



Heavy Vehicle National Law – An Overview

OCTOBER 2018



Overview

The Heavy Vehicle National Law (“**HVNL**”) is a set of state laws which regulate transport by heavy vehicles.

The HVNL not only applies to drivers and transport companies, but **all parties** in the transport and logistics chain.

This includes on-road **and off-road** parties.



HEAVY VEHICLE = 4.5 TONNES +

Why?

The HVNL was implemented to address non-compliance with laws relating to heavy vehicle transport (such as laws relating to overloading, speed, fatigue and work hours) and to promote safe business practices.

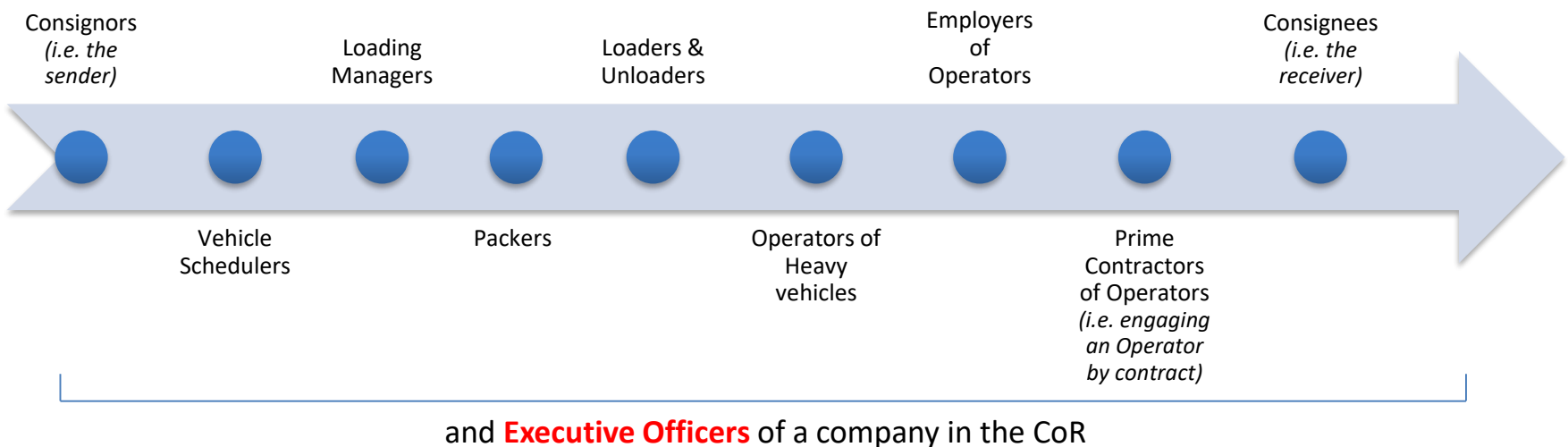
Critically, the HVNL applies to all on-road **and off-road parties** in the transport and logistics chain.

This is because it has been recognised that breaches of heavy vehicle transport laws are not always the fault of drivers and transport operators, but can be caused / affected by other parties along the logistics chain.



Who it affects

For the purpose of the HVNL, the logistics chain is referred to as the ‘Chain of Responsibility’ (the “CoR”). The CoR includes, but is not limited to:



Who it affects

Example:

A drilling company, ABC Drilling, does not own or operate any heavy vehicles. However, ABC Drilling engages Heavy Trucking Co. to transport its drill rigs to site.

Accordingly, ABC Drilling may be a party to the “CoR” as either one, or all, of the following:

- Consignee (i.e. the party *sending* the goods to be carried by a heavy vehicle)
- Consignor (i.e. the party *receiving* the goods carried by a heavy vehicle)
- Packer
- Loader/ Unloader
- Prime Contractor of an Operator (i.e. a party who engages a driver to drive a heavy vehicle under a contract for services)

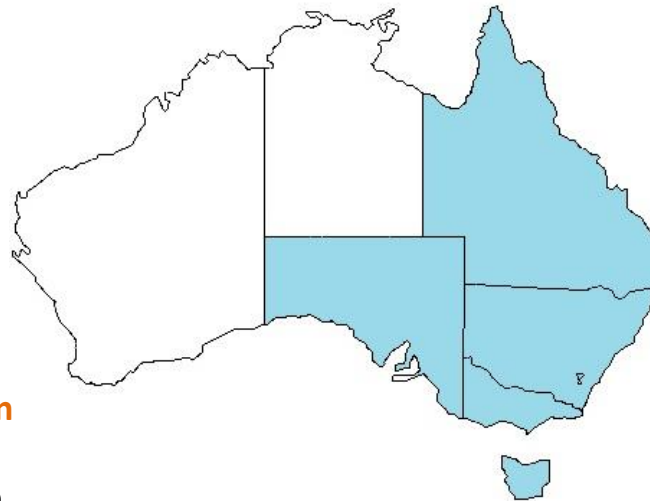
As a consequence:

1. ABC Drilling must comply with the HVNL; and
2. ABC Drilling’s directors may be **personally liable** for any breach of the HVNL.

Where it applies

The HVNL was introduced in **Queensland** as a ‘model law’ in 2014 (the *Heavy Vehicle National Law Act 2012* (Qld)), and has since been adopted in **Victoria, New South Wales, South Australia, Tasmania** and the **ACT**.

Western Australia and the **Northern Territory** have not yet adopted the HVNL, however the HVNL applies to vehicles from those jurisdictions when they cross in to jurisdictions where the HVNL applies.



Note that in some cases, the jurisdictions which have adopted the HVNL have made minor modifications to the HVNL to adapt the HVNL to that jurisdiction. This update relates to the HVNL as it stands in Queensland only.

General Duty

- As of 1 October 2018, all parties in the CoR have a general duty to **“take all reasonably practicable steps to ensure the safety of their transport activities”**
- **All parties** must comply with this general duty, regardless of whether they are the operator of the heavy vehicle or merely, say, an unloader of the vehicle.
- The standard is not incident based and, accordingly, a party can be prosecuted even without an incident/ accident occurring. This is extremely onerous on all the parties in the CoR as, at any given time, they must be able to prove that they have taken all reasonably practicable steps to ensure the safety of their transport activities.
- This standard applies to the “Compliance Components” and to safety generally.

Compliance Components

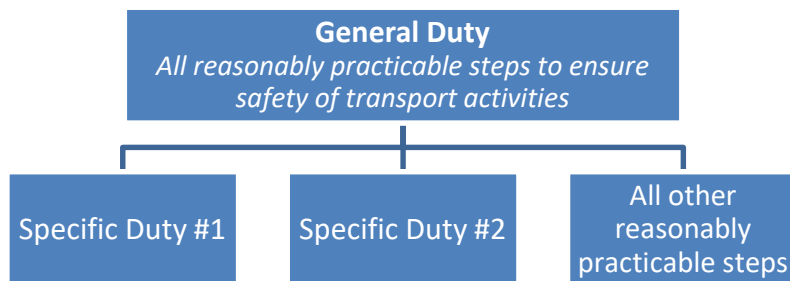
- ✓ Mass
- ✓ Dimension
- ✓ Loading
- ✓ Speed
- ✓ Fatigue
- ✓ Vehicle Standards/
Roadworthiness

Safety includes:

- Drivers and passengers of vehicles.
- Persons or property in or likely to be in the vicinity of road infrastructure.
- Risks to road infrastructure and the environment.

Specific Duties

In addition to the general duty to “take all reasonably practicable steps to ensure the safety of their transport activities”, the HVNL also requires that certain parties in the CoR comply with **express, specific requirements** as set out in the HVNL.



Example:

For example, some specific duties of a **consignor** or **consignee** include:

- Ensuring loads do not exceed mass or dimension limits and are appropriately restrained.
- Checking operators of heavy vehicles have valid container weight declaration.
- Ensuring that their delivery requirements do not encourage drivers to speed, drive while fatigued, exceed regulated driving hours or fail the minimum rest requirements.
- Liaising with other parties in the CoR to identify risks and issues.

Exposure for Executive Officers

- As of **1 October 2018**, the standards of responsibility and implications for Executive Officers under the HVNL **have increased and are more onerous**.
- Under the new standard, Executive Officers will be required to exercise **“due diligence”** to ensure that their business complies with all duties required under the HVNL.
- This new standard is not incident based and, accordingly, Executive Officers can be personally prosecuted even without an incident/ accident occurring.
- The standard of the duty has been raised, in part, to bring Executive Officers’ liability in line with the Officers’ duty provisions under the Model Work Health and Safety Act.
- The responsibilities of Executive Officers are broad and require Executive Officers to be actively involved in the company’s compliance with the HVNL.

Executive Officer =
a director or a person
concerned with the
management of a
corporation.

Exposure for Executive Officers

The new standard states “**due diligence**” includes (but is not limited to) taking reasonable steps to:

- ❑ acquire, and keep up to date, knowledge about the safe conduct of transport activities;
- ❑ gain an understanding of the nature of the entity’s transport activities and the hazards and risks (including the public risk) associated with those activities;
- ❑ ensure the entity uses appropriate resources to eliminate or minimise those hazards and risks;
- ❑ ensure the entity implements processes for receiving, considering, and responding in a timely way to, information about those hazards and risks and any incidents; and
- ❑ verify the resources and processes mentioned above are being provided, used and implemented.



Penalties & Prosecutions

The penalties under the HVNL are severe and, as of 1 October 2018, have increased.

The penalties are based on severity of the breach, categorised in to three broad categories:

CATEGORY 1: Breach of a duty creating risk of death or serious injury or illness (reckless)	CATEGORY 2: Breach of a duty creating risk of death or serious injury or illness	CATEGORY 3: Other breach of duty
<p>Maximum penalty: <i>Individual:</i> \$300,000 fine or 5 years imprisonment or both. <i>Corporation:</i> \$3,000,000 fine.</p>	<p>Maximum penalty: <i>Individual:</i> \$150,000 fine <i>Corporation:</i> \$1,500,000 fine.</p>	<p>Maximum penalty: <i>Individual:</i> \$50,000 fine. <i>Corporation:</i> \$500,000 fine.</p>

Prosecutions

By way of context, in the **2016 - 2017 financial year**, the prosecutions team of the National Heavy Vehicle Regulator reported:

Files received:	323
Adjudicated:	297
Guilty:	206
Withdrawn:	29
Acquittal:	0
Matters before the Court:	77

The significant number of prosecutions, together with increasing penalties, indicate that the policy of the National Heavy Vehicle Regulator is to enforce strict compliance.



Next steps

Given the recent changing landscape and the greater burden of compliance on Executive Officers and participants in the CoR, it is important that companies and their Executive Officers ensure that they understand their responsibilities, and are able to meet the required standard of responsibility under the HVNL.

Delphi Partners can provide you with a detailed advice about how the HVNL affects your company, its exposure and risks under the HVNL, responsibilities, compliance issues and mitigation.




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