3: a limited extension of due diligence requirements

Option 3 was supported by a mix of government and industry groups. Those in support of this option noted the need for internal consistency in the HVNL’s approach to executive officer liability but did not want to see an extension of the current scope of offences that executive officer liability would apply to.

Although the NTC has determined that the COAG agreed principles for assessing directors’ liability provisions (as set out in the 2012 COAG *Personal Liability for Corporate Fault: Guidelines for applying the COAG Principles*) do not apply to positive duties, some submissions supported option 3 on the basis that the scope of executive officer liability under option 3 was consistent with the *intent* of these principles and guidelines and was also consistent with the outcomes of the NTC’s recent assessment of executive officer liability.

Some stakeholders in support of option 3 also anticipated that moving to a single system of executive officer liability across the HVNL would reduce regulatory complexity for executive officers, which may contribute to a better focus on safety rather than regulatory outcomes, consistent with the logic underpinning the first phase of the reforms.

The stakeholders expressly supporting option 3 included:

- the Australian Trucking Association, who stated that option 3 ‘would create a consistent approach to executive officer liability across the HVNL. It would encourage higher levels of compliance and therefore safety’ (ATA submission, p. 3)
- the Australian Livestock and Rural Transporters Association, who stated that ‘the HVNL will be more effective and much easier to understand if it is internally consistent’ and ‘it is greater consistency that is responsible for a large part of estimated economic benefits of the HVNL and this must remain a key objective when assessing options for improving CoR’ (ALRTA submission, p. 1)
- the National Road Transport Association, who stated that option 3 ‘achieves the agreed objective of maintaining and improving the safety of road transport operations, while helping to ensure that these reforms also support improvements to regulatory efficiency’ (NatRoad submission, p. 2)
- the Queensland Department of Transport and Main Roads, who stated that option 3 ‘will allow industry to take a more proactive approach to safety and is unlikely to create any additional compliance burden’ (TMR submission, p. 1)
- the Tasmanian Department of State Growth, who stated that option 3 was ‘superior to option 4 in addressing the issues identified in Chapter 3 of the [consultation] RIS in the most efficient way’ (Tasmanian submission, p. 1)
- two anonymous submissions.

Some stakeholders did not support option 3, for example:

- Transport for NSW stated that ‘such a prescriptive approach does not promote a culture of holistic safety management but rather continues to direct executive officers to manage only a narrow set of risks; that is, only for certain offences’ and that, under this option, ‘executive officers may still have doubts as to whether a particular compliance issue is their responsibility and so this approach would have limited deterrent value’ (Transport for NSW submission, p. 1).
- Safe Work Australia stated that while ‘this option would bring executive officer liability under the HVNL more in line with the officers’ duty under the model WHS Act’, it still ‘has the potential to cause significant confusion for executive officers’ (SWA submission, p. 6).
- While Toll Group supported option 1, its submission stated that ‘option 3 is difficult to support because in the absence of drafting instructions outlining how the non CoR obligations would be framed it is difficult to judge their effect. That being the case, this option is not recommended at this stage. Toll may change its position if and when further information, such as the drafting instructions, becomes available’ (Toll Group, p. 3).

## 6.4 Option 4: extension of due diligence obligation

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Option 4 was supported by some jurisdictions, including Transport for NSW, and regulators (the NHVR and Safe Work Australia) on the basis that introducing a positive duty that encompasses the whole of the HVNL would improve safety outcomes by encouraging a more ‘holistic’ or ‘systems focused’ approach to safety. This would be more akin to those required under other national safety laws and would be most consistent with the intent of the phase 1 HVNL reforms. However, other stakeholders raised concerns that this option would result in significant regulatory burden with no significant improvements in safety outcomes.

### **Consistency with the HVNL reforms**

Transport for NSW and the NHVR considered option 4 to be consistent with the intent of the phase 1 HVNL reforms, which included closer alignment with national safety laws. Safe Work Australia also considered that option 4 was consistent with the Model WHS Act:

- Transport for NSW supported option 4 and considered that it ‘will result in significant improvements in safety by removing any doubt as to whether a particular compliance issue is the responsibility of the executive officer’ (Transport for NSW submission, p. 1).
- The NHVR supported option 4, stating that it ‘leads as near as possible to Management Systems approaches akin to those required under other National Safety Laws’ and that it ‘will promote a systems focus, driven through corporations by their executive officers, which will address all requirements under the law to properly control, supervise and influence behaviour in a positive, organised and universal way’ (NHVR submission, p. 2).
- Safe Work Australia stated that this option ‘would be consistent with the approach taken to the officers’ duty under the model WHS Act, which was the approach preferred by WHS Ministers in the development of the model WHS Act. Recognising the role that executive officers play in a corporation, the due diligence obligation under the HVNL would apply in relation to all duties and obligations of the executive officer’s corporation. It would not prioritise certain duties and obligations over others’ (SWA submission, p. 6).

However, some industry stakeholders raised concerns that option 4 would be inconsistent with the outcomes of the NTC’s *Executive Officer Liability Assessment* and with the intent of the 2012 COAG *Personal Liability for Corporate Fault: Guidelines for applying the COAG Principles*.

- The National Road Transport Association stated that option 4 would ‘complicate the commitment to the establishment of a more proactive positive culture of safety by executive officers, in line with best practice safety regulation’ (NatRoad submission, p. 2).
- Toll Group stated that option 4 would be ‘contradictory to the risk-based approach that has characterised recent policy’ (Toll Group submission, p. 3).
- The Australian Livestock and Rural Transporters Association stated that, similarly to option 2, option 4 ‘does not explicitly take into account the influence that executive officers may

have in the manifestation of offences’ and that the approach is not acceptable (ALRTA submission, p. 1).

### ***Consistency with other national safety laws***

Some submissions – for example, the one from Safe Work Australia – considered that option 4 proposed the same approach as under the Model WHS Act, where the executive officer would be responsible for duties owed directly by the entity they were responsible for.

However, other stakeholders were of the view that option 4 proposed extending the executive officer due diligence obligation to include anyone with a duty or obligation under the HVNL, including the duties of natural persons, such as a driver’s duty not to drive while fatigued. In this context, the Australian Trucking Association considered option 4 to be inconsistent with the Model WHS Act because ‘the due diligence obligation does not, however, extend to ensuring that natural persons working for the PCBU [person conducting a business or undertaking] comply with their obligations under the WHS Act and WHS Regulations’.

Other submissions were unclear on this issue.

The divergence in stakeholder views on option 4 can perhaps be explained by stakeholders holding different views about the coverage of option 4. In this context, Transport for NSW noted in its submission that ‘it is not clear whether option 4 is intended to apply to executive officers of persons who are not CoR parties’, suggesting that ‘option 4 should be amended to clarify that the due diligence obligation will apply to executive officers of a corporation that owes a primary safety duty under the amended HVNL’.

In this context it appears that support for option 4 may have been on the basis that it was the same approach as in the Model WHS Act; that is, the executive officer would be responsible for duties owed directly by their corporation.

### ***Safety impacts***

Some stakeholders have indicated that a key advantage of applying a positive due diligence obligation to executive officers for all aspects of the HVNL removes any doubt about whether a potential compliance issue is the responsibility of an executive officer, which would encourage a ‘safety culture’.

- Transport for NSW considered that option 4 would “result in significant improvements in safety by removing any doubt as to whether a particular compliance issue is the responsibility of the executive officer” (Transport for NSW submission, p1).

However, many other stakeholders were concerned that expanding the scope of executive officer liability to cover any person with a duty or obligation under the HVNL may result in confusion about the responsibilities of executive officers, potentially to the detriment of safety outcomes.

- The Queensland Department of Transport and Main Roads stated that the scope of executive officer liability proposed under option 4 was ‘too broad’ and that the inclusion of minor administrative matters would ‘divert attention away from developing a safety culture upon which the CoR reform seeks to focus’ (TMR submission, p. 2).
- The Australian Trucking Association stated that option 4 ‘would not increase safety and could in fact reduce it’ and that it would ‘increase the compliance burden on business’ (ATA submission, p. 3).
- Toll Group stated that option 4 ‘may have the effect of trivialising compliance, rather than focussing executive officers on the key safety issues over which they have power and influence to make a meaningful difference’ (Toll Group submission, p. 3).
- Another jurisdiction stated that option 4 provided no additional on-road safety benefit but could instead increase the regulatory burden on industry.

### ***Compliance impacts***

During consultations a number of stakeholders raised concerns about the compliance costs that would be created by broadening the requirements of executive officers in the way proposed by option 4. Many felt that extending the role of executive officers in the way proposed by option 4

would be inconsistent with aspects of the phase 1 reforms, including the introduction of primary duties that involved a less prescriptive approach to executive officer requirements.

Some submissions from industry also raised concerns that adopting option 4 would result in an increase in compliance costs for industry. For example, the Australian Trucking Association stated that 'option 4 would increase the compliance burden on businesses by requiring executive officers to exercise due diligence to prevent a much greater range of offences than at present' (ATA submission, p. 4).

Several organisations that provide services related to the Intelligent Access Program (IAP) raised concerns that option 4 would create additional compliance costs for their organisations (submission by IAP service provider Transport Compliance Services) and may require costly changes to IT or security systems (anonymous submission by IAP-related organisation), for no additional improvement in road safety outcomes.

### **Other concerns**

Other concerns about option 4 included:

- how executive officers would be expected to undertake due diligence to prevent breaches of the HVNL, over which they seemingly have little control (for example, offences by 'natural persons')
- whether the inclusion of many less serious offences within the scope of executive officer liability undermines a performance-based approach (also adopted through the introduction of the primary duties as part of the phase 1 reforms) and dilutes the focus of executive officers on key safety issues
- the penalties for noncompliance under this option, with the suggestion that a tiered approach may be required. However, penalties are outside the scope of this RIS.

## **6.5 Other matters raised in stakeholder submissions**

Some stakeholders raised issues about the implementation process, including the need for a long implementation period and the need for further guidance on enforcement.

These issues have already been specifically recognised and are addressed in the recommendations of the November 2015 policy paper, which provide the following:

### **Recommendation 22 – Development of guidance materials**

*Note that these recommendations on both the introduction of Primary Duties and executive officer liability will require detailed guidance materials and codes of practice for both industry and regulators, including all authorised officers, with the NHVR to lead the development of these documents, with support from the NTC.*

### **Recommendation 23 – Training of authorised officers, regulators and industry**

*Note that these recommendations on both the introduction of Primary Duties and executive officer liability will require comprehensive training for both industry and regulators, including all authorised officers, with the NHVR to lead the development of a training package, with support from the NTC.*

### **Recommendation 24 – Implementation period**

*Note that an implementation period will be required to allow industry and regulators, including all authorised officers, sufficient time to adjust to these amendments. It is suggested a 12 month period from the date the amending legislation is passed by the Queensland parliament (as host jurisdiction for the HVNL) would be an appropriate time period.*

In addition, stakeholders raised the following further issues:

- Transport for NSW recommended that the NHVR develop a prosecution and enforcement policy that explains the principles it has adopted to achieve compliance with the HVNL and that outlines the NHVR's enforcement priorities and strategies (Transport for NSW submission, p. 4). The NHVR is currently developing a suite of tools to build investigator capability and improve prosecutorial practice.

- The NHVR noted that the level and quality of guidance materials, education and training resources, as well as codes of practice, are crucial to assisting executive officers (NHVR submission, p. 2). The NHVR is currently working to develop appropriate guidance education and training resources.
- Safe Work Australia also suggested consideration be given to ‘more closely aligning the definition of “executive officer” in the HVNL with the meaning of “officer of a corporation” under the Corps Act and, therefore, the model WHS Act’; that is, ‘that executive officers’ obligations under the HVNL also extend to persons who participate in the making of decisions of the relevant corporation’ (Safe Work Australia submission, paragraph 40). Such a change is not proposed as part of this reform.

## 7 Impact analysis

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This chapter sets out an assessment of the costs and benefits of each of the options identified in Chapter 5 to determine the option with the greatest net benefit to the community.

### 7.1 Approach to measuring the impacts of the options

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This chapter seeks to identify who is likely to be affected by each option, assess the economic, social and environmental costs and benefits of each option and to determine how those costs and benefits are likely to be distributed. However, there have been two significant barriers to quantifying the costs and benefits of the proposed options for both the development of the consultation RIS and this decision RIS. These two barriers are discussed below.

#### Base case has yet to come into effect

One significant barrier is that the changes to the HVNL that have already been agreed through the first phase of the primary duties for CoR parties and executive officer liability reform process have not yet come into effect and are therefore not reflected in the current law. These phase 1 changes are also still in the drafting process, which means there is uncertainty about exactly how they will be implemented and what their impacts will be. These factors have made it difficult for stakeholders to identify the impact from phase 1 (for example, in terms of safety outcomes and compliance burden), which in turn has made it difficult for them to ascertain the additional impact that the other options proposed in this RIS are likely to have.

#### Lack of data to quantify costs and benefits

There is also a lack of data with which to quantify the impacts of the proposed options on safety outcomes. Although there is a substantial amount of data collected on road transport crashes, including those involving heavy vehicles, it is not possible to identify from this data the crashes that could have been avoided due to the changes proposed in the options. The reasons for this include the following:

- The specific nature of the reforms proposed in this RIS relate only to the role of executive officers, compared with the multifaceted causes of many road transport crashes.
- If agreed, the proposed reforms in this RIS would be implemented following a broader set of related reforms agreed by transport ministers in May and November 2015. Both these broader reforms and the options discussed in this RIS have complementary objectives around improving road transport safety. However, it is not possible to estimate the amount each component would contribute to these objectives in isolation from the others.
- It is difficult to directly link the actions of executive officers to safety outcomes.

Additional information on the costs and benefits of each option was sought from stakeholders as part of the consultation RIS. However, no additional quantitative data was provided, and much of the information that was provided was 'qualitative' rather than 'quantitative'. The additional data did not enable any further quantification of the costs and benefits of each option.

In the absence of appropriate data to quantify the costs and benefits of the proposed options, the approach adopted in this decision RIS has been to rely on a qualitative assessment of the costs and benefits supported by quantitative information to give evidence of the scale of the issues being discussed, where this information was available.

#### Analytical framework

The following categories of costs and benefits relevant to this decision RIS have been identified:

- the impact on the **cost of compliance** with executive officer due diligence requirements under the HVNL for each of the four options including
  - the cost of understanding any new requirements of the phase 2 reforms
  - the cost of implementing any necessary changes to activities



- the ongoing cost of maintaining compliance with the phase 2 requirements
- the ongoing cost of demonstrating compliance with the phase 2 requirements
- the impact on the **level of risk** associated with the use of heavy vehicles for each of the four options including
  - any impact on the number of crashes involving heavy vehicles
  - any reduction in the consequences of crashes involving heavy vehicles (such as loss of life, damage to vehicles, damage to infrastructure)
- the impact on the **cost of administering the regulations** for each of the four options including
  - the cost of monitoring compliance with requirements
  - the cost of undertaking enforcement actions where noncompliance is identified.

## Identification of the affected groups

For the purpose of this decision RIS, the groups that have been identified as being impacted by the proposed reforms to executive officer liability under the HVNL broadly include businesses, the community and governments. These groups are more specifically defined as:

- **businesses** – particularly those that must comply with the due diligence regulatory requirements in the HVNL for executive officers (these businesses include road transport businesses and other businesses involved in the operation of heavy vehicles)
- **the community** – including road users who may be affected by the safety outcomes achieved in the heavy vehicle sector and consumers, who ultimately bear the costs of any additional regulatory requirements placed on the operation of heavy vehicles – to the extent that businesses pass on these costs
- **governments** – including the NHVR and other state and territory enforcement agencies that bear the cost of undertaking compliance activities in relation to the executive officer requirements of the HVNL for undertaking enforcement actions where noncompliance is identified.

The following section provides some more information on these groups.

### **Businesses**

For the purposes of the HVNL, a vehicle is considered a heavy vehicle if it has a GVM or aggregate trailer mass (ATM) of more than 4.5 tonnes. These vehicles include rigid and articulated trucks as well as medium and larger sized buses. There are around 520,000 heavy vehicles registered in Australia.

The transport sector is a significant contributor to the Australian economy. There are an estimated 125,000 transport businesses registered in Australia (ABS, 2015). Of these, somewhere between 40,000 and 60,000 are involved in road transport.<sup>4</sup> These businesses range in size from the very small (such as owner-drivers) to very large companies (for example, national or international integrated logistics businesses). In addition to these businesses, there are many more businesses that operate heavy vehicles but are not considered road transport businesses.

These businesses are all potentially affected by the reform options proposed in this RIS, with the key impact identified during preliminary consultations being the potential for an increase in the cost of complying with any new requirements placed on executive officers.

In addition to compliance costs, road transport businesses are impacted by the safety outcomes achieved in the road transport sector. Figures from Safe Work Australia show there were 30 work-related fatalities in 2010–11 in the road freight transport industry. Although deaths in this industry have decreased significantly in recent years, it remains one of the most dangerous industries for workers, with 18.6 deaths per 100,000 workers, compared with an overall Australian fatality rate of 1.9 deaths per 100,000 workers. Injuries to workers resulting from road crashes are another

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<sup>4</sup> Figures estimated from ABS data and private industry reports.

substantial cost. There were approximately 200 vehicle crash-related compensation claims in 2010–11, at an average cost of \$8,700 per claim (Safe Work Australia, 2013).

There are significant costs to businesses from damage to vehicles and property as well. A recent analysis by the National Truck Accident Research Centre (2015) identified 549 crashes in 2015, where losses exceeded \$50,000. Speed and fatigue were the most common causes of the crashes identified in this study.

As noted earlier in this decision RIS, there are many more businesses that do not directly undertake road transport but have responsibilities under the HVNL's CoR provisions.

### **The community**

The community is directly affected by the level of safety of the road transport sector. Almost all members of the community share the roads with heavy vehicles, whether as other drivers, travellers on public transport or pedestrians. The community is frequently affected by crashes involving heavy vehicles. For example, 298 members of the public were killed in truck-related incidents in the 10 years to 2012, with all but eight of these fatalities occurring on public roads. The majority of these 'bystander' fatalities involved a person in a car being killed when hit by a truck (135 fatalities) or pedestrians who were hit by a truck (49 fatalities). In all of these cases, the truck was considered to be at fault in the fatal incident (Safe Work Australia, 2014). However, there is no data available, other than prosecutions, to establish whether the actions (or inactions) of executive officers played a role in the crashes.

Crashes involving heavy vehicles can also do significant damage to public infrastructure, which can create significant costs to the community. In New South Wales alone between 2010 and 2012 there were around 600 collisions between heavy vehicles and public infrastructure, including safety barriers (70 per cent), utility poles (14 per cent), signposts (10 per cent) and bridges (6 per cent) (Transport for NSW, 2014). Collisions between heavy vehicles and key public infrastructure, particularly bridges and tunnels, can cause millions of dollars in damage to the infrastructure affected and create significant delays to other road users.

According to an economic analysis by Frontier Economics (2016), every year heavy vehicles are involved in nearly 200 crashes resulting in fatalities, 1,500 resulting in hospitalisation, 11,000 resulting in less serious injuries and 32,000 causing property damage. In its cost-benefit analysis, Frontier Economics estimated that the total cost of heavy vehicle fatal and non-fatal crashes was approximately \$2 billion in 2014 and is likely to impose a net present value cost of approximately \$14.2 billion (in 2014 dollars) for the next 10 years.

### **Examples: heavy vehicle collisions with public infrastructure**

#### **Victoria**

There were over 12 crashes caused by over-height heavy vehicles in 2012, forcing lane closures in tunnels, major traffic delays and 'an unsafe environment for other drivers'. In a review by VicRoads, it was identified that the main reasons for heavy vehicle crashes in tunnels are drivers' lack of awareness of their vehicle's height, failing to plan their route prior to starting their trip and/or relying on GPS navigation systems and missing key advisory signs. A lack of awareness of the heavy vehicle's height may result in loads not being secured properly or breaching dimension requirements, causing crashes and traffic delays.<sup>(1)</sup>

#### **Australia Capital Territory**

In December 2015 a heavy vehicle carrying an excavator crashed in the Acton Tunnel, damaging more than 60 metres of the tunnel's ceiling. The damage to the ceiling was complicated with fears that asbestos sheeting had been damaged as a result of the crash. Although the cause of the crash is unknown, the incident caused significant interruptions to the community. The heavy vehicle was not able to be removed from the site of the incident until two days later.<sup>(2)</sup>

Source: (1) *The Age* 'Over height trucks causing tunnel chaos', 29 October 2013

(2) ABC News, 'Drivers advised of peak hour delays, as crews work to clear truck from Acton tunnel in Canberra', 22 October 2015



## Governments

The NHVR and other state and territory enforcement agencies across Australia bear the cost of enforcing the HVNL.

Enforcement agencies are concerned about the cost of undertaking investigations and prosecutions of executive officers under the current operation of the HVNL. The present structure of the HVNL requires that an offence has to have occurred before an executive officer can be prosecuted. This has led to some enforcement agencies charging individual executive officers with hundreds of offences in order to demonstrate to courts a period of ongoing misconduct. In one example of an executive officer prosecution, 165 offences were charged, with total penalties totalling \$1.25 million. The cost of undertaking the prosecution was reported to be substantial. There is therefore concern that the high cost of investigations and prosecutions may undermine the intent of the HVNL.<sup>5</sup>

## 7.2 Scale of potential costs and benefits

Although it has not been possible to quantify all of the costs and benefits of the proposed options, figures have been included in this RIS to demonstrate the potential scale of the costs and benefits associated with the options. These figures focus on potential compliance costs as well as safety benefits, as these were the most significant costs and benefits identified during preliminary consultations.

Based on average managerial wage rates and the number of road transport businesses, each additional hour of a single executive officer's time could cost businesses between \$3.9 and \$5.9 million (see Table 2). If the activity is an ongoing requirement, this cost would be repeated annually (or as frequently as the activity is required to be undertaken).

The costs associated with heavy vehicle crashes are estimated to be in the order of \$2 billion per year (based on 2014 figures), including around \$5 million per crash involving one or more fatalities (see Table 3).

**Table 2. The costs of executive officers' time**

### Indicative compliance costs:

• Number of businesses affected <sup>(1)</sup>	40,000 – 60,000
• Average managerial wage rates <sup>(2)</sup>	\$56 per hour
• Allowance for on-costs <sup>(3)</sup>	75 per cent
• <b>Cost of each additional hour undertaking compliance activities</b>	<b>\$3.9 – \$5.9 million</b>

Sources: (1) Figures estimated from ABS data and private industry reports

(2) ABS, Cat no. 6306, *Employee earnings and hours* (managerial), 2014

(3) Office of Best Practice Regulation, *Regulatory burden measurement framework*, 2014

**Table 3. Costs associated with heavy vehicle crashes, 2014**

Indicative cost of fatal and non-fatal crashes involving heavy vehicles:	Total cost (\$ million)	Number of crashes (2014)	Cost per crash (\$ million)
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<sup>5</sup> Note: the costs to government of administering regulation are not included in an estimate of the regulatory burden resulting from a change in regulation. For this RIS, these costs are discussed qualitatively, focusing on the extent that these costs impact on the regulatory effectiveness of the HVNL.

• Fatal crashes involving articulated trucks	\$445 m	88	\$5.06 m
• Fatal crashes involving rigid trucks	\$336 m	69	\$4.86 m
• Fatal crashes involving buses	\$53 m	11	\$4.78 m
• Injury crashes resulting in hospitalisation	\$503 m	1,536	\$0.33 m
• Injury crashes not resulting in hospitalisation	\$205 m	11,264	\$0.02 m
• Property damage crashes	\$393 m	32,000	\$0.01 m
• <b>Cost of fatal and non-fatal crashes</b>	<b>\$1,934 m</b>		

Source: Frontier Economics, 2016

### 7.3 Costs and benefits associated with option 1

Option 1 covers the changes to primary duties for CoR parties and executive officer liability that were agreed by Australian transport ministers in May and November 2015. Although these changes did not trigger the requirement for a RIS, they were the subject of significant consultation with industry and other stakeholders.

As the base case for the RIS, option 1 is not assumed to have any additional benefits or costs. Instead, option 1 is the reference point for assessing the remaining options. However, it should be noted that stakeholders in industry and government who were contacted to prepare this RIS were generally supportive of the changes that will be introduced to the HVNL as part of option 1.

#### Impact on compliance costs

As noted earlier in the RIS, a due diligence obligation will be introduced for executive officers as part of the first phase of reforms to ensure CoR parties comply with their primary duties. This and the other changes proposed in the first phase are still being drafted, so the precise nature of the requirements that will be applied to executive officers is still to be fully determined.

#### *Types of due diligence activities*

Both the Model WHS Act and the RSNL provide some guidance on the types of activities that constitute due diligence by executive officers. The RSNL, and also the definition proposed for the purpose of the phase 1 reforms, describes due diligence as including 'taking reasonable steps to—

- acquire and keep up-to-date knowledge of rail safety matters; and
- gain an understanding of the nature of the railway operations of the person and, generally, of the risks associated with those operations; and
- ensure that the person has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to safety from the railway operations of the person; and
- ensure that the person has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information; and
- ensure that the person has, and implements, processes for complying with any duty or obligation of the person under this Law; and
- verify the provision and use of certain resources and processes.'

The due diligence requirements of the Model WHS Act are structured in a similar way. In consultations, stakeholders highlighted that due diligence is already undertaken by most businesses as part of their existing requirements under the HVNL and the Model WHS Act. Overall, most stakeholders believe the changes that have been agreed as part of the first phase of reforms will contribute to a reduction in the compliance burden for 'normally compliant businesses'.

#### *An overall less prescriptive approach*

The key driver of the expected reduction in regulatory burden is the introduction of a primary safety duty to take the place of a number of specific CoR duties. This will result in a reduction in the

number of individual CoR offences. It is expected to contribute to a change in mindset for some executive officers from a 'tick the box' approach regarding due diligence that focuses on compliance with a large number of prescriptive duties, to a more outcomes-based approach that focuses on achieving overall safety outcomes. It is expected that this approach will contribute to improved safety as well as a reduction in the overall regulatory burden for businesses that are already generally compliant.

### ***Two systems of executive officer liability***

The proposed changes will, however, result in two approaches to executive officer liability within the HVNL: the positive due diligence requirement that will apply to the primary safety duty and the s 636(2) and column 3 of Schedule 4 mechanism that will continue to apply to a subset of 34 non-CoR offences. Stakeholders agree that the operation of the two approaches may cause confusion for executive officers and result in some duplication of effort. However, in the absence of more details on the precise nature of the first phase of reforms, they were unable to identify the additional costs of this duplication.

### ***Potential scale of any additional compliance costs***

As shown in Table 2, the cost of executive officers undertaking any unnecessary compliance activities associated with the HVNL could be substantial. Based on average managerial wage rates and the number of road transport businesses, each additional hour of an executive officer's time could cost businesses between \$3.9 and \$5.9 million.

## **Safety impacts**

It is anticipated that the combination of reforms agreed to in the first phase will contribute to improvements in safety outcomes in the road transport sector. The reduction in the overall number of CoR offences is anticipated to lead to a greater focus by executive officers on overall safety outcomes than occurs currently. A less prescriptive approach will also enable executive officers to be more innovative in responding to safety concerns.

However, there is a risk that having two systems of executive officer liability under the HVNL would be overly complex and confusing, and may make it harder to achieve the intended safety improvements.

## **Impact on the costs of administering the HVNL**

The reformulation of CoR offences into a primary safety duty to which a positive due diligence obligation for executive officers applies is likely to benefit governments by reducing the requirements and costs associated with enforcing prosecution of breaches of the law. However, under option 1 this will be limited to the primary safety duty. Two systems of executive officer liability under the HVNL will also be complex and confusing from an administrative and enforcement perspective.

## **Summary of expected impacts of option 1**

Table 4 provides a summary of the expected impacts of option 1 in terms of compliance costs, safety impacts and administrative costs.

**Table 4. Summary of expected impacts from option 1**

Type of impact	Compliance costs	Safety impacts	Administrative costs
Qualitative assessment	<ul style="list-style-type: none"> <li>Some implementation costs but an expected reduction in overall compliance costs compared with the status quo</li> <li>Benefits potentially reduced by the complexity caused by retaining two sets</li> </ul>	<ul style="list-style-type: none"> <li>Modest improvement in safety outcomes as part of an overall package of reforms</li> <li>Potentially reduced by the complexity caused by retaining two sets of executive officer requirements</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Benefits limited to the new primary safety duty</li> </ul>

Type of impact	Compliance costs	Safety impacts	Administrative costs
	of executive officer requirements		

## 7.4 Costs and benefits associated with option 2

Option 2 involves a reduction in the scope of executive officer liability to include only CoR offences. Under this option s 636(2) would be repealed, along with column 3 of Schedule 4 of the HVNL. This would mean that the 34 non-CoR offences under this section would no longer attract executive officer liability.

### Impact on compliance costs

As a result of the reduction in the scope of executive officer liability, this option has some scope to reduce compliance costs for businesses. By removing s 636(2) entirely, this option would result in a single system of executive officer liability limited to the CoR primary duty offence, which would avoid any potential additional costs from having two approaches to executive officer liability within the HVNL.

### Safety impacts

This option has the potential to reduce safety outcomes related to heavy vehicles. The option would result in 34 non-CoR offences that currently attract executive officer liability through the s 636(2) mechanism being repealed and no longer attracting executive officer liability under the HVNL. These 34 offences are generally serious offences relating to issues such as:

- vehicle safety
- tampering with speed-limiting devices
- contravening vehicle mass and dimension requirements
- using false or misleading documents.

This option would remove the personal incentive for executive officers to undertake due diligence to ensure that breaches of these sections of the HVNL do not occur. This approach is inconsistent with the intent of the phase 1 reforms to executive officer liability and is also inconsistent with the findings of the NTC's recent assessment of executive officer liability. This review assessed these 34 offences against the COAG principles for executive officer liability and found them to be serious enough to warrant executive officer liability applying.

### Impact on the costs of administering the HVNL

By narrowing the scope of executive officer liability and removing the dual approach to this liability, this option may result in a decrease in some costs associated with administering the HVNL.

### Summary of expected impacts of option 2

Table 5 provides a summary of the expected impacts of option 2 in terms of compliance costs, safety impacts and administrative costs, compared with option 1 (base case).

**Table 5. Summary of expected impacts from option 2**

Type of impact	Compliance costs	Safety impacts	Administrative costs
Qualitative assessment	<ul style="list-style-type: none"> <li>▪ Possible reduction in compliance costs due to narrowing of the scope of executive officer liability</li> </ul>	<ul style="list-style-type: none"> <li>▪ Likely reduction in safety associated with heavy vehicle use due to removal of an incentive for executive officers to ensure compliance with 34 serious offences</li> </ul>	<ul style="list-style-type: none"> <li>▪ Possible decrease in costs associated with administering two separate approaches to executive officer liability within the HVNL</li> </ul>

## 7.5 Cost and benefits associated with option 3

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Under option 3, executive officers will be required to undertake positive due diligence for the non-CoR offences that they already have liability for under the existing s 636(2) and column 3 of Schedule 4 (noting that, as part of the phase 1 reforms, this offence is being modified to remove the reverse onus and place the burden of proof on the prosecution).

### Impact on compliance costs

Stakeholders have indicated this option would be unlikely to create any additional, ongoing compliance costs for 'normally compliant businesses', as executive officers already have responsibility for these offences under existing provisions of the HVNL.

#### ***Unlikely to result in an increase in compliance costs***

Option 3 involves extending the due diligence obligation to the 34 offences remaining under the s 636 mechanism and repealing s 636(2) to create a consistent approach to executive officer liability across the HVNL. Accordingly, this option does not increase executive officers' requirements and if it were the only option being considered in this document it would not trigger the requirement for a RIS.

Many of these offences address similar issues to the CoR offences that will be incorporated into the primary duty and will be subject to an executive officer due diligence obligation under phase 1 (option 1). Accordingly, the diligence requirements of executive officers in relation to these offences will not change substantially because they are managed through the same systems as the primary safety duty requirements. Creating a consistent approach to executive officer liability across the HVNL (albeit limited to the provisions that executive officers will have responsibility for under phase 1) could result in a small reduction in ongoing compliance costs for businesses such as the cost to executive officers of staying up to date with two sets of requirements.

However, there may be additional implementation costs as a result of undertaking the reforms in two phases – for example, time spent to understand and apply the new requirements. These potential implementation costs may be avoided if both reforms are implemented at the same time.

#### ***Consistency with other national safety laws***

By applying a single approach to executive officer liability, based on a positive due diligence obligation, option 3 would bring executive officer liability under the HVNL more in line with the officers' duty provisions under the Model WHS Act by focusing the obligations of executive officers on public safety-related matters.

Under option 3, executive officers would only have a positive due diligence obligation in relation to the most serious safety-related offences (described in the previous chapter). In contrast, under the Model WHS Act, officers have a much broader obligation to undertake due diligence to ensure compliance with the legislative requirements of their PCBU. The differences between the approaches under the Model WHS Act and the HVNL may cause some confusion for executive officers who have duties under both sets of legislation.

However, as the scope of the HVNL extends beyond worker health and safety into infrastructure and environmental protection, and public amenity, executive officers will need to take different matters into consideration in any event.

#### ***Consistency with COAG principles***

The offences included under option 3 are consistent with the offences that the NTC's *Executive Officer Liability Assessment* determined should attract executive officer liability because of 'the seriousness of the harm the underlying offence is seeking to avoid' and the capacity of an executive officer to 'influence the conduct of the corporation in relation to the offending'. Option 3 limits the obligation on executive officers to offences that have a direct safety link and that executive officers are able to manage as part of their role – as agreed by the Transport and Infrastructure Council in May 2015.

Further, option 3 does not raise any additional concerns in relation to consistency with the COAG agreed principles for assessment of directors' liability provisions (the COAG principles). These principles do not apply in circumstances where directors and other officers may be held criminally

liable because they personally commit the underlying offence or some other offence. They are only concerned with provisions that hold directors and other officers liable because an offence has been committed by the corporation (COAG, 2012). They therefore do not apply in the case of a positive due diligence obligation on executive officers, which applies irrespective of whether the corporation has been convicted or found guilty of an offence.

## Safety impacts

This option does not change the scope of executive officer liability, as executive officers already have liability for the 34 non-CoR offences under the existing s 636(2) mechanism. However, the proposed introduction of a positive due diligence obligation for non-CoR offences is intended to encourage a more proactive approach by executive officers in these offences, which has the potential to contribute to improvements in safety.

Adopting a consistent approach to executive officer liability across the HVNL will also reduce regulatory complexity for executive officers, which is likely to contribute to a better focus on safety rather than regulatory outcomes, which is consistent with the logic underpinning the first phase of the reforms.

## Impact on the costs of administering the HVNL

For the same reasons identified in option 1, this option is expected to result in some minor cost savings for the NHVR and enforcement agencies in investigating and prosecuting executive officer offences. However, there may be additional implementation costs from this option as a result of undertaking reforms in two stages (such as the cost of preparing additional guidance materials for industry). These potential implementation costs may be avoided if both reforms are implemented at the same time.

## Summary of expected impacts of option 3

Table 6 provides a summary of the expected impacts of option 3 in terms of compliance costs, safety impacts and administrative costs, compared with option 1.

**Table 6. Summary of expected impacts from option 3**

Type of impact	Compliance costs	Safety impacts	Administrative costs
Qualitative assessment	<ul style="list-style-type: none"> <li>No change in the scope of executive officer liability as the remaining non-CoR executive liability offences in s 636(2) are reformulated as a due diligence obligation</li> <li>Unlikely to increase compliance costs</li> <li>Reduces complexity by adopting a consistent approach to executive officer liability within the HVNL</li> <li>Potential for some implementation costs</li> </ul>	<ul style="list-style-type: none"> <li>Implementing a consistent approach to executive officer liability in the HVNL will provide modest improvements in safety outcomes by encouraging a more proactive approach to managing safety risks, rather than focusing on compliance</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Potential for some implementation costs</li> </ul>

## 7.6 Costs and benefits associated with option 4

Option 4 involves extending the executive officer due diligence obligation to include anyone with a duty or obligation under the HVNL.



## Impact on compliance costs

Option 4 would result in an extension to the scope of executive officer liability to any person with a duty or obligation under the HVNL.

### **Potential to increase compliance costs**

There are around 200 separate offences in the HVNL that executive officers do not currently have liability for. Often these offences are less serious (many are administrative in nature and only indirectly related to safety outcomes) than the types of offences covered by the HVNL's existing s 636(2) provisions. While there are a number of serious offences (relating to high-risk behaviour) they are generally offences that can only be committed by 'natural persons' rather than a corporation.

The points below provide some examples of offences that would be covered under option 4 and the types of due diligence obligations that may apply to executive officers in relation to these offences:

- *228 Duty of driver to avoid driving while fatigued* – the executive officer would need to ensure the corporation had systems in place that did not result in a driver breaching his or her fatigue obligations.
- *419(1) Keeping record of use or disclosure of intelligent access information* – the executive officer of the IAP service provider would need to ensure the corporation had appropriate record-keeping systems or business practices in place to ensure compliance with administrative requirements under the HVNL.
- *478(1)–(4) Offences relating to auditors* – the executive officer of the auditor would need to exercise due diligence to ensure the corporation had appropriate systems or business practices in place to educate the auditors of their responsibilities and that did not encourage or result in an auditor breaching his or her obligations.
- *704(1) Offence to falsely represent that heavy vehicle authority is held* – the executive officer of the person (corporate or individual) would need to exercise due diligence to ensure the corporation had appropriate systems or business practices in place to ensure that the corporation did not falsely represent that it held a valid accreditation, exemption or other authorisation and also that an individual working for the company did not breach this requirement.

If the scope of executive officer liability is expanded to include these additional offences, this would likely result in a more prescriptive approach to regulation and may increase compliance costs. This would be inconsistent with the policy intent underpinning the phase 1 reforms, including the introduction of the primary duty, which involves adopting a less prescriptive and more outcomes-focused approach to executive officer requirements.

In addition, option 4 would also expand the scope of executive officer liability to include some organisations, such as IAP providers and Transport Certification Australia, that do not undertake road transport operations and are not CoR parties, and whose role is more focused on infrastructure protection than safety. This would create additional compliance costs for these organisations and may require costly changes to IT or security systems, for no additional improvement in road safety outcomes.

However, this view is not shared by all stakeholders, with Transport for NSW considering that the adoption of option 4 would reduce the regulatory burden by creating regulatory certainty and ensuring a consistent system-based approach to safety across the HVNL.

Some stakeholders have also raised the issue of penalties for noncompliance under this approach, with the suggestion that a tiered approach may be required. However, penalties are outside the scope of this RIS.

### **Consistency with other national safety laws**

Some stakeholders consider that option 4 would provide greater alignment between the HVNL and the Model WHS Act, and as such lead to more clarity of the obligations of executive officers and less duplication of effort.

However, there are a number of countervailing points:

- Option 4 proposes to extend the executive officer liability to any person with a duty or obligation under the HVNL, whereas the Model WHS Act and RSNL only impose liability for the duties and obligations of the officer's entity.
- Compared with the HVNL, the Model WHS Act and RSNL duties are relatively high level, generally relating to accreditation and safety management systems. The HVNL has many minor and very detailed obligations such as recording work diary information and ensuring carriage of documents, which may not be appropriate to apply executive officer due diligence obligation to.
- Unlike the Model WHS Act, the objects of the HVNL extend well beyond those of the health and safety of workers and workplaces and into matters such as infrastructure damage, public amenity and environmental harm. The adoption of option 4 would therefore extend the scope of obligations on executive officers to areas that are not covered by the obligation on officers under the Model WHS Act.
- Option 4 would also impose obligations on additional persons captured by the definition of 'executive officer' that are not captured by the Model WHS Act and RSNL. The definition of 'executive officer' under the HVNL extends to *'any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation'*. In comparison, the definition of 'officer' under the Model WHS Act and RSNL is limited by reference to an *'individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the person'*. The use of *'affect the whole, or a substantial part'* limits the application of an 'officer' to someone who has a high degree of influence or authority within the business or undertaking. This limitation is not provided for under the HVNL's definition and as such an executive officer could be anyone with involvement in the management in the corporation but with minimal authority or influence.

A table comparing the underlying executive officer liability offences under option 4 against the underlying executive officer liability offences under the RSNL and the Model WHS Act is attached at Appendix C. As this table shows, if option 4 was adopted at its broadest and as was proposed in the consultation RIS, it would be significantly broader than the Model WHS Act.

### **Consistency with the COAG principles and guidelines**

This option would result in extending due diligence requirements to HVNL offences that, as part of the NTC's *Executive Officer Liability Assessment*, were found not to satisfy the COAG principles and guidelines. As noted above, the COAG principles do not apply to offences where directors or executive officers personally commit the underlying offence, applying instead only for offences where liability follows directly from the company to the executive officer – for example, through deemed liability. This option would extend the offence of failing to undertake due diligence to all offences in the HVNL. Although the COAG principles do not apply in this case, stakeholders are concerned that the approach is inconsistent with the *intent* of the principles.

### **Safety impacts**

This option has the potential to contribute to improvements in the safety of heavy vehicle transport. The improvement may result from a reduction in regulatory complexity due to adopting a single approach to executive officer liability within the HVNL.

Applying a positive due diligence obligation to executive officers for all aspects of the HVNL will remove any doubt about whether a potential compliance issue is the responsibility of an executive officer. This approach may also encourage more of a 'safety culture' in the industry and a 'top-down' approach to risk management.

However, an alternate view is that widening the scope of executive officer liability to include many less serious offences may lead to an increase in regulatory complexity and an excessive focus on achieving regulatory compliance, at the expense of improving safety outcomes, which could offset the improvements identified above.

There is a divergence in stakeholder opinion on this matter and limited evidence to support the argument. In the absence of any evidence or quantifiable data, from a qualitative perspective, it is considered that any additional safety benefits from option 4 would be limited, as many of the most serious safety issues concerning speed, fatigue, MDL and vehicle standards (the CoR offences)



are already covered by the primary duty and the positive due diligence obligation as part of the phase 1 reforms.

### Impact on the cost of administering the HVNL

Option 4 is anticipated to provide greater consistency to the HVNL, aligning the enforcement actions available for governments to investigate and prosecute breaches of the law and reducing the cost of taking enforcement action, such as prosecutions.

### Summary of expected impacts of option 4

Table 7 provides a summary of the expected impacts of option 4 in terms of compliance costs, safety impacts and administrative costs, compared with option 1.

**Table 7. Summary of expected impacts from option 4**

Type of impact	Compliance costs	Safety impacts	Administrative costs
Qualitative assessment	<ul style="list-style-type: none"> <li>An increase in the scope of executive officer liability is likely to result in an increase in compliance costs</li> <li>Increased costs may be partially offset by achieving more consistency with the requirements for executive officers under the Model WHS Act and by having a single approach to executive officer liability in the HVNL</li> <li>Increased compliance costs for organisations without a direct role in road transport or the CoR, without any additional safety improvements</li> <li>Guidance materials will be required to minimise implementation costs</li> </ul>	<ul style="list-style-type: none"> <li>No clear evidence of beneficial impacts on safety</li> <li>A consistent approach to executive officer liability, with a broader scope, may contribute to cultural change and improved safety outcomes</li> <li>Including a wide range of offences that do not pose a safety risk, and for which executive officers do not currently have liability, may increase the focus on compliance at the expense of safety outcomes</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Potential for some implementation costs</li> </ul>

## 8 Assessment of competition effects

This chapter provides an assessment of the competition effects of the proposed options.

### 8.1 Overall assessment

Legislation should not restrict competition unless it can be demonstrated that the benefits of the restrictions outweigh the costs, and the objectives of the regulation can only be achieved by restricting competition.

During the development of the consultation and decision RISs, the NTC has sought to identify any competition issues that may result from implementing the options identified. This has included identifying the capacity for any of the options to significantly alter costs for some suppliers relative to others (for example, to disproportionately affect larger, medium-sized or smaller firms). This is particularly important in the road transport sector given the diversity in the size of businesses (a large number of small operators and a comparatively smaller number of large and very large operators).

As summarised in Table 8, the NTC did not identify any competition issues and stakeholders did not raise any concerns in their submissions to the consultation RIS.

**Table 8. Competition assessment checklist**

Question	Answer	Significance
<b>Would the regulatory proposal affect the number and range of suppliers?</b>		
▪ Grant exclusive rights for a supplier to provide a good or service?	No	N/A
▪ Establish a licence, permit or authorisation process as a requirement of operation?	No	N/A
▪ Affect the ability of some types of firms to participate in public procurement?	No	N/A
▪ Significantly alter costs of entry or exit to a supplier?	No	N/A
▪ Create a geographic barrier to the ability of businesses to supply goods or services, invest capital or supply labour?	No	N/A
<b>Would the regulatory proposal change the ability of suppliers to compete?</b>		
▪ Control or substantially influence the prices at which a good or service is sold?	No	N/A
▪ Alter the ability of suppliers to advertise or market their products?	No	N/A
▪ Set standards for product/service quality that is significantly different from current practice?	No	N/A
▪ Significantly alter costs for some suppliers relative to others?	No	N/A
<b>Would the regulatory proposal alter suppliers' incentives to compete vigorously?</b>		
▪ Create a self-regulatory or co-regulatory regime?	No	N/A
▪ Impact on the mobility of customers between suppliers?	No	N/A
▪ Require/encourage the publishing of information on company outputs/price, sales/cost?	No	N/A
▪ Exempt an activity from general competition law?	No	N/A

## 9 Stakeholder consultation

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The NTC has conducted a comprehensive consultation process to enable affected stakeholders to provide input into the policy development process. The consultation strategy and a summary of stakeholders' comments and formal submissions are provided below.

### 9.1 Objectives of the consultation process

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The objectives of the consultation process on the proposed options for reforms to the executive officer liability provisions under the HVNL are to:

- gather information on the compliance activities that are currently conducted by executive officers of corporations to meet the current regulatory requirements and their impact on businesses, the regulator, enforcement agencies and Australian states and territories
- collect data and other evidence and validate assumptions to inform the cost-benefit analysis of the proposed options
- provide stakeholders with an opportunity to input into the development of reform options to achieve greater productivity while managing risk, and to state their preferred option for regulatory reform.

### 9.2 Consultation undertaken

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The NTC has undertaken extensive consultation with key stakeholders to inform the development of the proposed regulatory options prior to the finalisation of the decision RIS, including informal consultation and a number of formal consultation processes.

#### Related review processes

The NTC has received feedback on executive officer liability regulatory requirements through public submissions to the *NTC Review of Chain of Responsibility Duties Review* (2014) and the *Executive Officer Liability Assessment* (2015).

In July 2015 the NTC published the *Primary Duties for Chain of Responsibility Parties and Executive Officer Liability Discussion Paper* to seek feedback from industry, the national regulator, enforcement agencies and Australian states and territories on the draft proposals regarding how the existing HVNL CoR obligations could be restructured and consolidated to include a primary duty of care.

#### Consultation during the development of the consultation RIS

During the development of the consultation RIS, NERA undertook a series of consultations that focused on: developing potential reform options; the underlying costs and benefits associated with the proposed reforms; and additional data sources to assess the impact of the reforms. NERA consulted with the following organisations:

- Australian Logistics Council
- Australian Trucking Association
- Department of Planning Transport and Infrastructure (South Australia)
- Department of Transport and Main Roads (Queensland)
- National Heavy Vehicle Regulator
- National Road Transport Association (NatRoad)
- South Australia Police
- Transport for New South Wales with Roads and Maritime Services
- VicRoads.

## Stakeholder engagement on the consultation RIS

Following the Office of Best Practice Regulation's assessment of the consultation RIS, it was published on the NTC's website for public consultation; stakeholder submissions were requested.

Responses were specifically sought to the following questions:

- Do you support the assumptions used in the impact analysis? Are you able to provide any comment or data that would assist in quantifying the costs and benefits identified in the impact analysis (for example, the time it would take your business to comply with the requirements for each option)?
- Are there any additional costs or benefits associated with the current regulatory arrangements that have not been identified in the RIS (including any data or evidence to quantify the costs and benefits)?
- Which reform option do you/does your organisation support and why?
- What considerations should be taken into account during the implementation process (if an amendment is supported)?

The NTC received 15 submissions. These came from industry associations, regulators, government departments and transport businesses. Submissions were received from:

- Australian Livestock and Rural Transporters Association
- Australian Logistics Council
- Australian Trucking Association
- Department of State Growth (Tasmania)
- National Heavy Vehicle Regulator
- National Road Transport Association
- Queensland Government, Department of Transport and Main Roads
- Safe Work Australia
- Toll Group
- Transport Compliance Services
- Transport for New South Wales
- four confidential submitters.

# 10 Conclusions and recommended option

This chapter outlines the analysis of the options considered and the extent to which they address the problems identified in Chapter 3, and states the recommendations.

## 10.1 Summary of the impacts of the four options

The key considerations in assessing the options have been their potential to impact on compliance costs, safety outcomes and the costs of administering the HVNL. A summary of these impacts is set out in Table 9 and discussed in further detail below.

**Table 9. Summary of expected impacts from the four options**

Option	Compliance costs	Safety impacts	Administrative costs
Option 1	<ul style="list-style-type: none"> <li>Some implementation costs but an expected reduction in overall compliance costs compared with the status quo</li> <li>Benefits potentially reduced by the complexity caused by retaining two sets of executive officer requirements</li> </ul>	<ul style="list-style-type: none"> <li>Modest improvement in safety outcomes as part of an overall package of reforms</li> <li>Potentially reduced by the complexity caused by retaining two sets of executive officer requirements</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Benefits limited to the new primary safety duty</li> </ul>
Option 2	<ul style="list-style-type: none"> <li>Possible reduction in compliance costs due to narrowing of the scope of executive officer liability</li> </ul>	<ul style="list-style-type: none"> <li>Likely reduction in safety associated with heavy vehicle use due to removing an incentive for executive officers to ensure compliance with 34 serious offences</li> </ul>	<ul style="list-style-type: none"> <li>Possible decrease in costs associated with administering two separate approaches to executive officer liability within the HVNL</li> </ul>
Option 3	<ul style="list-style-type: none"> <li>No change in the scope of executive officer liability as the remaining non-CoR executive officer liability offences in s 636(2) are reformulated as a due diligence obligation</li> <li>Unlikely to increase compliance costs</li> <li>Reduces complexity by adopting a consistent approach to executive officer liability within the HVNL</li> <li>Potential for some implementation costs</li> </ul>	<ul style="list-style-type: none"> <li>Implementing a consistent approach to executive officer liability within the HVNL will encourage a more proactive approach to managing safety risks, rather than achieving compliance</li> </ul>	<ul style="list-style-type: none"> <li>Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>Potential for some implementation costs</li> </ul>

Option	Compliance costs	Safety impacts	Administrative costs
Option 4	<ul style="list-style-type: none"> <li>▪ An increase in the scope of executive officer liability is likely to result in an increase in compliance costs</li> <li>▪ Increased costs may be partially offset by achieving more consistency with the requirements for executive officers under the Model WHS Act and by having a single approach to executive officer liability in the HVNL</li> <li>▪ Increases compliance costs for organisations without a direct role in road transport or the CoR, without any additional safety improvements</li> <li>▪ Guidance materials will be required to minimise implementation costs</li> </ul>	<ul style="list-style-type: none"> <li>▪ No clear beneficial impacts on safety</li> <li>▪ A consistent approach to executive officer liability, with a broader scope, may contribute to cultural change and improved safety outcomes</li> <li>▪ Including a wide range of offences that do not pose a safety risk, and for which executive officers do not currently have liability, may increase the focus on compliance at the expense of safety outcomes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Modest reductions in the cost of investigating and prosecuting executive officers</li> <li>▪ Potential for some implementation costs</li> </ul>

## 10.2 Conclusions of the analysis

### ***Option 1: no additional changes to the HVNL***

Option 1 (the base case) will come into effect when the phase 1 reforms are introduced into law. As the base case, option 1 is the reference point for assessing the remaining options.

The phase 1 reforms are expected to contribute to an overall improvement in safety outcomes for CoR-related offences (compared with the HVNL today). However, when option 1 comes into effect there will effectively be two approaches to executive officer liability operating under the HVNL. This approach is undesirable because it will increase regulatory complexity and has the potential to lead to an increase in compliance costs. Some stakeholders have raised concerns that the additional complexity of this option may also undermine the safety improvements sought by the phase 1 reforms.

### ***Option 2: remove non-CoR executive officer requirements***

Option 2 involves removing executive officer liability from the non-CoR offences that exist under the base case. Option 2 is not supported at this time. It would involve a reduction in the current scope of executive officer liability, including in relation to some important safety obligations for which executive officers should have responsibility. Although this option has the potential to reduce some compliance costs for businesses, it is inconsistent with the intent of the phase 1 reforms to executive officer liability and it is also inconsistent with the findings of the NTC's 2015 *Executive Officer Liability Assessment*.

In submissions to the consultation RIS, this was the least supported of the four proposed options.

### ***Option 3: a limited extension of due diligence requirements***

Option 3 involves extending the positive due diligence requirements to the non-CoR offences that executive officers will remain liable for under the base case by reformulating these remaining s 636(2) obligations as a due diligence obligation. These are generally safety-related offences, often committed by – as described in the legislation – ‘a person’, which may be an individual or a corporation.

This option does not change the overall scope of offences that executive officers can be potentially liable for, or the parties covered, and therefore is unlikely to result in any increase in ongoing compliance costs for businesses and it would ensure that the executive officer liability obligations are consistent throughout the HVNL. This would avoid the regulatory complexity and compliance costs that would be associated with having two approaches to executive officer liability under the HVNL as would be the case under option 1.

The option is anticipated to drive modest improvements in safety outcomes because the positive due diligence obligation for the non-CoR offences will encourage a more proactive approach to safety by executive officers.

The option would also bring executive officer liability under the HVNL more in line with the officers’ duty provisions under the Model WHS Act by focusing the obligations of executive officers on public safety-related matters.

This option was supported by a wide range of stakeholders including industry and government.

#### **Option 4: extension of due diligence obligation**

Option 4 involves extending the executive officer due diligence obligation to include anyone with a duty or obligation under the HVNL. Like option 3, option 4 would result in a consistent approach to executive officer liability being applied across the HVNL, which some stakeholders believe would help to promote a ‘safety culture’ across the industry. For a number of stakeholders, option 4 is considered the best option to embed a proactive and systems-based approach to managing safety risks as it would remove any doubt about the scope of executive officers’ responsibilities under the HVNL.

However, the option would extend executive officer liability into a number of areas of the HVNL that do not have a direct link to the safety of road transport operations, such as the IAP, as well as some driver obligations. Although some stakeholders consider that these areas of the HVNL also have indirect safety benefits, other stakeholders are concerned that the extension of executive officer liability into these areas may result in increased compliance costs for business, particularly for those businesses without a direct role in road transport or the CoR, with no significant safety improvements. This option may also raise the cost of the IAP, which is concerned with the protection of infrastructure, not safety. Option 4, and the extension of the executive officer due diligence obligation to include anyone with a duty or obligation of the HVNL, is also inconsistent with the findings of the NTC’s 2015 *Executive Officer Liability Assessment*, which recommended the scope of executive officer liability be reduced to only the most serious safety-related offences.

This option was supported by a number of jurisdictions and the NHVR but received no support from industry.

### **10.3 Recommendations and preferred option**

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Based on a qualitative assessment of the options’ impacts on compliance costs, safety outcomes, and the extent to which the option addresses the problems identified with the status quo, option 3 is the preferred option. Option 3 is supported by a broad range of stakeholders including industry and government.

Option 3 addresses many of the problems with the existing regulatory approach identified in Chapter 3. By expanding the coverage of the due diligence obligation of executive officers to include 34 of the most serious non-CoR offences, option 3 will encourage a more proactive approach to addressing heavy vehicle safety risks. It will also avoid the additional regulatory complexity and compliance costs that would be associated with having two different approaches to executive officer liability under the HVNL (once the phase 1 reforms are introduced), which may reduce the focus on improving safety outcomes.



While option 3 stops short of applying a positive due diligence obligation across the entire HVNL (option 4), it will make the HVNL's approach to executive officer liability more consistent with national safety laws than it is currently. Option 3 aligns with the recommendations of the NTC's *Executive Officer Liability Assessment*, whereby the obligations on executive officers are limited to those that have a direct safety link and that executive officers are able to manage as part of their role – as agreed by the Transport and Infrastructure Council in May 2015.

Option 3 covers all major safety offences in the HVNL.

Option 3 will not increase the range of parties or the scope of executive liability and is therefore not expected to contribute to any increases in ongoing compliance costs. In comparison, option 4 may result in significant increases in compliance costs for businesses, including to non-CoR parties that do not have a direct role in influencing safety outcomes.

Option 3 is anticipated to lead to modest reductions in the cost of investigating and prosecuting executive officers by reducing duplication in executive officer offences and simplifying procedures.

Although some stakeholders considered that option 4 would result in greater safety outcomes, no clear evidence was provided to support this. Indeed, some industry and regulatory stakeholders were concerned that option 4 could significantly increase compliance costs and may actually negatively impact on safety outcomes due to its very broad scope and coverage of non-safety-related offences.

# 11 Implementation and review

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If the Transport and Infrastructure Council commits to further reforms to the executive officer liability requirements under the HVNL, the reforms will be implemented and reviewed in accordance with the implementation plan outlined in this chapter.

## 11.1 Implementation plan

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### Approval processes

The NTC will seek endorsement from the Transport and Infrastructure Senior Officials Committee (TISOC) on its preferred reform option and will then present the preferred option to Council for decision at its November 2016 meeting.

### Legislative amendments

Once the Transport and Infrastructure Council has provided policy approval for the reforms and, if required, amendments to the HVNL, these will be drafted as a Bill for Council's consideration in May 2017.

Following Council consideration, and should the Bill be approved, the amending Bill will be tabled for consideration by the Queensland parliament (as host jurisdiction for the HVNL).

In accordance with usual Queensland parliamentary processes, the Bill will then be referred to a committee for consideration, including public hearings and engagement with stakeholders. This committee review process is therefore an opportunity for stakeholders to make submissions and provide comment on the draft Bill.

Subject to passage of the Bill through the Queensland parliament, the amendments will then be adopted by other jurisdictions party to the HVNL.

### Communication and training

As the national regulator, the NHVR has a key role in communicating and promoting awareness of the changes to industry and enforcement agencies. The NHVR will therefore also lead the development of guidance materials and training, with input from enforcement agencies and industry bodies.

## 11.2 Post-implementation review

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As part of its commitment to undertake a best practice approach to regulation, the NTC has included a 'routine maintenance' program to conduct rolling reviews of its regulations to ensure they are current and support the strategic goals of improving transport productivity, safety and environmental outcomes.

These reforms, if implemented, will be reviewed as part of this process.

# Appendix A: Glossary and key terms

## Glossary

Term	Definition
COAG	Council of Australian Governments
COAG principles	The COAG agreed principles for assessment of directors' liability provisions
CoR	chain of responsibility
HVNL	Heavy Vehicle National Law
IAP	Intelligent Access Program
non-CoR	non-chain of responsibility
MDL	mass, dimension and loading
Model WHS Act	Model Work Health and Safety Act
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
PCBU	person conducting a business or undertaking
RIS	regulatory impact statement
RSNL	Rail Safety National Law

## Key terms

Term	Definition
Phase 1 reforms	The reforms to primary duties for CoR parties and executive officer liability agreed by ministers in November 2015, as set out in <i>Primary Duties for Chain of Responsibility Parties and Executive Officer Liability</i> (November 2015).
Phase 2 reforms	The second part of recommendation 19 from the <i>Primary Duties for Chain of Responsibility Parties and Executive Officer Liability</i> (November 2015) – the extension of the executive officer due diligence obligation to include any persons with a duty or obligation under the HVNL, subject to the outcomes of a regulatory impact statement.

## Appendix B: Current HVNL offences and impacts for each phase of reform and option considered

The following table identifies the current HVNL offences for which executive officers will have responsibility under each option explored within this paper. Under each option, the table identifies the offences that have satisfied the COAG principles and guidelines for extension to executive officers and/or the current HVNL offences that would be covered by the proposed primary duty obligation proposed as part of the NTC's Duties Review.

✓	Executive officer liability under s 636(2) and column 3 of Schedule 4 of the HVNL
✓	Positive due diligence obligation for executive officers – as per recommendation 19 from the <i>Primary Duties for Chain of Responsibility Parties and Executive Officer Liability Policy Paper</i> (November 2015)
✓*	CoR offences reformulated into primary duties – as per recommendations 2 to 8 from the <i>Primary Duties for Chain of Responsibility Parties and Executive Officer Liability Policy Paper</i> (November 2015)
✓**	Safety-related offences able to be committed by 'a person' that will be covered by the primary duty (and as such by an executive officer due diligence obligation to ensure CoR parties comply with their primary duty) only so far as the offence is committed by 'a party in the chain of responsibility'
#	For options 1 to 4, executive officers will also have responsibility for the primary duty obligation proposed as part of the NTC's Duties Review

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
<b>Chapter 2: Registration</b>					
30(1) Registration requirement – a person must not use, or permit to be used, on a road	✓	✓		✓	✓
39(2) Driver to carry proof of compliance with third-party insurance legislation					✓
50(1) Obtaining registration or registration items by false statements					✓
50(2) Obtaining registration or registration items by false statements					✓
51(3) Replacement and recovery of incorrect registration items					✓
52(4) Verification of particular records					✓
<b>Chapter 3: Vehicle operations – standards and safety</b>					
60(1)(a) Compliance with heavy vehicle standards	✓				✓
60(1)(b) Compliance with heavy vehicle standards	✓				✓
79(2) Return of permit	✓				✓
80(1) Replacement of defaced permit					✓
81(1) Contravening condition of vehicle standards exemption	✓				✓
81(2) Contravening condition of vehicle standards exemption	✓				✓
81(3) Contravening condition of vehicle standards	✓				✓
82(2) Keeping relevant document while driving under vehicle standards exemption (notice)					✓
82(3) Keeping relevant document while driving under vehicle standards exemption (notice)					✓
83(1) Keeping copy of permit while driving under vehicle standards exemption (permit)					✓
83(2) Keeping copy of permit while driving under vehicle standards exemption (permit)					✓

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
83(3) Keeping copy of permit while driving under vehicle standards exemption (permit)					✓
85(1) Modifying heavy vehicle requires approval					✓
85(2) Modifying heavy vehicle requires approval	✓				✓
86(2) Approval of modifications by approved vehicle examiners					✓
87A Person must not tamper with modification plate or label					✓
89(1) Safety requirement	✓	✓	✓**	✓	✓
90(1) Requirement about properly operating emission control system					✓
90(2) Requirement about properly operating emission control system					✓
90(3) Requirement about properly operating emission control system					✓
91(1) Person must not tamper with emission control system fitted to heavy vehicle					✓
91(2) Person must not tamper with emission control system fitted to heavy vehicle					✓
92(2) Display of warning signs on heavy vehicles if not required by heavy vehicle standards					✓
93(1) Person must not tamper with speed limiter fitted to heavy vehicle	✓	✓	✓*	✓	✓
93(2) Person must not tamper with speed limiter fitted to heavy vehicle		✓	✓*	✓	✓
93(3) Person must not tamper with speed limiter fitted to heavy vehicle		✓	✓**	✓	✓
Chapter 4: Vehicle operations – mass, dimension and loading					
96(1) Compliance with mass requirements					✓
102(1)(a) Compliance with dimension requirements					✓
102(1)(b) Compliance with dimension requirements					✓
109(2) Warning signals required for rear projection of loads					✓
111(1) Compliance with loading requirements					✓

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
129(1) Contravening condition of mass or dimension exemption generally	✓	✓		✓	✓
129(2) Contravening condition of mass or dimension exemption generally	✓	✓		✓	✓
129(3) Contravening condition of mass or dimension exemption generally	✓	✓		✓	✓
130(2) Contravening condition of mass or dimension exemption relating to pilot or escort vehicle					✓
130(3) Contravening condition of mass or dimension exemption relating to pilot or escort vehicle	✓				✓
131(1) Using pilot vehicle with a heavy vehicle that contravenes mass or dimension exemption					✓
132(2) Keeping relevant document while driving under mass or dimension exemption (notice)					✓
132(3) Keeping relevant document while driving under mass or dimension exemption (notice)					✓
133(1) Keeping copy of permit while driving under mass or dimension exemption (permit)					✓
133(2) Keeping copy of permit while driving under mass or dimension exemption (permit)					✓
133(3) Keeping copy of permit while driving under mass or dimension exemption (permit)					✓
134(1) Displaying warning signs on vehicles if not required by dimension exemption					✓
134(2) Displaying warning signs on vehicles if not required by dimension exemption					✓
137 Using a class 2 heavy vehicle	✓	✓		✓	✓
150(1) Contravening a condition of class 2 heavy vehicle authorisation	✓	✓		✓	✓
151(2) Keeping relevant documents while driving under class 2 heavy vehicle authorisation (notice)					✓



All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
151(3) Keeping relevant documents while driving under class 2 heavy vehicle authorisation (notice )					✓
152(1) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)					✓
152(2) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)					✓
152(3) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)					✓
153(1) Keeping a copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation					✓
153(2) Keeping a copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation					✓
153A Using restricted access vehicle		•✓		•✓	✓
181(3) Return of permit					✓
182(1) Replacement of defaced etc. permit					✓
183(2) Liability of employer etc. for driver's contravention of mass, dimension or loading requirement	✓	✓*	✓*	✓*	✓*
184(1) Towing restriction					✓
185(1) Requirements about coupling trailers	✓				✓
185(2) Requirements about coupling trailers	✓				✓
186(2) False or misleading transport documentation for goods	✓	✓	✓*	✓	✓
186(3) False or misleading transport documentation for goods	✓	✓	✓*	✓	✓

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
186(4) False or misleading transport documentation for goods	✓	✓	✓*	✓	✓
186(5) False or misleading transport documentation for goods	✓	✓	✓*	✓	✓
187(2) False or misleading information in container weight declaration	✓	✓	✓*	✓	✓
187(3) False or misleading information in container weight declaration	✓	✓	✓*	✓	✓
190(1) Duty of responsible entity	✓				✓
191(1) Duty of operator	✓				✓
191(3) Duty of operator	✓				✓
192(1) Duty of driver					✓
192(2) Duty of driver					✓
193(2) Weight of freight container exceeding weight stated on container or safety approval plate	✓				✓
194(1) Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement	✓	✓*	✓*	✓*	✓*
Chapter 5: Vehicle operations – speeding					
204(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit	✓	✓*	✓*	✓*	✓*
205 Duty of employer not to cause driver to drive if particular requirements not complied with	✓	✓*	✓*	✓*	✓*
206(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with	✓	✓*	✓*	✓*	✓*
207(1) Duty to ensure driver’s schedule will not cause driver to exceed speed limit	✓	✓*	✓*	✓*	✓*
208(1) Duty not to cause driver to drive if particular requirements not complied with	✓	✓*	✓*	✓*	✓*

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
209(1) Duty to ensure loading arrangements will not cause driver to exceed speed limit	✓	✓*	✓*	✓*	✓*
212(1) Duty to ensure terms of consignment will not cause driver to exceed speed limit	✓	✓*	✓*	✓*	✓*
212(2) Duty to ensure terms of consignment will not cause driver to exceed speed limit	✓	✓*	✓*	✓*	✓*
213 Duty not to make a demand that may result in driver exceeding the speed limit	✓	✓*	✓*	✓*	✓*
215 Particular requests etc. prohibited	✓	✓	✓*	✓	✓
216(1) Particular contracts etc. prohibited	✓	✓	✓*	✓	✓
216(2) Particular contracts etc. prohibited	✓	✓	✓*	✓	✓
219(1) Liability of employer etc. for speeding offence	✓	✓*	✓*	✓*	✓*
Chapter 6: Vehicle operations – driver fatigue					
228 Duty of driver to avoid driving while fatigued					✓
229(1) Duty of party in the CoR to prevent driver driving while fatigued	✓	✓*	✓*	✓*	✓*
230(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued	✓	✓*	✓*	✓*	✓*
231(1) Duty of employer not to cause driver to drive if particular requirements not complied with	✓	✓*	✓*	✓*	✓*
232(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with	✓	✓*	✓*	✓*	✓*
233(1) Duty to ensure driver’s schedule will not cause driver to drive while fatigued	✓	✓*	✓*	✓*	✓*
234(1) Duty not to cause driver to drive if particular requirements not complied with	✓	✓*	✓*	✓*	✓*
235(1) Duty to ensure terms of consignment will not cause driver to drive while fatigued	✓	✓*	✓*	✓*	✓*
235(2) Duty to ensure terms of consignment will not cause driver to drive while fatigued	✓	✓*	✓*	✓*	✓*

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
236(1) Duty not to cause driver to drive if particular requirements not complied with	✓	✓*	✓*	✓*	✓*	
237(1) Duty not to make a demand that may result in driver driving while fatigued	✓	✓*	✓*	✓*	✓*	
238(1) Duty to ensure loading arrangements will not cause driver to drive while fatigued	✓	✓*	✓*	✓*	✓*	
239(2) Duty to ensure drivers can rest in particular circumstances	✓	✓*	✓*	✓*	✓*	
240 Particular requests prohibited	✓	✓	✓**	✓	✓	
241(1) Particular contracts prohibited	✓	✓	✓**	✓	✓	
241(2) Particular contracts prohibited	✓	✓	✓**	✓	✓	
250(1) Operating under standard hours – solo drivers					✓	
251(1) Operating under standard hours – two-up drivers					✓	
254(1) Operating under BFM hours – solo drivers					✓	
256(1) Operating under BFM hours – two-up drivers					✓	
258(1) Operating under AFM hours					✓	
260(1) Operating under exemption hours					✓	
261(2) Liability of employer etc. for driver's contravention of maximum work requirement or minimum rest requirement	✓	✓*	✓*	✓*	✓*	
263(1) Operating under new work and rest hours option after change					✓	
264(2) Duty of employer, prime contractor, operator and scheduler to ensure driver compliance	✓				✓	
284(2) Return of permit	✓				✓	
285(1) Replacement of defaced permit					✓	
286(1) Contravening condition of work and rest hours exemption	✓				✓	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
287(2) Keeping relevant documents while operating under work and rest hours exemption (notice)					✓	
287(3) Keeping relevant documents while operating under work and rest hours exemption (notice)					✓	
288(1) Keeping copy of permit while driving under work and rest hours exemption (permit)					✓	
288(2) Keeping copy of permit while driving under work and rest hours exemption (permit)					✓	
288(3) Keeping copy of permit while driving under work and rest hours exemption (permit)					✓	
293(1) Driver of fatigue-regulated heavy vehicle must carry work diary					✓	
296(1) Recording information under the national regulations					✓	
297(2) Information required to be recorded immediately after starting work					✓	
298(1) Defence for failing to record information about odometer reading					✓	
299 Two-up driver to provide details					✓	
301 Recording information in written work diary					✓	
302 Recording information in electronic work diary					✓	
303 Time zone of driver's base must be used					✓	
305(1) Driver must make supplementary records in particular circumstances					✓	
305(2) Driver must make supplementary records in particular circumstances					✓	
305(3) Driver must make supplementary records in particular circumstances					✓	
306 Driver must notify the regulator if written work diary filled up					✓	
307(2) Driver must notify the regulator if electronic work diary filled up etc.					✓	
307(3) Driver must notify the regulator if electronic work diary filled up etc.					✓	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
308(1) What driver must do if lost or stolen written work diary found or returned					✓
309(2) Driver must notify record keeper if electronic work diary filled up					✓
310(2) Intelligent access reporting entity must notify record keeper if approved electronic recording system malfunctioning	✓				✓
311(2) What record keeper must do if electronic work diary filled up	✓				✓
312(2) What record keeper must do if electronic work diary destroyed, lost or stolen	✓				✓
312(3) What record keeper must do if electronic work diary destroyed, lost or stolen					✓
313(2) What record keeper must do if electronic work diary not in working order or malfunctioning	✓				✓
313(3) What record keeper must do if electronic work diary not in working order or malfunctioning					✓
314(2) How electronic work diary must be used					✓
314(3) How electronic work diary must be used					✓
315(2) Liability of employer etc. for driver's contravention of particular requirements of this division	✓				✓
319(1) Records record keeper must have	✓				✓
321(1) Records record keeper must have	✓				✓
321(2) Records record keeper must have	✓				✓
322(2) General requirements about driver giving information to record keeper					✓
322(4) General requirements about driver giving information to record keeper	✓				✓
323(2) Requirements about driver giving information to record keeper if driver changes record keeper					✓

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
323(3) Requirements about driver giving information to record keeper if driver changes record keeper	✓				✓
324(2) Record keeper must give printouts of information from electronic work diary	✓				✓
324A Record keeper must give record to driver if requested					✓
325(1) False or misleading entries					✓
326(1) Keeping two work diaries simultaneously prohibited					✓
326(2) Keeping two work diaries simultaneously prohibited					✓
327 Possession of purported work records etc. prohibited	✓				✓
328 False representation about work records prohibited					✓
329 Defacing or changing work records etc. prohibited					✓
330 Making entries in someone else’s work records prohibited					✓
331 Destruction of particular work records prohibited					✓
332 Offence to remove pages from written work diary					✓
335(1) Person must not tamper with approved electronic recording system	✓	✓		✓	✓
336(1) Person using approved electronic recording system must not permit tampering with it	✓	✓		✓	✓
336A Reporting tampering or suspected tampering with electronic work diary					✓
337(2) Intelligent access reporting entity must not permit tampering with approved electronic recording system	✓	✓		✓	✓
341(1) Period for which, and way in which, records must be kept	✓				✓
341(2) Period for which, and way in which, records must be kept	✓				✓



All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
341(3) Period for which, and way in which, records must be kept	✓				☐	
341(4) Period for which, and way in which, records must be kept	✓				✓	
341(5) Period for which, and way in which, records must be kept					✓	
341(7) Period for which, and way in which, records must be kept					✓	
347 Prohibition on using electronic work diary if it is not, and is not a part of, an approved electronic recording system					✓	
350(1) Prohibition on using device as electronic work diary if it is not, and is not a part of, an approved electronic recording system	✓				✓	
350(2) Prohibition on using device as electronic work diary if it is not, and is not a part of, an approved electronic recording system	✓				✓	
354(3) Requirements if approval amended	✓				✓	
354(5) Requirements if approval amended	✓				✓	
355(2) Requirements if approval cancelled	✓				✓	
355(4) Requirements if approval cancelled	✓				✓	
355(6) Requirements if approval cancelled	✓				✓	
355(8) Requirements if approval cancelled	✓				✓	
373(2) Return of permit					✓	
374(1) Replacement of defaced permit					✓	
375 Contravening conditions of work diary exemption	✓				✓	
376(2) Keeping relevant document while operating under work diary exemption (notice)					✓	
376(3) Keeping relevant document while operating under work diary exemption (notice)					✓	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
377 Keeping copy of permit while operating under work diary exemption (permit)					✓	
392(2) Return of permit					✓	
393(1) Replacement of defaced etc. permit					✓	
395 Contravening condition of fatigue record keeping exemption					✓	
396(2) Owner must maintain odometer	✓				✓	
397(2) Driver must report malfunctioning odometer					✓	
398(2) What owner must do if odometer malfunctioning	✓				✓	
399(2) What employer or operator must do if odometer malfunctioning	✓				✓	
Chapter 7: Intelligent access						
404(1) Offence to give false or misleading information to intelligent access service provider	✓				✓	
404(4) Offence to give false or misleading information to intelligent access service provider	✓				✓	
405(1) Advising vehicle driver of collection of information by intelligent access service provider					✓	
406(1) Reporting system malfunctions to the regulator	✓				✓	
406(2) Reporting system malfunctions to the regulator					✓	
407(1) Advising driver of driver's obligations about reporting system malfunctions					✓	
408(1) Reporting system malfunctions to the operator					✓	
408(2) Reporting system malfunctions to the operator					✓	
410(1) Collecting intelligent access information					✓	
410(2) Collecting intelligent access information					✓	
411(1) Keeping records of intelligent access information collected					✓	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
412 Protecting intelligent access information					✓
413(1) Making individuals aware of personal information held					✓
413(2) Making individuals aware of personal information held					✓
414(1) Giving individuals access to their personal information					✓
415(2) Correcting errors					✓
415(4) Correcting errors					✓
416 General restriction on use and disclosure of intelligent access information					✓
417 Giving intelligent access auditor access to records					✓
419(1) Keeping record of use or disclosure of intelligent access information					✓
419(3) Keeping record of use or disclosure of intelligent access information					✓
420(2) Keeping noncompliance report					✓
421(1) Destroying intelligent access information					✓
422(2) Reporting relevant contraventions to the regulator	✓				✓
423(1) Reporting tampering or suspected tampering with approved intelligent transport system to the regulator	✓				✓
423(2) Reporting tampering or suspected tampering with approved intelligent transport system to the regulator					✓
424(1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	✓				✓
424(3) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	✓				✓

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
424(4) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system					✓	
427(1) Collecting intelligent access information					✓	
427(2) Collecting intelligent access information					✓	
428 Protecting intelligent access information collected					✓	
429(1) Making individuals aware of personal information held					✓	
429(2) Making individuals aware of personal information held					✓	
430(1) Giving individuals access to their personal information					✓	
431(2) Correcting errors etc.					✓	
431(5) Correcting errors etc.					✓	
432 General restriction on use and disclosure of intelligent access information					✓	
434 Restriction about intelligent access information that may be used or disclosed					✓	
435(1) Keeping record of use or disclosure of intelligent access information					✓	
435(3) Keeping record of use or disclosure of intelligent access information					✓	
436 Keeping noncompliance reports					✓	
437(1) Destroying intelligent access information or removing personal information from it					✓	
438(1) Reporting tampering or suspected tampering with, or malfunction or suspected malfunction of, approved intelligent transport system to the regulator					✓	
439(1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system					✓	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
439(3) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system					✓	
441(1) Collecting intelligent access information					✓	
441(2) Collecting intelligent access information					✓	
442 Protecting intelligent access information collected					✓	
443(1) Making individuals aware of personal information held					✓	
444(1) Giving individuals access to their personal information					✓	
445(2) Correcting errors					✓	
445(4) Correcting errors					✓	
446 General restriction on use and disclosure of intelligent access information					✓	
448 Restriction about intelligent access information that may be used or disclosed					✓	
449(1) Keeping record of use or disclosure of intelligent access information					✓	
449(2) Keeping record of use or disclosure of intelligent access information					✓	
449(3) Keeping record of use or disclosure of intelligent access information					✓	
450(1) Destroying intelligent access information or removing personal information from it					✓	
451 Reporting contraventions by intelligent access service providers to Transport Certification Australia	✓				✓	
452 Reporting tampering or suspected tampering with approved intelligent transport system to the regulator or Transport Certification Australia	✓				✓	
453(1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	✓				✓	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
453(2) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	✓				✓
454(1) Offence to tamper with approved intelligent transport system	✓	✓		✓	✓
454(2) Offence to tamper with approved intelligent transport system	✓	✓		✓	✓
Chapter 8: Accreditation					
467 Compliance with conditions of BFM accreditation or AFM accreditation	✓	✓		✓	✓
468(1) Driver must carry accreditation details					✓
468(3) Driver must carry accreditation details					✓
469(2) Driver must return particular documents if stops operating under accreditation					✓
470(2) General requirements applying to operator with heavy vehicle accreditation	✓	✓		✓	✓
470(3) General requirements applying to operator with heavy vehicle accreditation	✓	✓		✓	✓
470(4) General requirements applying to operator with heavy vehicle accreditation	✓	✓		✓	✓
470(5) General requirements applying to operator with heavy vehicle accreditation	✓				✓
470(6) General requirements applying to operator with heavy vehicle accreditation	✓				✓
470(8) General requirements applying to operator with heavy vehicle accreditation					✓
471(2) Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation	✓				✓
471(3) Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation					✓
476(2) Return of accreditation certificate	✓				✓
477(1) Replacement of defaced etc. accreditation certificate					✓

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
478(1) Offences relating to auditors					✓	
478(2) Offences relating to auditors					✓	
478(3) Offences relating to auditors					✓	
478(4) Offences relating to auditors					✓	
Chapter 9: Enforcement						
488 Return of identity card					✓	
513(4) Direction to stop heavy vehicle to enable exercise of other powers					✓	
514(3) Direction not to move or interfere with a heavy vehicle to enable exercise of other power					✓	
516(3) Direction to move heavy vehicle to enable exercise of other powers					✓	
517(4) Direction to move heavy vehicle if causing harm					✓	
522(5) Power to order presentation of heavy vehicles for inspection					✓	
524(5) Direction to leave heavy vehicle					✓	
526(4) Issue of vehicle defect notice					✓	
528(3) Defective vehicle labels					✓	
529 Using defective heavy vehicles contrary to defect vehicle notice	✓				✓	
531(4) Amendment or withdrawal of vehicle defect notices					✓	
533(7) Powers for minor risk breach of mass, dimension or loading requirement					✓	
534(5) Powers for substantial risk breach of mass, dimension or loading requirement					✓	
535(5) Powers for severe risk breach of mass, dimension or loading requirement					✓	
542(1) Compliance with requirement under this division					✓	



All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
553(3) Requirement of person in control of thing to be seized					✓
558(1) Noncompliance with embargo notice	✓				✓
558(3) Noncompliance with embargo notice	✓				✓
559(3) Power to secure embargoed thing	✓				✓
559(4) Power to secure embargoed thing	✓				✓
559(5) Power to secure embargoed thing	✓				✓
567(4) Power to require name and address					✓
568(3) Power to require production of document etc. required to be in driver's possession					✓
568(7) Power to require production of document etc. required to be in driver's possession					✓
569(2) Power to require production of documents etc. generally					✓
569(7) Power to require production of documents generally					✓
570(3) Power to require information about heavy vehicles					✓
573(1) Contravention of improvement notice	✓				✓
577(4) Power to require reasonable help					✓
584(1) Obstructing authorised officer					✓
585 Impersonating authorised officer					✓
<b>Chapter 10: Sanctions and provisions about liability for offences</b>					
604 Contravention of supervisory intervention order	✓	✓		✓	✓
610 Contravention of prohibition order	✓	✓		✓	✓
636(1) Liability of executive officers of corporation					✓
636(2) Liability of executive officers of corporation					✓

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms			
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>	
637(4) Treatment of unincorporated partnerships					✓	
637(5) Treatment of unincorporated partnerships					✓	
638(4) Treatment of other unincorporated bodies					✓	
638(5) Treatment of other unincorporated bodies					✓	
Chapter 12: Administration						
697(3) General duties of persons exercising functions under this law					✓	
Chapter 13: General						
699(1) Discrimination against or victimisation of employees	✓				✓	
699(2) Discrimination against or victimisation of employees	✓				✓	
700(4) Order for damages or reinstatement	✓				✓	
701(1) False or misleading statements					✓	
701(2) False or misleading statements					✓	
702(1) False or misleading documents					✓	
702(3) False or misleading documents					✓	
703(1) False or misleading information given by responsible person to another responsible person					✓	
703(2) False or misleading information given by responsible person to another responsible person					✓	
704(1) Offence to falsely represent that heavy vehicle authority is held – a person must not represent					✓	
704(2) Offence to falsely represent that heavy vehicle authority is held					✓	

All offences in the Heavy Vehicle National Law (HVNL)	The HVNL now	Phase 1 reforms	Phase 2 reforms		
		Option 1 <sup>#</sup>	Option 2 <sup>#</sup>	Option 3 <sup>#</sup>	Option 4 <sup>#</sup>
704(3) Offence to falsely represent that heavy vehicle authority is held					✓
728(1) Duty of confidentiality	✓				✓
728A(1) Duty of confidentiality for electronic work diary protected information					✓
729(1) Protected information only to be used for authorised use	✓				✓
729(3) Protected information only to be used for authorised use	✓				✓
729A(1) Electronic work diary protected information only to be used for electronic work diary authorised use					✓
729A(2) Electronic work diary protected information only to be used for electronic work diary authorised use					✓

## Appendix C: Comparison of option 4 with RSNL and Model WHS Act

The following table lists:

- The offences of the HVNL, as they currently stand today, that will be captured by option 4 as proposed by the *Extension of Executive Officer Due Diligence Obligation Regulatory Impact Statement* (noting many of these provisions will be repealed and covered by the primary duty)
- the offences that are currently captured by the due diligence obligations under the Model WHS Act and RSNL.

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	<b>Option 4:</b> In addition to option 1, the positive due diligence obligation is extended to include the executive officers of any person with a duty or obligation under the HVNL. This would cover all aspects of the HVNL, including the non-CoR offences that executive officers currently have liability for under s 636(2) and column 3 of Schedule 4. This includes repealing s 636(2) of the HVNL.	<b>55—Duty of officers to exercise due diligence</b> (1) If a person has a duty or obligation under this Law, an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation.  (2) An officer of a person referred to in subsection (1) may be convicted or found guilty of an offence under this Law relating to a duty under this section whether or not the person has been convicted or found guilty of an offence under this Law relating to the duty or obligation.	<b>27 Duty of officers</b> (1) If a person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.
Category	Section number and provision	Section number and provision	Section number and provision
	Heavy Vehicle National Law (Queensland)	Rail Safety National Law (South Australia) Bill 2012	Model Work Health and Safety Bill
<b>Requirements related to safety and public amenity on persons</b>	30(1) Registration requirement – a person must not use, or permit to be used, on a road 60(1)(a) Compliance with heavy vehicle standards 60(1)(b) Compliance with heavy vehicle standards	52—Duties of rail transport operators 53—Duties of designers, manufacturers, suppliers etc 54—Duties of persons loading or unloading freight	19 Primary duty of care 20 Duty of persons conducting businesses or undertakings involving management or control of workplaces

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
<b>and other off-road parties</b>	<p>81(1) Contravening condition of vehicle standards exemption</p> <p>81(2) Contravening condition of vehicle standards exemption</p> <p>81(3) Contravening condition of vehicle standards</p> <p>87A Person must not tamper with modification plate or label</p> <p>89(1) Safety requirement</p> <p>90(1) Requirement about properly operating emission control system</p> <p>90(2) Requirement about properly operating emission control system</p> <p>90(3) Requirement about properly operating emission control system</p> <p>91(1) Person must not tamper with emission control system fitted to heavy vehicle</p> <p>91(2) Person must not tamper with emission control system fitted to heavy vehicle</p> <p>93(1) Person must not tamper with speed limiter fitted to heavy vehicle</p> <p>93(2) Person must not tamper with speed limiter fitted to heavy vehicle</p> <p>93(3) Person must not tamper with speed limiter fitted to heavy vehicle</p> <p>185(1) Requirements about coupling trailers</p> <p>185(2) Requirements about coupling trailers</p> <p>204(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit</p> <p>205 Duty of employer not to cause driver to drive if particular requirements not complied with</p> <p>206(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with</p> <p>207(1) Duty to ensure driver's schedule will not cause driver to exceed speed limit</p> <p>208(1) Duty not to cause driver to drive if particular requirements not complied with</p> <p>209(1) Duty to ensure loading arrangements will not cause driver to exceed speed limit</p>	<p>62—Accreditation required for railway operations</p> <p>78—Penalty for breach of condition or restriction</p> <p>83—Requirement for managers of certain private sidings to be registered</p> <p>98—Offences relating to registration</p> <p>99—Safety management system</p> <p>101—Compliance with safety management system</p> <p>102—Review of safety management system</p> <p>103—Safety performance reports</p> <p>104—Regulator may direct amendment of safety management system</p> <p>106—Interface coordination—rail transport operators</p> <p>107—Interface coordination—rail infrastructure and public roads</p> <p>108—Interface coordination—rail infrastructure and private roads</p> <p>112—Security management plan</p> <p>113—Emergency management plan</p> <p>114—Health and fitness management program</p> <p>115—Drug and alcohol management program</p> <p>116—Fatigue risk management program</p> <p>117—Assessment of competence</p> <p>119—Other persons to comply with safety management system</p> <p>128—Offence relating to prescribed concentration of alcohol or prescribed drug</p> <p>203—Ministerial exemptions</p> <p>214—Penalty for breach of condition or restriction</p> <p>227—Not to interfere with train, tram etc</p> <p>228—Applying brake or emergency device</p> <p>229—Stopping a train or tram</p>	<p>21 Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces</p> <p>22 Duties of persons conducting businesses or undertakings that design plant, substances or structures</p> <p>23 Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures</p> <p>24 Duties of persons conducting businesses or undertakings that import plant, substances or structures</p> <p>25 Duties of persons conducting businesses or undertakings that supply plant, substances or structures</p> <p>26 Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures</p> <p>29 Duties of other persons at the workplace</p> <p><b>Model Work Health and Safety Regulations</b></p> <p>39 Provision of information, training and instruction</p> <p>40 Duty in relation to general workplace facilities</p> <p>41 Duty to provide and maintain adequate and accessible facilities</p> <p>42 Duty to provide first aid</p> <p>43 Duty to prepare, maintain and implement emergency plan</p> <p>44 Provision to workers and use of personal protective equipment</p> <p>45 Personal protective equipment used by other persons</p> <p>48 Remote or isolated work</p> <p>49 Ensuring exposure standards for substances and mixtures not exceeded</p> <p>50 Monitoring airborne contaminant levels</p>

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	<p>212(1) Duty to ensure terms of consignment will not cause driver to exceed speed limit</p> <p>212(2) Duty to ensure terms of consignment will not cause driver to exceed speed limit</p> <p>213 Duty not to make a demand that may result in driver exceeding the speed limit</p> <p>215 Particular requests etc. prohibited</p> <p>216(1) Particular contracts etc. prohibited</p> <p>216(2) Particular contracts etc. prohibited</p> <p>219(1) Liability of employer etc. for speeding offence</p> <p>229(1) Duty of party in the chain of responsibility to prevent driver driving while fatigued</p> <p>230(1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued</p> <p>231 Duty of employer not to cause driver to drive if particular requirements not complied with</p> <p>232(2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with</p> <p>233(1) Duty to ensure driver's schedule will not cause driver to drive while fatigued</p> <p>234(1) Duty not to cause driver to drive if particular requirements not complied with</p> <p>235(1) Duty to ensure terms of consignment will not cause driver to drive while fatigued</p> <p>235(2) Duty to ensure terms of consignment will not cause driver to drive while fatigued</p> <p>236(1) Duty not to cause driver to drive if particular requirements not complied with</p> <p>237(1) Duty not to make a demand that may result in driver driving while fatigued</p> <p>238(1) Duty to ensure loading arrangements will not cause driver to drive while fatigued</p> <p>239(2) Duty to ensure drivers can rest in particular circumstances</p> <p>240 Particular requests prohibited</p> <p>241(1) Particular contracts prohibited</p>		<p>51 Managing risks to health and safety</p> <p>52 Ignition sources</p> <p>53 Flammable and combustible material not to be accumulated</p> <p>54 Management of risk of falling objects</p> <p>55 Minimising risk associated with falling objects</p> <p>58 Audiometric testing</p> <p>60 Managing risks to health and safety</p> <p>76 Information, training and instruction for workers</p> <p>77 Confined space entry permit and risk assessment must be kept</p> <p>78 Management of risk of fall</p> <p>150 Inspection and testing of electrical equipment</p> <p>151 Untested electrical equipment not to be used</p> <p>154 Electrical work on energised electrical equipment – prohibited</p> <p>155 Duty to determine whether equipment is energised</p> <p>156 De-energised equipment must not be inadvertently re-energised</p> <p>157 Electrical work on energised electrical equipment – when permitted</p> <p>158 Preliminary steps</p> <p>159 Unauthorised access to equipment being worked on</p> <p>160 Contact with equipment being worked on</p> <p>161 How the work is to be carried out</p> <p>163 Duty of person conducting business or undertaking – electrical equipment and installations and construction work</p> <p>164 Use of socket outlets in hostile operating environment</p> <p>166 Duty of person conducting a business or</p>

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	<p>241(2) Particular contracts prohibited</p> <p>261(2) Liability of employer etc. for driver's contravention of maximum work requirement or minimum rest requirement</p> <p>264(2) Duty of employer, prime contractor, operator and scheduler to ensure driver compliance</p> <p>396(2) Owner must maintain odometer</p> <p>398(2) What owner must do if odometer malfunctioning</p> <p>399(2) What employer or operator must do if odometer malfunctioning</p> <p>467 Compliance with conditions of BFM accreditation or AFM accreditation</p> <p>470(2) General requirements applying to operator with heavy vehicle accreditation</p> <p>470(3) General requirements applying to operator with heavy vehicle accreditation</p> <p>470(4) General requirements applying to operator with heavy vehicle accreditation</p> <p>529 Using defective heavy vehicles contrary to defect vehicle notice</p>		<p>undertaking – overhead and underground electric lines</p> <p>168 Person conducting business or undertaking must ensure fitness of workers</p> <p>174 Competence of competent person supervising general diving work</p> <p>175 Evidence of competence – duty of person conducting business or undertaking</p> <p>176 Management of risks to health and safety</p> <p>177 Appointment of competent person to supervise diving work</p> <p>178 Additional control – dive plan</p> <p>179 Dive plan must be complied with</p> <p>183 Duties of person conducting business or undertaking</p> <p>189 Guarding</p> <p>317 Duty to ensure worker has been trained – construction work</p> <p>405 Duty to provide health monitoring before first commencing lead risk work</p> <p>416 Duty to ensure medical examination if worker removed from lead risk work</p> <p>417 Return to lead risk work after removal</p> <p>458 Duty to ensure asbestos removalist is licensed</p> <p>482 Air monitoring</p>
<b>Requirements related to infrastructure protection on persons and other off-road parties</b>	<p>129(1) Contravening condition of mass or dimension exemption generally</p> <p>129(2) Contravening condition of mass or dimension exemption generally</p> <p>129(3) Contravening condition of mass or dimension exemption generally</p> <p>137 Using class 2 heavy vehicle</p> <p>150(1) Contravening condition of class 2 heavy vehicle authorisation</p>		

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	<p>153A Using restricted access vehicle</p> <p>183(2) Liability of employer etc. for driver's contravention of mass, dimension or loading requirement</p> <p>193(2) Weight of freight container exceeding weight stated on container or safety approval plate</p> <p>194(1) Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement</p> <p><b>MDL Regulation</b></p> <p>16(2) Contravening conditions applying to HML vehicles being used in an area or on a route declared by an HML declaration</p> <p>28 Contravening conditions of HML permit</p> <p>85(1) Modifying heavy vehicle requires approval</p> <p>85(2) Modifying heavy vehicle requires approval</p> <p>86(2) Approval of modifications by approved vehicle examiners</p>		
<b>Requirements on drivers and workers</b>	<p>96(1) Compliance with mass requirements</p> <p>102(1)(a) Compliance with dimension requirements</p> <p>102(1)(b) Compliance with dimension requirements</p> <p>111(1) Compliance with loading requirements</p> <p>130(2) Contravening condition of mass or dimension exemption relating to pilot or escort vehicle</p> <p>130(3) Contravening condition of mass or dimension exemption relating to pilot or escort vehicle</p> <p>131(1) Using pilot vehicle with a heavy vehicle that contravenes mass or dimension exemption</p> <p>184(1) Towing restriction</p> <p>192(1) Duty of driver</p> <p>192(2) Duty of driver</p> <p>228 Duty of driver to avoid driving while fatigued</p> <p>250(1) Operating under standard hours—solo drivers</p> <p>251(1) Operating under standard hours—two-up drivers</p>		



	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	<p>254(1) Operating under BFM hours—solo drivers  256(1) Operating under BFM hours—two-up drivers  258(1) Operating under AFM hours  260(1) Operating under exemption hours  263(1) Operating under new work and rest hours option after change  286(1) Contravening condition of work and rest hours exemption  397(2) Driver must report malfunctioning odometer</p> <p><b>MDL Regulation</b>  11(1) Identification requirement for CML heavy vehicle used under concessional mass limits  36(2) Identification requirement for HML heavy vehicle used under higher mass limits</p>		
<b>Discrimination and victimisation</b>	<p>699(1) Discrimination against or victimisation of employees  699(2) Discrimination against or victimisation of employees  700(4) Order for damages or reinstatement</p>	225—Dismissal or other victimisation of employee	
<b>Keeping, replacing, returning etc. documents</b>	<p>39(2) Driver to carry proof of compliance with third-party insurance legislation  51(3) Replacement and recovery of incorrect registration items  52(4) Verification of particular records  79(2) Return of permit  80(1) Replacement of defaced permit  82(2) Keeping relevant document while driving under vehicle standards exemption (notice)  82(3) Keeping relevant document while driving under vehicle standards exemption (notice)  83(1) Keeping copy of permit while driving under vehicle standards exemption (permit)  83(2) Keeping copy of permit while driving under vehicle standards exemption (permit)</p>	81—Keeping and making available records for public inspection	

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	83(3) Keeping copy of permit while driving under vehicle standards exemption (permit) 132(2) Keeping relevant document while driving under mass or dimension exemption (notice) 132(3) Keeping relevant document while driving under mass or dimension exemption (notice) 133(1) Keeping copy of permit while driving under mass or dimension exemption (permit) 133(2) Keeping copy of permit while driving under mass or dimension exemption (permit) 133(3) Keeping copy of permit while driving under mass or dimension exemption (permit) 151(2) Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice) 151(3) Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice) 152(1) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit) 152(2) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit) 152(3) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit) 153(1) Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation 153(2) Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation 181(3) Return of permit 182(1) Replacement of defaced etc. permit 190(1) Duty of responsible entity 191(1) Duty of operator 191(3) Duty of operator 284(2) Return of permit 285(1) Replacement of defaced permit 287(2) Keeping relevant document while operating under work and rest hours exemption (notice)		

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	<p>287(3) Keeping relevant document while operating under work and rest hours exemption (notice)</p> <p>288(1) Keeping copy of permit while driving under work and rest hours exemption (permit)</p> <p>288(2) Keeping copy of permit while driving under work and rest hours exemption (permit)</p> <p>288(3) Keeping copy of permit while driving under work and rest hours</p> <p>373(2) Return of permit</p> <p>374(1) Replacement of defaced permit</p> <p>376(2) Keeping relevant document while operating under work diary exemption (notice)</p> <p>376(3) Keeping relevant document while operating under work diary exemption (notice)</p> <p>377 Keeping copy of permit while operating under work diary exemption (permit)</p> <p>392(2) Return of permit</p> <p>393(1) Replacement of defaced etc. permit</p> <p>468(1) Driver must carry accreditation details</p> <p>468(3) Driver must carry accreditation details</p> <p>469(2) Driver must return particular documents if stops operating under accreditation</p> <p>470(5) General requirements applying to operator with heavy vehicle accreditation</p> <p>470(6) General requirements applying to operator with heavy vehicle accreditation</p> <p>470(8) General requirements applying to operator with heavy vehicle accreditation</p> <p>471(2) Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation</p> <p>471(3) Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation</p> <p>476(2) Return of accreditation certificate</p> <p>477(1) Replacement of defaced etc. accreditation certificate</p>		

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	526(4) Issue of vehicle defect notice 531(4) Amendment or withdrawal of vehicle defect notices  <b>MDL Regulation</b> 34(2) Return of HML permit (MDL Regulation) 35(1) Replacement of defaced etc. HML permit (MDL Regulation)		
<b>Display, notification of information</b>	92(2) Display of warning signs on heavy vehicles if not required by heavy vehicle standards 109(2) Warning signals required for rear projection of loads 134(1) Displaying warning signs on vehicles if not required by dimension exemption 134(2) Displaying warning signs on vehicles if not required by dimension exemption	66—Regulator may direct applicants to coordinate applications 118—Identification of rail safety workers 131—Disclosure of train safety recordings  <b>Rail Safety National Law National Regulations 2012</b> 22—Establishing and amending network rules	47 Duty to consult workers 53 Notice to workers 56 Negotiation of agreement for work groups of multiple businesses 57 Notice to workers 70 General obligations of person conducting business or undertaking 71 Exceptions from obligations under section 70(1) 72 Obligation to train health and safety representatives 74 List of health and safety representatives 75 Health and safety committees 79 Duties of person conducting business or undertaking 80 Parties to an issue 210 Display of notice 273 Person not to levy workers  <b>Model Work Health and Safety Regulations</b> 19 Person conducting business or undertaking must not delay election 22 Agreed procedure – minimum requirements 170 Duty to keep certificate of medical fitness 180 Additional control – dive safety log to be kept 181 Use of dive safety log

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
			182 Record keeping 187 Provision of information to manufacturer 188 Hazard identified in design during manufacture
<b>False and misleading provisions</b>	50(1) Obtaining registration or registration items by false statements 50(2) Obtaining registration or registration items by false statements 186(2) False or misleading transport documentation for goods 186(3) False or misleading transport documentation for goods 186(4) False or misleading transport documentation for goods 186(5) False or misleading transport documentation for goods 187(2) False or misleading information in container weight declaration 187(3) False or misleading information in container weight declaration 325(1) False or misleading entries 328 False representation about work records prohibited 404(1) Offence to give false or misleading information to intelligent access service provider 404(4) Offence to give false or misleading information to intelligent access service provider 701(1) False or misleading statements 701(2) False or misleading statements 702(1) False or misleading documents 702(3) False or misleading documents 703(1) False or misleading information given by responsible person to another responsible person 703(2) False or misleading information given by responsible person to another responsible person 704(1) Offence to falsely represent that heavy vehicle authority is held 704(2) Offence to falsely represent that heavy vehicle authority is	226—Offence to give false or misleading information	268 Offence to give false or misleading information

	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	held 704(3) Offence to falsely represent that heavy vehicle authority is held		
<b>Officer directions</b>	513(4) Direction to stop heavy vehicle to enable exercise of other powers 514(3) Direction not to move or interfere with a heavy vehicle to enable exercise of other power 516(3) Direction to move heavy vehicle to enable exercise of other powers 517(4) Direction to move heavy vehicle if causing harm 522(5) Power to order presentation of heavy vehicles for inspection 524(5) Direction to leave heavy vehicle 528(3) Defective vehicle labels 533(7) Powers for minor risk breach of mass, dimension or loading requirement 534(5) Powers for substantial risk breach of mass, dimension or loading requirement 535(5) Powers for severe risk breach of mass, dimension or loading requirement 542(1) Compliance with requirement under this Division 553(3) Requirement of person in control of thing to be seized 558(1) Noncompliance with embargo notice 558(3) Noncompliance with embargo notice 559(3) Power to secure embargoed thing 559(4) Power to secure embargoed thing 559(5) Power to secure embargoed thing 567(4) Power to require name and address 568(3) Power to require production of document etc. required to be in driver's possession 568(7) Power to require production of document etc. required to be in driver's possession 569(2) Power to require production of documents etc. generally	20—Power of Regulator to obtain information 110—Regulator may give directions 120—Power of Regulator to obtain information from rail transport operators 121—Notification of certain occurrences 122—Investigation of notifiable occurrences 126—Authorised person may require preliminary breath test or breath analysis 127—Authorised person may require drug screening test, oral fluid analysis and blood test 149—Securing a site 154—Power to require production of documents and answers to questions 159—Directions relating to seizure 160—Rail safety officer may direct a thing's return 168—Power to require name and address 198—Response to certain reports 199—Power to require works to stop	118 Rights that may be exercised while at workplace 155 Powers of regulator to obtain information 165 General powers on entry 171 Power to require production of documents and answers to questions 177 Powers supporting seizure 185 Power to require name and address 242 Offence to fail to comply with order

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	569(7) Power to require production of documents generally 570(3) Power to require information about heavy vehicles 577(4) Power to require reasonable help		
<b>Compliance with sanctions and court orders</b>	573(1) Contravention of improvement notice 604 Contravention of supervisory intervention order 610 Contravention of prohibition order	177—Compliance with improvement notice 181—Compliance with prohibition notice 184—Compliance with non-disturbance notice 231—Supervisory intervention order 232—Exclusion orders 254—Compliance with rail safety undertaking 255—Contravention of rail safety undertaking	193 Compliance with improvement notice 197 Compliance with prohibition notice 200 Compliance with non-disturbance notice 219 Compliance with WHS undertaking
<b>Frustration of enforcement</b>	293(1) Driver of fatigue-regulated heavy vehicle must carry work diary 326(1) Keeping two work diaries simultaneously prohibited 326(2) Keeping two work diaries simultaneously prohibited 327 Possession of purported work records etc. prohibited 329 Defacing or changing work records etc. prohibited 330 Making entries in someone else's work records prohibited 331 Destruction of particular work records prohibited 332 Offence to remove pages from written work diary 335(1) Person must not tamper with approved electronic recording system 336(1) Person using approved electronic recording system must not permit tampering with it 336A Reporting tampering or suspected tampering with electronic work diary 337(2) Intelligent access reporting entity must not permit tampering with approved electronic recording system 350(1) Prohibition on using device as electronic work diary if it is not, and is not a part of, an approved electronic recording system 350(2) Prohibition on using device as electronic work diary if it is	172—Offence to hinder or obstruct rail safety officer 173—Offence to impersonate rail safety officer 174—Offence to assault, threaten or intimidate rail safety officer	188 Offence to hinder or obstruct inspector 189 Offence to impersonate inspector 190 Offence to assault, threaten or intimidate inspector

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	not, and is not a part of, an approved electronic recording system 478(1) Offences relating to auditors 478(2) Offences relating to auditors 478(3) Offences relating to auditors 478(4) Offences relating to auditors 584(1) Obstructing authorised officer 585 Impersonating authorised officer		
<b>Record keeping requirements</b>	296(1) Recording information under the national regulations 297(2) Information required to be recorded immediately after starting work 298(1) Defence for failing to record information about odometer reading 299 Two-up driver to provide details 301 Recording information in written work diary 302 Recording information in electronic work diary 303 Time zone of driver's base must be used 305(1) Driver must make supplementary records in particular circumstances 305(2) Driver must make supplementary records in particular circumstances 305(3) Driver must make supplementary records in particular circumstances 306 Driver must notify Regulator if written work diary filled up 307(2) Driver must notify Regulator if electronic work diary filled up etc. 307(3) Driver must notify Regulator if electronic work diary filled up etc. 308(1) What driver must do if lost or stolen written work diary found or returned 309(2) Driver must notify record keeper if electronic work diary filled up 311(2) What record keeper must do if electronic work diary filled up	111—Register of interface agreements	162 Record keeping – electrical work risk assessment 170 Duty to keep certificate of medical fitness 180 Additional control – dive safety log to be kept 182 Record keeping



	Heavy Vehicle National Law – today	Rail Safety National Law	Model Work Health and Safety
	<p>312(2) What record keeper must do if electronic work diary destroyed, lost or stolen</p> <p>312(3) What record keeper must do if electronic work diary destroyed, lost or stolen</p> <p>313(2) What record keeper must do if electronic work diary not in working order or malfunctioning</p> <p>313(3) What record keeper must do if electronic work diary not in working order or malfunctioning</p> <p>314(2) How electronic work diary must be used</p> <p>314(3) How electronic work diary must be used</p> <p>315(2) Liability of employer etc. for driver's contravention of particular requirements of this Division</p> <p>319(1) Records record keeper must have</p> <p>321(1) Records record keeper must have</p> <p>321(2) Records record keeper must have</p> <p>322(2) General requirements about driver giving information to record keeper</p> <p>322(4) General requirements about driver giving information to record keeper</p> <p>323(2) Requirements about driver giving information to record keeper if driver changes record keeper</p> <p>323(3) Requirements about driver giving information to record keeper if driver changes record keeper</p> <p>324(2) Record keeper must give printouts of information from electronic work diary</p> <p>324A Record keeper must give record to driver if requested</p> <p>341(1) Period for which, and way in which, records must be kept</p> <p>341(2) Period for which, and way in which, records must be kept</p> <p>341(3) Period for which, and way in which, records must be kept</p> <p>341(4) Period for which, and way in which, records must be kept</p> <p>341(5) Period for which, and way in which, records must be kept</p> <p>341(7) Period for which, and way in which, records must be kept</p> <p>347 Prohibition on using electronic work diary if it is not, and is not a part of, an approved electronic recording system</p>		

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	354(3) Requirements if approval amended 354(5) Requirements if approval amended 355(2) Requirements if approval cancelled 355(4) Requirements if approval cancelled 355(6) Requirements if approval cancelled 355(8) Requirements if approval cancelled 375 Contravening conditions of work diary exemption 395 Contravening condition of fatigue record keeping exemption		
<b>Intelligent access program requirements</b>	310(2) Intelligent access reporting entity must notify record keeper if approved electronic recording system malfunctioning 405(1) Advising vehicle driver of collection of information by intelligent access service provider 406(1) Reporting system malfunctions to Regulator 406(2) Reporting system malfunctions to Regulator 407(1) Advising driver of driver's obligations about reporting system malfunctions 408(1) Reporting system malfunctions to operator 408(2) Reporting system malfunctions to operator 410(1) Collecting intelligent access information 410(2) Collecting intelligent access information 411(1) Keeping records of intelligent access information collected 412 Protecting intelligent access information 413(1) Making individuals aware of personal information held 413(2) Making individuals aware of personal information held 414(1) Giving individuals access to their personal information 415(2) Correcting errors 415(4) Correcting errors 416 General restriction on use and disclosure of intelligent access information 417 Giving intelligent access auditor access to records 419(1) Keeping record of use or disclosure of intelligent access		

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	<p>information</p> <p>419(3) Keeping record of use or disclosure of intelligent access information</p> <p>420(2) Keeping noncompliance report</p> <p>421(1) Destroying intelligent access information</p> <p>422(2) Reporting relevant contraventions to Regulator</p> <p>423(1) Reporting tampering or suspected tampering with approved intelligent transport system to Regulator</p> <p>423(2) Reporting tampering or suspected tampering with approved intelligent transport system to Regulator</p> <p>424(1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system</p> <p>424(3) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system</p> <p>424(4) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system</p> <p>427(1) Collecting intelligent access information</p> <p>427(2) Collecting intelligent access information</p> <p>428 Protecting intelligent access information collected</p> <p>429(1) Making individuals aware of personal information held</p> <p>429(2) Making individuals aware of personal information held</p> <p>430(1) Giving individuals access to their personal information</p> <p>431(2) Correcting errors etc.</p> <p>431(5) Correcting errors etc.</p> <p>432 General restriction on use and disclosure of intelligent access information</p> <p>434 Restriction about intelligent access information that may be used or disclosed</p> <p>435(1) Keeping record of use or disclosure of intelligent access information</p> <p>435(3) Keeping record of use or disclosure of intelligent access information</p> <p>436 Keeping noncompliance reports</p> <p>437(1) Destroying intelligent access information or removing</p>		

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	<p>personal information from it</p> <p>438(1) Reporting tampering or suspected tampering with, or malfunction or suspected malfunction of, approved intelligent transport system to Regulator</p> <p>439(1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system</p> <p>439(3) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system</p> <p>441(1) Collecting intelligent access information</p> <p>441(2) Collecting intelligent access information</p> <p>442 Protecting intelligent access information collected</p> <p>443(1) Making individuals aware of personal information held</p> <p>444(1) Giving individuals access to their personal information</p> <p>445(2) Correcting errors</p> <p>445(4) Correcting errors</p> <p>446 General restriction on use and disclosure of intelligent access information</p> <p>448 Restriction about intelligent access information that may be used or disclosed</p> <p>449(1) Keeping record of use or disclosure of intelligent access Information</p> <p>449(2) Keeping record of use or disclosure of intelligent access Information</p> <p>449(3) Keeping record of use or disclosure of intelligent access Information</p> <p>450(1) Destroying intelligent access information or removing personal information from it</p> <p>451 Reporting contraventions by intelligent access service providers to TCA</p> <p>452 Reporting tampering or suspected tampering with approved intelligent transport system to Regulator or TCA</p> <p>453(1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system</p> <p>453(2) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system</p>		

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	454(1) Offence to tamper with approved intelligent transport system 454(2) Offence to tamper with approved intelligent transport system		

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