



National Transport Reform Implementation Monitoring Report

Report to the Transport and Infrastructure Council

2017



National Transport Commission

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Abbreviations

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

Executive summary

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

Each year the NTC provides a progress report to the Council on the implementation status of nationally agreed reforms. The 2017 *National Transport Reform Implementation Monitoring Report* is the fifth report delivered. The reporting period is from 1 July 2016 to 30 June 2017. Any implementation progress after 30 June 2017 will be included in the 2018 monitoring report.

Key points of this report

Heavy vehicle regulatory reform

The heavy vehicle regulatory reform established a national regulatory system for all heavy vehicles, consisting of uniform laws administered by a single regulator. The Heavy Vehicle National Law (HVNL) commenced in 2014 and the National Heavy Vehicle Regulator (NHVR) fully commenced operations at that time. All but one milestone of the original reform are complete. This final milestone is due on 1 July 2018 when the NHVR plans to have a register of heavy vehicles available for use.

A 5th amendment package was approved by the Queensland parliament in December 2016 and is anticipated to be fully commenced in mid-2018. Ministers approved a 6th amendment package in May 2017. All previous amendments packages have been implemented by participating jurisdictions.

Western Australia is not implementing the HVNL but is developing mirror legislation. The Northern Territory has indicated that they will not commence the HVNL until the benefits to local industry are clearly demonstrated. The Northern Territory is working with the NHVR and jurisdictions to ensure a seamless approach for heavy vehicle operators crossing borders and that the best interests of the Northern Territory are strongly advocated.

These WA and NT differences have significant impacts on industry that operate between WA/NT and the others states.

The NTC will work with WA and NT to understand the barriers to adoption of the national reform.

Heavy vehicle charges

Heavy vehicle charges are a combination of a fixed annual registration and fuel-based road user charges that ensures expenditure on roads allocated to heavy vehicles is recovered by governments. Charges agreed in November 2016 are planned to be implemented on 1 July 2017.

Rail safety regulation and investigation reform

The rail safety regulation and investigation reform has established a national system of rail safety regulation and investigation that includes uniform regulation and a single national rail safety regulator, complemented by a national rail safety investigator. All states and territories have passed enabling legislation for the application of the Rail Safety National Law (RSNL).

Mirror legislation is applied in Western Australia (WA) with the WA Parliament required to pass any amendments. This approach means amendments to the Rail Safety National Law will be routinely delayed, currently waiting for up to two years to apply in WA. This delay results in the ONRSR and industry working under different legislation in WA to the rest of Australia.

The ONRSR continues to operate under a Service Level Agreement in Victoria with light rail and some Victorian tourist and heritage operators excluded from the RSNL.

Progress has been made from last year. Queensland is scheduled to implement the reform on 1 July 2017.

In addition, the 1st and 2nd RSNL amendment packages have been implemented in seven jurisdictions. Ministers approved a 3rd amendment package for the RSNL and Rail Safety National Regulations in November 2016. This amendment Act has been passed by the South Australian parliament and will commence on 1 July 2017.

Australian Road Rules

The Australian Road Rules (the road rules) contain the rules of the road for motorists, motorcyclists, cyclists, pedestrians, passengers and others.

Most jurisdictions have implemented the 9th and 10th amendment packages. The 11th Australian Road Rules amendment package was approved by Ministers in November 2015 and implementation is underway.

Australian Light Vehicle Standards Rules

In November 2015 the Council approved reforms to the Australian Light Vehicle Standards Rules. Heavy Vehicles Standards Rules are now included in the HVNL, and the Australian Light Vehicle Standards Rules, approved by Council in May 2016, will apply to light vehicles in the future.

The HVNL has incorporated the provisions of the vehicle standards that apply to heavy vehicles.

A 2017 amendment package for the Australian Light Vehicle Standards Rules was approved by Ministers in May 2017, and is scheduled for adoption by 1 July 2018.

While most jurisdictions are progressing implementation, there are inconsistencies in the adoption of amendment packages. However, the nature of the proposed amendments means the impact of different implementation dates should be minor.

Strategic Review of Australian Road Rules and Australian Vehicle Standards Rules

Recommendations from the Review of the Australian Road Rules and Australian Vehicle Standards Rules were approved by the Council in 2013. Four of the five recommendations were completed by the end of 2015. Only four of the eight states and territories have fully implemented the last recommendation.

Australian Dangerous Goods

The Australian Dangerous Goods Model Regulations and Code set out the requirements for transporting dangerous goods by road or rail. The Council approved amendments to the Transport of Dangerous Goods by Road and Rail regulations and version 7.5 of the Dangerous Goods Code

in November 2016. The amendments to the Dangerous Goods regulations are scheduled to be adopted and implemented by March 2018.

Strategic Review of Australian Dangerous Goods Code

In November 2013, ministers approved the Strategic Framework Review of the Regulation of Land Transport of Dangerous Goods which set out six recommendations and included a supporting implementation plan. Five of the six recommendations were completed by 2014-15. The last recommendation is for the NTC to amend the model laws to include a timeline for a competent authority to make a decision once it has received an application.

1 Introduction

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

Each year, the NTC provides a progress report to the Council on the implementation status of nationally approved transport reforms.

The 2012 review of the NTC specified the NTC should provide independent assessments of jurisdictions' implementation progress comments and to provide advice to the Council on:

- reasons for delays;
- barriers to implementation;
- what is required to bring the jurisdiction back on target; and
- an analysis of whether variations (or derogations) were implemented that would reduce the benefits of the particular reform.

The reporting period is from 1 July 2016 to 30 June 2017. Any implementation progress after 30 June 2017 will be reported in the 2018 monitoring report.

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

Purpose

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

This report improves transparency and enhances accountability, providing stakeholders with information to hold governments and their agencies to account for timely and consistent reform implementation. It also helps explain implementation issues, successes and departure from agreed recommendations, so that national solutions can be developed and applied in future reform initiatives.

Method

From June to August 2017, the Commonwealth, states and territories, the National Heavy Vehicle Regulator (NHVR), the Office of the National Rail Safety Regulator (ONRSR) and agencies regulating the transport of dangerous goods provided information and implementation progress updates to the NTC to inform this report.

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

Speeding up the regulatory reform process

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

Reforms and projects for monitoring

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

The *2012 Review of the NTC and other relevant transport bodies* recommended that all future reforms are developed with an implementation plan and agreed to by the Council. As such, monitoring reports will only include new and current reforms being implemented where there is an agreed implementation plan that contains specific actions, accountabilities and timeframes.

The Council approved five reforms during 2016-17 that are included for monitoring in this report:

- 3rd amendment package for the Rail Safety National Law and regulations.
- 6th amendment package for the Heavy Vehicle National Law.
- Revised heavy vehicle charges for 2017-18.
- 3rd amendment package for the Australian Light Vehicle Standards Rules.
- Amendment of the transport of dangerous goods laws and updating the Australian Code for the Transport of Dangerous Goods by Road and Rail.

Structure of the report

This report is divided into four areas:

- **Heavy vehicle reforms** – includes the heavy vehicle regulatory reform, which encompasses the Heavy Vehicle National Law (HVNL) and the establishment of the NHVR. This section also includes the heavy vehicle charging framework and a description of derogations.
- **Rail reforms** – monitors implementation of the rail safety regulation and investigation reform, which encompasses the Rail Safety National Law (RSNL), the National Rail Safety Regulator, as well as the expansion of the Australian Transport Safety Bureau's (ATSB) investigative arrangements. This section includes a description of derogations.
- **Maintenance of existing reforms** – monitors implementation of the Australian Road Rules, Australian Light Vehicle Standards Rules, Australian Heavy Vehicle Standards Rules, and Transport of Dangerous Goods Code by Road and Rail Code and model legislation. Additionally, this report includes monitoring of the implementation of the recommendations from the Strategic Review of the road rules and the vehicle standards.
- **Derogations** – assesses derogations to the Heavy Vehicle National Law and National Rail Safety Law (Attachments 1 and 2).

Indicator of implementation status

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

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

Reform implementation status indicators

Implementation status indicator	Status definition	Progress comments required
 Complete	All milestones are completed	Describe: <ul style="list-style-type: none"> when and how the final output was implemented if any local variations were implemented, describe the variation and how it impacts on the ability to realise the desired benefits of the national reform
 In progress	Significant progress has been made, and: <ul style="list-style-type: none"> milestones are not yet due, or no significant risks to the output have been identified, or some milestones have not been met, but the output is likely to be achieved within timeframes (or no more than six months beyond final milestone) 	Describe: <ul style="list-style-type: none"> progress made within the last 12 months expected time for completion reasons for any delays
 No progress/ progress stalled	No significant progress since the last reporting period, and <ul style="list-style-type: none"> key milestones have not been met (by more than six months), or the output (in full or in substantial part) is at risk of not being achieved without significant intervention 	Describe: <ul style="list-style-type: none"> reasons for any delays barriers to implementation recommended solutions to achieve implementation
n/a Not applicable	The jurisdiction is not responsible for implementing the reform	No comment required
 Not implementing	The jurisdiction has not agreed to implement the reform	Describe how non-participation will impact on the benefits of the national reform

Milestones that are completed for all parties will not be reported in future reports.

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

2 Heavy vehicle reforms

2.1 Heavy vehicle regulatory reform

Key points

- All but one milestone of the original reform are complete.
- This final milestone is due on 1 July 2018 when the heavy vehicle register is due to commence. In May 2017 Ministers agreed to the form of this heavy vehicle register.
- WA and NT have not implemented the reform.

About the reform

The heavy vehicle regulatory reform established a national regulatory system for all heavy vehicles weighing more than 4.5 tonnes, consisting of uniform laws administered by a single national regulator (Council of Australian Governments, 2011).

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

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

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

Implementation analysis

In line with the Intergovernmental Agreement on heavy vehicle regulatory reform, the Commonwealth has committed to repeal the Federal Interstate Registration Scheme once chapter 2 of the HVNL (national registration scheme) commences in all participating states and territories. The Council agreed to delay implementation of the national registration provisions until 1 July 2018. The NHVR will implement this register by 1 July 2018.

The Northern Territory has indicated that they will not commence the HVNL until the benefits to local industry are clearly demonstrated. The Northern Territory is working with the NHVR and jurisdictions to ensure a seamless approach for heavy vehicle operators crossing borders and that the best interests of the Northern Territory are strongly advocated.

All participating jurisdictions have implemented the Heavy Vehicle National Law. Over time this is expected to result in a high degree of national consistency in the application of the HVNL. However, there are some jurisdictional variations in the way that HVNL has been adopted. These derogations from the national law have the potential to affect the consistency with which the HVNL is applied nationally and to confuse or impose additional regulatory burden on any operator that operates inter-jurisdictionally. Analysis of derogations to the HVNL is in Attachment 1.

2.2 Amendments to Heavy Vehicle National Law

Key points

- The 5th Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016*, was passed by the Queensland Parliament (host jurisdiction) in December 2016.
- The 6th Heavy Vehicle National Law amendment package, the *Heavy Vehicle National Law Amendment Bill 2017* was approved by Ministers in May 2017 and is awaiting consideration by the Queensland Parliament.

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

In May 2017, the Council approved a 6th amendment package to the HVNL: the *Heavy Vehicle National Law Amendment Bill 2017*. Key items in the 6th amendment package include:

- twin-steer axle mass limit increases
- extending the positive due diligence requirements to include the non-chain of responsibility offences for which executive officers are currently liable
- revisions to the heavy vehicle national registration provisions and
- heavy vehicle standards.

Table 1. Implementation summary of Heavy Vehicle National Law amendments

Heavy Vehicle National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Draft bill and regulations for the HVNL 4 th Amendment package for inclusion in the <i>Heavy Vehicle National Law Amendment Act 2015 (Council approved May 2015)</i>	✓	✓	✓	✓	●	✓	●	✓
Draft legislative provisions for the 4 th Amendment package for inclusion in the <i>Heavy Vehicle National Law Amendment Act 2015 (Council approved May 2015)</i>	✓	✓	✓	✓	●	✓	●	✓
Draft bill and regulations for the 5 th Amendment package for inclusion in the <i>Heavy Vehicle National Law Amendment Act 2016 (Council approved June 2016)</i>	●	●	✓	●	●	●	●	●
Draft bill and regulations for the 6 th Amendment package for inclusion in the <i>Heavy Vehicle</i>	●	●	●	●	●	●	●	●

National Law Amendment Act 2017 (Council approved May 2017)								
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Table 2. Comments on adopting the National Heavy Vehicle Law HVNL 5th and 6th Amendment Package

Jurisdiction	Implementation comments
QLD	Part of the 5 th amendment package has commenced and the remainder is expected to commence in mid-2018. The 6 th amendment package is starting the process of legislative approval.
NSW	Part of the 5 th amendment package has commenced and the remainder is expected to commence in mid-2018.
VIC	Chapter 3 of the 5 th amendment package will commence when the Queensland amendments commence on 1 July 2017. Chapter 2 of the 5 th amendment package will similarly commence when the Queensland amendment commences in mid-2018.
SA	Part of the 5 th amendment package has commenced and the remainder is expected to commence in mid-2018.
TAS	Part of the 5 th amendment package has commenced and the remainder is expected to commence in mid-2018.
ACT	Part of the 5 th amendment package has commenced and the remainder is expected to commence in mid-2018.

Implementation analysis

Queensland passed the draft bill and amendments for the reforms approved by the Council in May 2015. The 4th amendment package consisting of these changes has also been implemented in New South Wales, Victoria, South Australia, Tasmania and the Australian Capital Territory.

In June 2016, the Council approved amendments to the HVNL being the 5th Amendment Package included in the *Heavy Vehicle National Law Amendment Act 2016*.

The Queensland parliament assented to the 5th amendment package in December 2016. These reforms will commence by proclamation in two tranches, with the majority of amendments scheduled to commence on 1 July 2017 and the chain of responsibility amendments expected to commence in mid-2018.

In May 2017, the Council approved the 6th amendment package to the HVNL: the *Heavy Vehicle National Law Amendment Bill 2017*. This amendment has not yet been introduced into the Queensland parliament for consideration. The NTC will report on the implementation of the 6th amendment package by other jurisdiction in next year's report.

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

2.3 Heavy vehicle charges

Key points

- In November 2016, Ministers approved reduced heavy vehicle charges to apply from 1 July 2017.
- In November 2016, Ministers also approved the *Heavy Vehicle Charges (Annual Registration Charges) Amendment Model Law 2016* scheduled to commence on or by 1 July 2017.

About the heavy vehicle charges

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

An annual adjustment formula is automatically applied in July each year to ensure heavy vehicle charges keep pace with road spending programs.

Charges implementation

In November 2015 the Council approved the heavy vehicle charges that applied from 1 July 2016. The Council agreed that the overall revenue collected through registration and road user charges would remain at FY2015-16 levels for two years (FY2016-17 and 2017-18).

In November 2016, Ministers confirmed that this revenue freeze would continue to apply and set the new heavy vehicle charges that would apply from 1 July 2017. Due to growth in heavy vehicle numbers, this results in a small decrease in charges per vehicle. Ministers also approved an amendment to the Heavy Vehicle Charges Model Law which will give effect to the 2017–18 heavy vehicle registration charges when implemented.

Implementation analysis

All jurisdictions (except NT and WA) agreed that registration charge revenues will be frozen at 2015-16 levels for the two year period.

The NT has committed to return to the national level of charges through a staged process.

3 Rail reform

3.1 Rail Safety Regulation and Investigation Reform

Key points

- The Rail Safety National Law (RSNL) was approved by the Council in November 2011.
- South Australia (the host jurisdiction) adopted the RSNL in 2012.
- Enabling legislation has been passed in New South Wales, Tasmania, the Northern Territory, Victoria, the Australian Capital Territory and Western Australia.
- Mirror legislation passed in Western Australia.
- The RSNL commenced in Queensland on 1 July 2017.
- The Office of the National Rail Safety Regulator (ONRSR) was established in January 2013 and is fully operational in jurisdictions where the enabling legislation has commenced.

About the reform

The reform has established a national system of rail safety regulation and investigation which includes uniform regulation and a single national rail safety regulator, complemented by a national rail safety investigator (Council of Australian Governments, 2011b).

The reform aims to improve safety and reduce the costs and regulatory burden for Australian transport companies, export and trade. A further objective is to extend the role of the Australian Transport Safety Bureau (ATSB) as a national investigator for rail in Australia.

Tables 3 and 4 provide an overview of progress in meeting milestones set by the Intergovernmental Agreement.

Table 3. Implementation summary of the Rail Safety Regulation and Investigation Reform

Output	Milestone	Implementation status										
		NSW	VIC	SA	QLD	WA	TAS	NT	ACT	Cwth	ONRSR / ATSB	
1 Rail Safety National Law	1.4 States and territories draft enabling legislation by August 2012	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	n/a
	1.5 States and territories introduce enabling legislation into their parliaments by September 2012	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	n/a
	1.6 States and territories pass enabling legislation by December 2012	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	n/a
3 Transition plan	3.1 Transition plan agreed by 31 December 2011	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	✓ (ONRSR)
6 National arrangements	6.1 National regulator established and operational by 1 January 2013	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	✓ (ATSB)
	6.2 Commencement of national rail safety investigation arrangements by 1 January 2013	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓ (ATSB)

Table 4. Comments on implementing the Rail Safety Regulation and Investigation Reform

Jurisdiction	Implementation comments
QLD	In November 2015, Queensland announced that it would implement the reform. Enabling legislation has passed through the Queensland parliament and commenced on 1 July 2017.

Implementation analysis

Progress has been made from last year. Since Queensland has implemented the reform, the RSNL and ONRSR are now fully operational across Australia, except for regulating light rail and some tourist and heritage operations in Victoria.

ONRSR has identified the mirror law approach used in Western Australia as having major safety and productivity impacts for ONRSR and industry. This mirror law approach means amendments to the Rail Safety National Law will be routinely delayed, currently waiting for up to two years to apply in WA and subject also to separate parliamentary decision-making. This delay results in ONRSR and industry working under different legislation in WA to the rest of Australia.

3.2 Amendments to Rail Safety National Law

Key points

- The 1st Rail Safety National Law amendment package was approved by Council in November 2014 and has been implemented in seven jurisdictions.
- The 2nd Rail Safety National Law amendment package was approved by Council in November 2015 and has been implemented in seven jurisdictions.
- In April 2017, the South Australian parliament passed the *Rail Safety National Law (South Australia) (Miscellaneous No 3) Amendment Bill 2017*, and subordinate *Rail Safety National Law National Regulations Variation Regulations 2017*.

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

The 3rd amendment package was approved by Ministers in November 2016 and passed through the host (South Australian) parliament in April 2017. These amendments commenced on 1 July 2017.

In November 2016, the Council also approved amendments to the National Standard for the Health Assessment of Rail Safety Workers and came into effect on 1 February 2017.

Tables 5 and 6 provide an overview of progress in implementing Rail Safety National Law amendments.

Table 5. Implementation summary of amendments to Rail Safety National Law

Rail Safety National Law amendments	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
1 st Amendment package (Council approved November 2014)	✓	✓	✓	✓	●	✓	✓	✓

2 nd Amendment package (Council approved November 2015)	✓	✓	✓	✓	●	✓	✓	✓
3 rd Amendment package (Council approved November 2016) (scheduled for implementation by 1 July 2017)	✓	✓	✓	✓	●	✓	✓	✓

Table 6. Jurisdiction comments on amendments to Rail Safety National Law

Jurisdiction	Implementation comments
QLD	Queensland parliament passed the Rail Safety National Law (Queensland) Bill in March 2017, paving the way for the RSNL to commence from 1 July 2017.
SA	The SA parliament has passed the 3 rd amendment package and these commenced on 1 July 2017.
WA	WA has begun preparations to implement the 1 st , 2 nd and 3 rd amendment packages. Depending on maintaining Ministerial and legislative priority, the package of amendments is expected in the 2017-18 financial year.

Implementation analysis

The Queensland parliament adopted the RSNL and all amendment packages in April 2017, with minor changes to the model law. Supporting changes were also made to the RSNL National Regulations with the *Rail Safety National Law National Regulations (Queensland Fatigue Provisions) Variation Regulations 2017*. The RSNL and National Regulations commenced in Queensland from 1 July 2017.

All states and territories apart from Western Australia have implemented the 1st and 2nd amendment packages. Western Australia has begun preparations to implement the 1st, 2nd and 3rd amendment packages. The mirror law approach in Western Australia means amendments to the Rail Safety National Law are routinely delayed and subject to separate parliamentary decision-making.

The 3rd amendment package was passed by the South Australian parliament and commences on 1 July 2017. The NTC will report on the implementation of the 3rd amendment package by other jurisdictions in next year's report.

4 Maintenance of existing reforms

4.1 Australian Road Rules

Key points

- Most jurisdictions have implemented the 9th and 10th amendment packages
- The 11th Australian Road Rules amendment package was approved in November 2015.

About the Australian Road Rule amendment package

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

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

Tables 7 and 8 provide an overview of progress in delivering the Australian Road Rules amendment packages.

Table 7. Implementation summary of the Australian Road Rules amendment package

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

Table 8. Comments on implementing the Australian Road Rules amendment package

Jurisdiction	Implementation comments
NSW	The 11 th Amendment Package was approved by the Executive Council and commenced on 1 July 2016.
VIC	The 11 th amendment package was incorporated into the new Victorian Road Safety Rules 2017 in June 2017, and will commence on 1 July 2017.
SA	The 11 th amendment package was implemented in December 2016.
QLD	The required amendments from the 11 th amendment package were adopted in December 2016.
WA	Appropriate amendments from the 10 th package are currently under Ministerial consideration and are likely to be implemented by September 2017 if approved. Implementation of the 11 th amendment package is subject to the new Government's legislative reform priorities.
TAS	Amendments to Tasmania's Road Rules 2009 to incorporate the 11 th amendment package were passed through Parliament and were implemented in July 2016.
NT	The outstanding amendment packages were due to be implemented as part of the new traffic safety legislation. The NT has commenced an interim project with the intention of assessing all packages and adopting those appropriate to the NT context prior to implementing the new traffic safety legislation. Timing of implementation is subject to Government's legislative drafting priorities
ACT	The ACT has, to date, applied the Australian Road Rules by reference. As such, implementation of the 10 th and 11 th packages of amendments has been dependent on an official consolidation being published. More recently the ACT has been progressing to incorporate the Australian Road Rules in a stand-alone regulation and it is expected that the entirety of the 10 th and 11 th packages will be adopted through this mechanism in the near future.

Implementation analysis

The 10th and 11th amendment packages have been implemented by most States and Territories, with those still due to implement expecting to do so by the end of 2017. Victoria's 11th amendment package rule changes commenced on 1 July 2017. As this is outside the reporting period for this report, implementation will be marked as complete in the next report.

The impact of variance in implementation dates is minor.

4.2 Australian Light Vehicle Standards Rules

Key points

- The Heavy Vehicle National Law (HVNL) has incorporated the provisions of the vehicle standards that apply to heavy vehicles.
- While most jurisdictions are progressing implementation, there are inconsistencies in the adoption of amendment packages.
- However, the nature of the proposed amendments means the impact of different implementation dates should not be significant.

About the Australian Light Vehicle Standards Rules

In November 2015 the Council approved reforms to the Australian Light Vehicle Standards Rules. Heavy Vehicles Standards Rules are now included in the HVNL, and the Australian Light Vehicle Standards Rules, approved by Council in May 2016, will apply to light vehicles in the future.

Some of the earlier vehicle standards amendment packages have not been implemented in some jurisdictions. The NTC will continue to monitor the implementation of these packages.

Table 9. Implementation summary of the Australian Light Vehicle Standards Rules amendments package

Adopt the Australian Vehicle Standards amendment packages	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Adopt the 5 th amendment package (Council approved June 2006)	●	✓	✓	✓	●	✓	●	✓
Adopt the 6 th amendment package (Council approved March 2009)	●	✓	✓	✓	●	✓	●	✓
Adopt the 7 th amendment package (Council approved May 2010)	●	✓	✓	✓	✓	✓	●	✓
Adopt the 8 th amendment package (Council approved May 2014)	●	✓	✓	✓	●	●	●	●
Adopt the Australian Light Vehicle Standards Rules (Council approved May 2016)	●	●	●	✓	●	●	●	●
Adopt 1 st amendment package to the Australian Light Vehicle Standards Rules (Council approved May 2016)	●	●	●	✓	●	●	●	●
Adopt the 2017 amendment package to the Australian Light Vehicle Standards Rules (Council approved May 2017)	●	●	●	●	●	●	●	●

Table 10. Comments on implementing the Australian Light Vehicle Standards Rules amendments

Jurisdiction	Implementation comments
NSW	It is expected that New South Wales will adopt the 5 th , 6 th , 7 th and 8 th amendment packages and Australian Light Vehicle Standards Rules on 1 September 2017. The 1 st and 2017 amendment packages to the Australian Light Vehicle Standards Rules are expected to be implemented in 2018.
VIC	VicRoads will adopt the agreed 1 st light vehicle standards amendment package as part of its upcoming 'sun setting' of Victoria's Road Safety (Vehicles) Regulations 2009. These regulations will be remade by 31 October 2019. However, options will be considered to implement the 1 st amendment package prior to this date if feasible.
SA	<i>. The Australian Light Vehicle Standards Rules and all amendment packages are due to be implemented by December 2017. These will include the 8th amendment package to the Light Vehicle Standards Rules.</i>
QLD	Australian Light Vehicle Standards Rules have been implemented in the Queensland Vehicle Standards and Safety Regulation 2010, which now contains only light vehicle requirements. These are largely consistent with the Australian Light Vehicle Standards Rules, with any departures being only minor. The 1 st amendment package to the Australian Light Vehicle Standards Rules was implemented by June 2017. The 2017 amendment package is expected to be implemented by the end of 2017.
WA	WA introduced the 7 th amendment package of the Australian Light Vehicle Standard Rules as part of the compliance and enforcement legislation entitled Road Traffic (Vehicles) Regulations 2014. WA will be considering the most appropriate way to implement the remaining packages during 2017-18.
TAS	Some elements of the 8 th amendment package have been implemented in Tasmania, with the remainder on the forward work program. The Australian Light Vehicle Standards Rules and 1 st Amendment Package will be prioritised for the next financial year. The 2017 amendment package is expected to be implemented by the end of the 2017-18 financial year.
NT	The outstanding amendment packages were due to be implemented as part of new traffic safety legislation. The NT has commenced an interim project with the intention of assessing all packages and adopting those appropriate to the NT context prior to implementing the new traffic safety legislation. Advice is being sought on adoption of separate light and heavy vehicle standards rules. Timing of implementation is subject to the Government's legislative drafting priorities.
ACT	Work to adopt the 8 th amendment package was delayed while the NHVR was being implemented including development of the Australian Heavy Vehicle Standards Rules. The ACT will work to progress the 8 th package, the Australian Light Vehicle Standards Rules and the 1 st amendment package to those rules through 2017-18, noting that the existing standards for light vehicles in the Road Transport (Vehicle Registration) Regulation 2000 are already very similar to the requirements of the Australian Light Vehicle Standards Rules. The 2017 amendment package is expected to be implemented by through 2017-18, but will be dependent on other regulation priorities.

Implementation analysis

At present there is inconsistency in the adoption of the various amendment packages of the Australian Light Vehicle Standards.

South Australia and Queensland are the only states to have implemented the 1st amendment package, with most states and territories aiming to prioritise implementation of the 1st and 2017 amendment packages during 2017-18.

Ideally amendments would be implemented at the same time. However, the nature of the proposed amendments means the impact of different implementation dates is minor.

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

Key points

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

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

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

Tables 11 and 12 provide an overview of the implementation status of the review's recommendations.

Table 11. Implementation summary of the Strategic Review of the Australian Road Rules and Australian Vehicle Standards Rules recommendations

Recommendations	Implementation status								
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT	NTC
Maintain publicly available lists outlining the difference between jurisdictions' laws and the model laws for the road rules and vehicle standards	✓	● ¹	✓	●	●	●	✓	✓	✓

1. Implementation completed for the vehicle standards as there are no differences.

Table 12. Comments on implementing the recommendations

Jurisdiction	Implementation comments
VIC	Victoria is yet to commence work on identifying Victorian road rule variants to the ARR. Victoria had been waiting for a number of years for the publication of the consolidated ARR. Now that a consolidated set of rules have been published this task will be completed in the financial year 2017-18.
QLD	Queensland expects to have the list of differences between the Queensland Road Rules and the model laws completed by the end of September 2017. The list will include amendments to the Queensland Road Rules as a result of the 11 th package amendments. With regard to the vehicle standards, Queensland has reviewed the Australian Vehicle Standards Regulation and there are no significant differences to the national model law beyond minor drafting amendments. There will be 2 nd and 3 rd amendment changes, which are due for inclusion by the end of 2017. All vehicle standards are currently posted on the website.
WA	WA supports the recommendations, though implementation is contingent upon Ministerial direction and legislative priority. WA will progress the publication of variations when resourcing allows.
TAS	Currently included on Tasmania's work program for both Road Rules and Vehicle Standards, but not a high priority. The majority of the Tasmanian Road Rules legislation is consistent with the model law, with most deviations being contained separately in jurisdictional qualifications or local road rules.

Implementation analysis

The Australian Capital Territory, Northern Territory, New South Wales and South Australia have implemented the relevant recommendation of the review, while Queensland is working to implement this year. Tasmania and Western Australia will progress implementation when resources are available.

The nature of the recommendations means the impact of different implementation dates is minor.

4.4 Transport of Dangerous Goods laws

Key points

- The Council approved the amended Australian Code for the Transport of Dangerous Goods by Road and Rail and Updated Model Subordinate Law in November 2016.

About the Transport of Dangerous Goods Model Regulations and Code

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

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

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

Tables 13 and 14 provide an overview of the progress of states and territories in implementing Council reforms.

Table 13. Implementation summary of the Transport of Dangerous Goods model regulations and Code

Recommendations	Implementation status							
	NSW	VIC	SA	QLD	WA	TAS	NT	ACT
Updated Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 3) (May 2015)	✓	✓	✓	✓	✓	✓	✓	●
Update to edition 7.5 of the Australian Dangerous Goods code (November 2016)	✓	✓	✓	●	✓	✓	●	●
Updated Model Subordinate Law on the <i>Transport of Dangerous Goods by Road or Rail 2007</i> (Amendment package 4) (November 2016)	✓	✓	●	●	✓	✓	●	●

Table 14. Comments on implementing the Australian Dangerous Goods Code

Jurisdiction	Implementation comments
NSW	Updated Code 7.5 and amendment to the NSW Dangerous Goods (Road and Rail Transport) Regulation 2014 (to reflect changes to the Model Subordinate Law) took effect on 1 March 2017.
VIC	Updated Code 7.5 and updated model subordinate law took effect on 1 March 2017, with a 12 month transition ending on 1 March 2018.
SA	The updated Model Subordinate Law was implemented in August 2016.
QLD	Updated Code 7.5 and updated model subordinate law are expected to take effect in August 2017.
WA	Updated Code 7.5 and updated model subordinate law took effect on 12 July 2017.
TAS	Updated Model Subordinate Law Packages 2 and 3 took effect on 1 December 2016 and Package 4 took effect on 22 February 2017. Updated Code 7.5 took effect on 1 March 2017 and will become compulsory on 1 March 2018.
ACT	WorkSafe ACT did not provide an update for implementing the Australian Dangerous Goods Code.
NT	Implementation of the updated Code 7.5 and updated model subordinate law are on NT Worksafe's reform agenda for 2018-19. Timing will be subject to Government's legislative drafting priorities.

Implementation analysis

Edition 7.4 of the Transport of Dangerous Goods Code was approved by ministers in May 2015 and implemented by all jurisdictions on 1 January 2016. The Model Subordinate Law update was implemented on 1 January 2016 by all jurisdictions with the exception of South Australia which implemented in July 2016.

A transition period will allow industry to voluntarily comply with the new Australian Dangerous Goods code or continue to comply with the previous edition. From 1 January 2017, compliance with edition 7.4 became mandatory.

Edition 7.5 of the Transport of Dangerous Goods Code was approved by Ministers and published on the NTC website in December 2016. Amendments to the model subordinate law on the Transport of Dangerous Goods by Road and Rail were approved by Ministers in November 2016 and are expected to be adopted in all states and territories in March 2018.

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

Key points

- Recommendations from the Strategic Framework Review of the Regulation of Land Transport of Dangerous Goods were approved in November 2013.

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

Five of the six recommendations were completed by 2014-15.

The last recommendation is for the NTC to amend the model laws to include a timeline for a competent authority to make a decision once it has received an application.

Implementation analysis

During 2014-15, the NTC sought to amend the model law to include a timeline for a competent authority to make a decision once it has received an application. However, the scope of the model law does not extend to timelines for decisions of competent authorities. During 2017-18, the NTC will continue to seek the cooperation of the Competent Authorities Panel to amend their business rules to include a timeline for a decision.

5 References

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

Council of Australian Governments (2011b), *Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform*, Council of Australian Governments, Canberra.

Explanatory Memorandum, Rail Safety National Law Application Bill 2013 (Vic.).

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

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

For the HVNL, the majority of minor derogations are able to be considered and addressed by the HVNL maintenance advisory group. These have been included in the HVNL maintenance issues log.

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

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

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

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

NSW	Vehicle standards				NTC comment
	Derogation	Type	Impact	Description	
	Speed limiters deemed noncompliant if travelling at more than 115 km/h (section 93(8A))	Addition	Low	The NSW offence makes the responsible person (for example, the operator) for a vehicle liable if a vehicle is not speed-limiter compliant when the vehicle is driven on a road. In proceedings for this offence, proof that the vehicle concerned was driven at a speed of more than 115 km/h is prima facie evidence that the vehicle was not speed-limiter compliant at the time the vehicle was travelling at that speed.	Ministers decided to retain the current approach to speeding heavy vehicle laws in November 2016.
	Vehicle monitoring devices (VMDs) – Requirement for a heavy vehicle (with GVMs or GCMs exceeding 13.9 tonnes) and vehicles carrying dangerous goods to have fitted a device capable of recording various operating parameters (new section 93A)	Addition	Medium	VMD requirements were introduced in NSW following major bus crashes in Kempsey and Grafton in 1989. NSW is currently undertaking a comprehensive review of its VMD requirement and the vehicles to which a VMD might apply.	The NTC is open to receiving evidence and advice from NSW after their review of the VMD requirement. This will inform whether the NTC will develop a proposal to amend the national laws.
	The use of warning lights and signs on buses carrying children (omits Part 6 Division 16)	Alteration	Low	This alteration reflects the fact that in NSW a 40 km zone exists around school buses that are stopped to allow children to board or disembark. Thus 40 km signage and extra flashing lights are required. Since school buses rarely cross borders this alteration has a low impact.	Local policy decision which has low impact in terms of costs, and does not impact operators across borders.
	Conditions on heavy vehicles being fitted with lights and reflectors (new section 7A)	Alteration	Low	This alteration prevents heavy vehicles from fitting blue lights. In NSW, blue lights may only be used by police and other emergency vehicles. This provision is required to ensure there is consistency between light and heavy vehicles in NSW being used for the same purpose.	The NTC has added this to the maintenance issues register
	Additional offences to which demerit points	Addition	Low	NSW has attached demerit points to six offences that do not attract demerit points in the HVNL. This derogation ensures consistency with light vehicle offences in NSW. The additional offences are covered under section 60 of the HVNL and are:	These issues were considered fully during the 2014 NTC penalties review. NSW decided to retain its variation.

				<ul style="list-style-type: none"> • Use vehicle with defective brakes • Use vehicle with defective steering • Use vehicle with seatbelt missing or defective • Use vehicle not fitted/equipped with seatbelts/anchorages • Use vehicle with dangerous protrusion. 	
Speed derogations					
Derogation	Type	Impact	Description		
Exemptions for emergency services from chain of responsibility requirements (new section 203A)	Addition	Low	This exempts staff of an emergency service from obligations concerning speed compliance but only in the course of undertaking work for the emergency service.		The NTC has added this to the maintenance issues register
Section 27E – Evidence of speed	Addition	Low	Provides that evidence of speed obtained under Part 5.3 of the Road Transport Act 2013 may be used for an offence against the HVNL (NSW). The NTC is currently consulting with jurisdictions over the possible inclusion of an evidentiary provision in the HVNL, similar to the evidentiary provision in the NSW offence.		Ministers decided to retain the current approach to speeding heavy vehicle laws in November 2016.
Fatigue derogations					
Derogation	Type	Impact	Description		
Exemptions for accredited service operators and their drivers from certain application requirements when applying for accreditation (new section 222A)	Addition	Low	Derogation in place with the intention of allowing an exemption from certain bus operator requirements including medical assessment requirements.		The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
Exemption for non-accredited buses and private hire vehicles from some fatigue requirements in the HVNL (new section 222B)	Addition	Low	This exempts private hire vehicles and buses not providing a public passenger service from some fatigue obligations.		The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
Exemptions for emergency services from work and rest time requirements (alters section 265, new section 265A)	Alteration/ addition	Low	This exempts staff of an emergency service from obligations concerning fatigue compliance but only in the course of undertaking work for the emergency service.		The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
Exemption from counting 15-minute periods for certain buses (section 246,	Addition	Low	This exempts certain fatigue-regulated buses (undertaking a journey in accordance with a		The NTC will examine this following the

new sections 5)			service contract) from the rounding rule, which applies to counting periods of less than 15 minutes. This was inserted to maintain the status quo for these operators that record the actual time of work for these periods.	completion of the heavy vehicle driver fatigue data project.
Occupying driver's seat to count as rest time in certain circumstances (new section 248A)	Addition	Low	This allows drivers to rest in an air-conditioned cabin and for concrete truck drivers to continue to churn concrete during a rest break.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
Certain personal activities may be counted as part of rest time (section 248B)	Addition	Low	This provides for limited personal use of a vehicle on rest days, which allows the cleaning, driving or refuelling of a fatigue-related heavy vehicle to count as 'rest' if it is done as a 'personal' activity, and is not performed at the employers' direction, for reward or at the beginning or end of a mandated rest period.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
Additional provision allows the NSW minister to attach conditions on Advanced Fatigue Management (AFM) accreditation (new section 462A)	Addition	Medium	This section was included to alter an AFM accreditation in those limited circumstances that the NSW minister determined it was necessary to maintain safety standards based on the available fatigue evidence base.	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
Requirement on the regulator to issue a replacement accreditation certificate (section 464, new subsection 2A)	Addition	Low	This section requires the regulator to issue a replacement AFM accreditation certificate if the current certificate inaccurately states the conditions applicable because of the imposition or revocation of a condition by the NSW minister (under section 462A).	The NTC will examine this following the completion of the heavy vehicle driver fatigue data project.
Enforcement derogations				
Derogation	Type	Impact	Description	
Power for an authorised officer to enter a vehicle if the incident involves death, injury or damage Removal of limitation on powers for authorised officers who are not police (omits section 521(6))	Omission or alteration (NSW)	Low	Omits section 521(6) of the HVNL and allows an authorised officer other than a police officer to enter a vehicle. The HVNL only provides for a police officer to enter a vehicle. NSW believes this should be extended nationally. This provision allows an authorised officer who is not a police officer to enter a heavy vehicle and search the heavy vehicle where there is an incident involving the death or injury to a	The 2016-17 Investigative and Enforcement Powers review partially addressed this issue by allowing an authorised officer to enter a vehicle if acting under the direction of a police officer. This

				person. The HVNL only allows police officers to do this. This change was made to preserve existing powers in NSW. The NTC is currently consulting with jurisdictions on this issue as part of the investigation and enforcement review.	power is limited in comparison to the NSW derogation.
QLD	Fatigue derogations				
	Derogation	Type	Impact	Description	
	Police commissioner to approve use of blue flashing lights on vehicles (new sections 40– 41)	Addition	Low	This alteration prevents heavy vehicles from fitting blue lights. In QLD, blue lights may only be used by police and other emergency vehicles. This provision is required to ensure there is consistency between light and heavy vehicles in QLD being used for the same purpose.	This is a local Queensland issue relating to interaction between justice/HVNL
	Mass, dimensions and loading				
	Derogation	Type	Impact	Description	
	Additional consents required to grant a mass or dimension exemption permit (affects section 124)	Addition	Medium	Materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place.	The NTC will write to Queensland requesting they reconsider this derogation
Additional requirements for commissioners' consents for a mass or dimensions exemption permit (affects sections 118, 124, 127, 128) and creates new requirements on granting of permits	Addition	Medium	Materially changes the intent and operation of the HVNL by putting another layer of statutory consent requirements in place.	The NTC will write to Queensland requesting they reconsider this derogation	
Clarification of reviewable decisions under schedule 3. QLD sections 28–29 clarifies the scope and process for review of commissioners' decisions	Reference	Low	This derogation is tied to the additional consents required under a mass or dimension exemption permit. QLD provision provides avenue for a commissioner's response to the permit application to be reviewed if required by a particular party.	The NTC will write to Queensland requesting they reconsider this derogation	
SA	Enforcement derogations				
	Derogation	Type	Impact	Description	
	Additional offences constituting infringement (Schedule 1 of HVNL (SA))	Addition	Medium	SA has made all parties in the chain of responsibility liable for the contravention of mass, dimensions or load requirements. This includes the consignee, loader, loading manager and packer. This is an extension of liability from operators, prime contractors and	Addressed by the HVNL Amendment Bill 2016 and the removal of sections 183 and 261.

				<p>employees currently provided for in the schedule. SA also intends to make all parties in the chain of responsibility liable for a driver's contravention of work/rest hours requirements. The HVNL does not currently make this an infringeable offence in the chain of responsibility.</p> <p>These derogations have the potential to reduce national consistency in the enforcement of the HVNL, increase the regulatory burden on, and confuse industry (especially those parties that would become liable as a result of the derogation) and to cause increased administrative workload for the regulator. The 2016 HVNL Amendment Bill will remove these offences (section 183 and section 261) from the HVNL and will replace them with a primary duty of care on all parties to ensure the safety of their operations. Once this bill is in operation this derogation will no longer be an issue.</p>	
	Issuance of improvement notices before an offence occurs (section 16e of the SA HVNL, alters section 572)	Alteration	Medium	<p>SA legislation enables authorised officers to issue an improvement notice where an offence is 'likely to occur'. All other jurisdictions require a breach to have occurred before an enforcement measure is taken. This derogation is likely to have implications for natural justice, may reduce national consistency, and may result in disproportionate outcomes. Notwithstanding this derogation, provisions already exist in the HVNL to issue warning notices, and the ability to enforce a penalty for a breach would continue to remain available. Conversely, should the improvement notice be issued, and the person to whom it is issued ignores it but no breach ever eventuates, that person would still remain liable for a \$10,000 penalty upon conviction. This matter was explored as part of the 2014 penalties review and all jurisdictions (except</p>	The NTC will write to South Australia requesting they reconsider this derogation

				SA) agreed that it should not be adopted.	
	Exclude the requirement for enforcement officers to form a reasonable belief that evidence may be concealed or destroyed if a place is not immediately entered and searched, before they can enter without a warrant for investigation purposes (amends sections 498 and 499 of the HVNL)	Alteration	Medium	This derogation removes the requirement for an authorised officer to form a reasonable belief that evidence will be destroyed before invoking warrantless entry to a place. This derogation has implications for natural justice as well as human and property rights. It is also likely to result in additional costs to, and decreased confidence in, the exercise of the national regulator's enforcement powers. Further, this derogation has been implemented following extensive discussion and compromise by all jurisdictions to reach agreement on the balance between the intrusiveness of enforcement powers and the protections afforded by human rights charters.	The NTC will write to South Australia requesting they reconsider this derogation
	Exclude the 'reasonable steps' defence for the offence of tampering with a speed limiter (omits section 93(8))	Omission	Medium	This derogation removes the ability for a person charged with tampering to use the reasonable steps defence. Under section 93(8), it is a defence against a charge of tampering if the person charged took all reasonable steps to prevent the tampering, or there were not reasonable steps that the person could have taken to prevent the tampering. This derogation has potential to cause national inconsistency in the enforcement of national law and may have implications for natural justice and procedural fairness. The 2016 HVNL Amendment Bill will remove the reasonable steps defence for this offence (section 93) and the 'mistake of fact' defence will be available. Once this bill is in operation this derogation will no longer be an issue.	Addressed by the 2016 HVNL Amendment Bill and removal of the reasonable steps defence for section 93.
	Reverse the onus of proof for a 'reasonable excuse' defence for a number of offences	Addition	Medium	This derogation reverses the onus of proof for the reasonable excuse defence in proceedings for an offence against the HVNL. This means that the onus will rest with the defendant to prove that the lawful authority or reasonable excuse exists. In the absence of such proof, it	Addressed by the 2016 HVNL Amendment Bill and removal of the reasonable steps defence for section 93.

				will be presumed that no authority or excuse exists. This derogation may have implications for fundamental human and legal rights and procedural fairness. The NTC recommends that SA clarify its position regarding the extra offences that will be amended to include the reasonable excuse defence as part of the 2016 Amendment Bill.	
	Additional power to enter premises where vehicles are offered for sale and inspect those vehicles	Addition	Low	This derogation provides authorised officers with the power to enter a place opened for business where heavy vehicles are exhibited or kept for sale or hire and search those vehicles for defects. Provisions of this nature are generally associated with consumer protection activities in order to protect buyers of vehicles.	The NTC will write to South Australia requesting they reconsider this derogation
	Additional powers relating to the sale or disposal of a defective vehicle	Addition	Low	This derogation provides authorised officers with the power to enter a place opened for business where heavy vehicles are exhibited or kept for sale or hire and search those vehicles for defects. Provisions of this nature are generally associated with consumer protection activities in order to protect buyers of vehicles.	The NTC will write to South Australia requesting they reconsider this derogation
	Additional power for authorised officers to direct a heavy vehicle to move if it is obstructing	Addition	Medium	This derogation allows authorised officers to direct a heavy vehicle to move if it obstructs a road, area adjacent to a road, a lawful event, or specified other areas. This derogation has potential to introduce significant complexity and cost into the operations of the national regulator. The need for these powers is unclear, as comprehensive powers already exist in this regard. This derogation may result in reduced consistency of national law.	The NTC will write to South Australia requesting they reconsider this derogation
	Additional offence for possessing a device designed for tampering with a speed limiter	Addition	Low	This derogation creates an offence for possessing a device that is designed, or is adapted, to enable tampering with a speed limiter. This includes a computer or other electronic device that is intended, or able, to be used to tamper with a speed limiter.	SA argues the offence is too broad (a device could be everything from a screwdriver to an electronic device). Low impact on national

					consistency
	Allowing the Commissioner of Police to authorise a class of police officers as well as individual officers for the purposes of issuing improvement notices	Addition	Low	This derogation provides power for the Commissioner of Police to nominate additional parties that are authorised to issue improvement notices under the HVNL.	This is a local issue between justice/HVNL.
	Section 134A of SA's Motor Vehicles Act provides power to exempt a person/class of persons or vehicle/class of vehicles from any act, law or standard	Omission	Low	This derogation can exempt persons/vehicles from the HVNL, and this power has not been provided for under the national HVNL model.	This relates to the exemption powers put in place for automated vehicle trials and will not impact application of HVNL or operators.
VIC	Fatigue derogations				
	Derogation	Type	Impact	Description	
	Statutory rail replacement service exemption	Addition	Low	This derogation exempts bus drivers who are responding to an emergency or replacing a rail service from fatigue management provisions.	Local jurisdictional variation which does not impact at the national level.
	Enforcement derogations				
	Derogation	Type	Impact	Description	
Disposal of unclaimed seized goods to the Crown, rather than the regulator	Addition	Low	This derogation clarifies that police have the power, under the Police Regulation Act 1958, to dispose of goods seized under the Heavy Vehicle HVNL, where such goods are unclaimed after three months. Victorian courts and tribunals are also empowered to offer the forfeiture of the goods to the Crown if they might be used to commit or continue an offence.	Local jurisdictional variation which does not impact at the national level.	
Extension of time within which a person may challenge an evidentiary certificate	Alteration	Low	Under this derogation, a person accused of causing damage to road infrastructure will have 60 days in which to challenge an evidentiary certificate (rather than 28 days as provided under the HVNL). The derogation operates to the benefit of the defendant. Hence there is no additional abridgement of their rights. It is limited in its application to instances where a conviction is made, so there is no change to the overall regulatory burden.	The NTC has added this to the maintenance issues register	

TAS	Enforcement derogations				
	Derogation	Type	Impact	Description	
	Regulation 4 of the Heavy Vehicle National Law (Tasmania) Regulations 2014 details sections of the Heavy Vehicle (Vehicle Standards) Regulation that do not apply in Tasmania	Omission	Low	This derogation reflects local specifications relating to the location and display of flashing lights, and the accompanying signage for school buses. Given that this is current practice in Tasmania, adopting the national law approach would constitute a significant financial burden to refit the existing school bus fleet.	Local jurisdictional variation which does not impact at the national level

Notes:

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

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

NSW	Enforcement derogations				NTC comment
	Derogation	Type	Impact	Description	
	Rail Safety (Adoption of National Law) Regulation 2012 Part 2 Drug and alcohol testing	Addition	Medium	Division 1 Provisions relating to drug and alcohol offences Division 2 Testing for alcohol or other drugs Division 3 Offences relating to testing for alcohol/other drugs Division 4 Admission of evidence in proceedings Division 5 Certificate evidence	The ONRSR is currently undertaking a review into drug and alcohol and fatigue management arrangements under the RSNL. This is due to the Council in November 2017.
	Rail Safety (Adoption of National Law) Regulation 2012 Part 3 Train communications systems	Addition	Medium	A rolling stock operator must ensure that each train for which the person is responsible is, at all times, fitted with a radio communications system that complies with this clause and a back-up means of communication to be used if the radio communications system fails.	RISSB developing standard in consultation with ONRSR and industry
	Rail Safety (Adoption of National Law) Regulation 2012 Part 4 Savings and transitional provisions: Data loggers	Addition	Medium	Data Loggers Compliance Code means the code of that name approved by the minister under section 167 of the former Act (the Rail Safety Act 2008), as in force immediately before the commencement of this Regulation. The Data Loggers Compliance Code continues to have effect and section 167 of the former Act continues to apply in respect of that code. The required standard was completed July 2015. In May 2012 the Standing Council on Transport and Infrastructure agreed that a regulatory impact statement would be developed following the development of this Australian Standard.	RISSB developing standard in consultation with ONRSR and industry

Fatigue derogations					
Derogation		Type	Impact	Description	
Rail Safety National Law (NSW) (2012 no. 82a) Part 3 Regulation of rail safety fatigue risk management requirements		Addition	Medium	A rail transport operator must prepare and implement a program, in accordance with the prescribed requirements, for the management of fatigue of rail safety workers who carry out rail safety work in relation to railway operations in respect of which the operator is required to be accredited that complies with the prescribed requirements relating to fatigue risk management programs.	
QLD	Fatigue derogations				
	Derogation		Type	Impact	Description
	Rail Safety National Law Queensland Part 3 Subdivision 3		Addition	Medium	Under the RSNL, a rail transport operator must prepare and implement a program for the management of fatigue of rail safety workers.
	Rail Safety National Law National Regulations 2012 Schedule 2 Part 2				The RSNL does not prescribe limits on train driver hours; however, Queensland's application of the RSNL includes specified provisions about standard work hours and rest periods for drivers of passenger or freight trains, light rail vehicles or other rolling stock such as track maintenance machines.
Drug and Alcohol Management derogations					
Derogation		Type	Impact	Description	
Rail Safety National Law (Queensland) Act 2017 Part 3		Alteration	Low	Under the Qld Adoption Act, police officers will continue to conduct drug and alcohol testing of train drivers exercising powers under other legislation. An authorised officer appointed under the RSNL may not perform these tests if a police officer is also performing the same tests under other legislation.	
WA	RSNL – Mirror Legislation				
	Derogations		Type	Impact	Description
	Rail Safety National Law (WA) 2015		Alterations and Additions	High	WA implements the RSNL by enacting it in mirror form to address circumstances in WA. Significant differences are:
					The NTC will write to Western Australia requesting they

				<ul style="list-style-type: none">• Urine testing may continue as part of drug and alcohol management programs• Samples may be used for other purposes• The Governor of WA will continue to make regulations under the law rather than the Governor of SA and may do so without the unanimous recommendation of Ministers of relevant jurisdictions• Changes to the RSNL WA will be able to be made by the legislation of WA and not SA legislation.	reconsider this derogation.
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