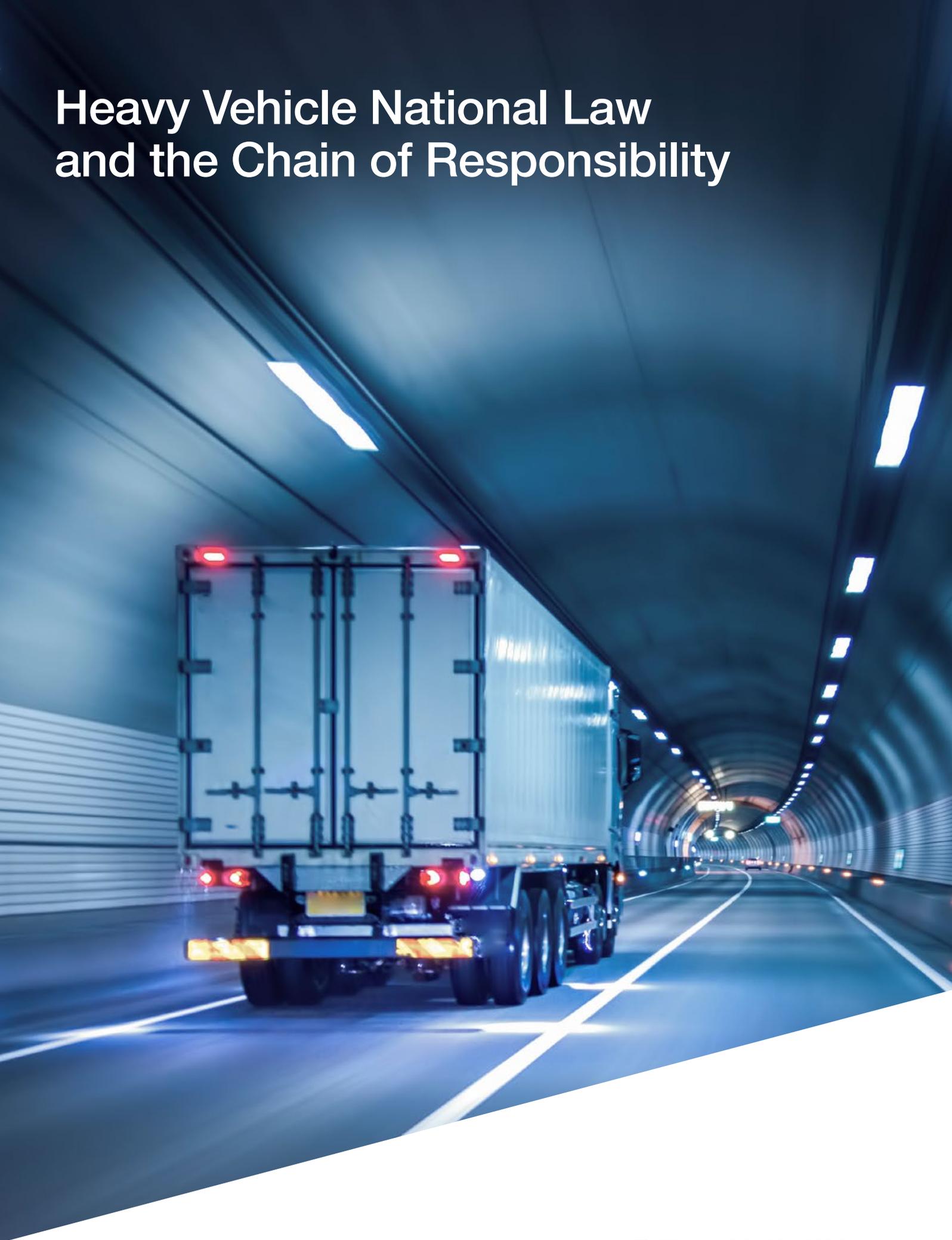


# Heavy Vehicle National Law and the Chain of Responsibility



## How can Hall & Wilcox help mitigate your HVNL risks?

**Education** – Advising on the scope of your responsibilities and risks associated with the HVNL.

**Contracting** – Drafting HVNL clauses for inclusion in your transport contracts or contracts for the supply of goods or services involving a heavy vehicle.

**Risk Management** – Drafting vendor questionnaires and operational systems to allow you to appropriately vet your service providers and manage your HVNL compliance.

**Defence** – Managing and defending HVNL investigations and prosecutions.

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## What is the Heavy Vehicle National Law (HVNL)?

The HVNL creates a consistent legislative framework<sup>1</sup> which regulates safety standards for heavy vehicle drivers nationally, as well as maintaining the public safety of other road users.

The HVNL regulates heavy vehicles over 4.5 tonnes gross vehicle mass and imposes obligations on all parties in the Chain of Responsibility. The HVNL regulates the operation of heavy vehicles on the road in respect of mass, dimension, load, fatigue management, vehicle standards and compliance programs.

Under the HVNL, a National Heavy Vehicle Regulator (**NHVR**) was established to investigate issues that arise under the HVNL and impose fines for lack of compliance.

## Where does it apply?

The HVNL only has force of law in NSW, VIC, QLD, TAS, SA, ACT.

The NT and WA do not have HVNL legislation in force; however, if the carriage is interstate from/to NT or WA to other states then the HVNL will apply.

## Who does it apply to?

The HVNL applies (to differing degrees) to all the parties in the Chain of Responsibility (**CoR**).

A party in the CoR for a heavy vehicle is defined under section 5 of the HVNL as follows:

- (a) if the vehicle's driver is an employed driver – an employer of the driver;
- (b) if the vehicle's driver is a self-employed driver – a prime contractor for the driver;
- (c) an operator of the vehicle;
- (d) a scheduler for the vehicle;
- (e) a consignor of any goods in the vehicle;
- (f) a consignee of any goods in the vehicle;
- (g) a packer of any goods in the vehicle;
- (h) a loading manager for any goods in the vehicle;
- (i) a loader of any goods in the vehicle;
- (j) an unloader of any goods in the vehicle.

1. Heavy Vehicle National Law Act 2012 (QLD), Heavy Vehicle National Law Application Act 2013 (VIC), Heavy Vehicle (Adoption of National Law Act 2013 (NSW), Heavy Vehicle National Law (ACT) Act 2013, Heavy Vehicle National Law (South Australia) Act 2013 (SA), Heavy Vehicle National Law (Tasmania) Act 2013 (TAS).

## Relevant provisions

The HVNL operates a system of general and specific duties:

- i. **section 26C** – a broad Primary duty for all parties of the CoR.
- ii. **section 26D** – due diligence obligations for all executives.
- iii. **section 26E** – prohibition on requests and contracts that may cause a driver to exceed a speed limit or drive while fatigued.
- iv. specific obligations for drivers and operators:
  - (a) **chapter 3** – vehicle operations – standards and safety;
  - (b) **chapter 4** – vehicle operations – mass, dimension and loading;
  - (c) **chapter 6** – vehicle operations – driver fatigue;
  - (d) **chapter 8** – accreditation.

## Section 26C – Primary Duty

All parties to the CoR have a 'Primary Duty' to ensure, so far as is reasonably practicable, the safety of the party's transport activities relating to the vehicle.

Section 26C sets out the 'Primary Duty' obligations that apply to all parties of the CoR as follows:

- (1) *Each party in the chain of responsibility for a heavy vehicle must ensure, so far as is reasonably practicable, the safety of the party's transport activities relating to the vehicle.*
- (2) *Without limiting subsection (1), each party must, so far as is reasonably practicable –*
  - (a) *eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and*
  - (b) *ensure the party's conduct does not directly or indirectly cause or encourage –*
    - i. *the driver of the heavy vehicle to contravene this Law; or*
    - ii. *the driver of the heavy vehicle to exceed a speed limit applying to the driver; or*
    - iii. *another person, including another party in the chain of responsibility, to contravene this Law.*
- (3) *For subsection (2)(b), the party's conduct includes, for example –*
  - (a) *the party asking, directing or requiring another person to do, or not do, something; and*
  - (b) *the party entering into a contract –*
    - i. *with another person for the other person to do, or not do, something; or*
    - ii. *that purports to annul, exclude, restrict or otherwise change the effect of this Law.*

The Primary Duty ensures that those who employ the driver, load the vehicle or receive goods at the end of the transaction are held responsible for maintaining safe procedures.

Failure to comply with the primary duty can result in significant penalties:

- individuals can be fined up to \$300,000 and five years' imprisonment; and
- businesses can be fined up to \$3 million depending on the severity of the contravention.

## Section 26D – due diligence obligations for all executives

An Executive within the meaning of section 26D of the HVNL includes a director of a company, a partner, manager or executive officer. Executives have a due diligence obligation to ensure that the business complies with its primary duty set out above.

Section 26D provides as follows:

### **26D Duty of executive of legal entity**

- (1) If a legal entity has a safety duty, an executive of the legal entity must exercise due diligence to ensure the legal entity complies with the safety duty.*
- (2) The executive may be convicted of an offence against subsection (1) even if the legal entity has not been proceeded against for, or convicted of, an offence relating to the safety duty.*
- (3) In this section –*

**'due diligence'** includes taking reasonable steps –

- (a) to acquire, and keep up to date, knowledge about the safe conduct of transport activities; and*
- (b) to gain an understanding of –*
  - i. the nature of the legal entity's transport activities; and*
  - ii. the hazards and risks, including the public risk, associated with those activities; and*
- (c) to ensure the legal entity, and uses, appropriate resources to eliminate or minimise those hazards and risks; and*
- (d) to ensure the legal entity has, and implements, processes –*
  - i. to eliminate or minimise those hazards and risks; and*
  - ii. for receiving, considering, and responding in a timely way to, information about those hazards and risks and any incidents; and*
  - iii. for complying with the legal entity's safety duties; and*
- (e) to verify the resources and processes mentioned in paragraphs (c) and (d) are being provided, used and implemented.*

**'executive'**, of a legal entity, means –

- (a) for a corporation – an executive officer of the corporation; or
- (b) for an unincorporated partnership – a partner in the partnership; or
- (c) for an unincorporated body – a management member of the body.

## Section 26E – prohibition on requests and contracts that may cause a driver to exceed a speed limit or drive while fatigued

Section 26E prohibits the direction of drivers which has the effect of causing the driver to breach a speed limit or drive while fatigued.

Section 26 E states:

### **26E Prohibited requests and contracts**

- (1) *A person must not ask, direct or require (directly or indirectly) the driver of a heavy vehicle or a party in the chain of responsibility to do or not do something the person knows, or ought reasonably to know, would have the effect of causing the driver –*
- (a) to exceed a speed limit applying to the driver; or*
  - (b) to drive a fatigue-regulated heavy vehicle while impaired by fatigue; or*
  - (c) to drive a fatigue-regulated heavy vehicle while in breach of the driver's work and rest hours option; or*
  - (d) to drive a fatigue-regulated heavy vehicle in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.*

*Maximum penalty – \$10,000.*

- (2) *A person must not enter into a contract with the driver of a heavy vehicle or a party in the chain of responsibility that the person knows, or ought reasonably to know, would have the effect of causing the driver, or would encourage the driver, or would encourage a party in the chain of responsibility to cause the driver –*
- (a) to exceed a speed limit applying to the driver; or*
  - (b) to drive a fatigue-regulated heavy vehicle while impaired by fatigue; or*
  - (c) to drive a fatigue-regulated heavy vehicle while in breach of the driver's work and rest hours option; or*
  - (d) to drive a fatigue-regulated heavy vehicle in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.*

*Maximum penalty – \$10,000.*

## Specific obligations for drivers and operators

**Chapter 3** – vehicle operations – standards and safety. This chapter aims to ensure that heavy vehicles used on roads are of an appropriate standard and condition to prevent and/or minimise safety risks.

**Chapter 4** – vehicle operations – mass, dimension and loading. This purpose of this chapter is to improve public safety by minimising risks caused by excessively loaded or excessively large vehicles as well as minimising any associated adverse impacts of excessively loaded or excessively large vehicles on road infrastructure.

**Chapter 6** – vehicle operations – driver fatigue. This chapter deals with the safe management of the fatigue of drivers of fatigue-regulated heavy vehicles during their journey on the road.

**Chapter 8** – accreditation. This chapter deals with accreditation under the HVNL to allow operators of heavy vehicles who implement management systems to be subject to alternative requirements under the HVNL where certain aspects are more suited to operators' business options.

## Managing HVNL obligations and mitigating risk of prosecution

Under the HVNL all parties in the CoR have a duty to identify and eliminate public safety risks and implement measures to ensure compliance with safety standards.

Convictions are generally recorded against companies where they have failed to monitor or implement systems which indirectly lead to a drivers' breach of the HVNL.

Businesses should consider managing and mitigating risk in the following ways:

- (a) including HVNL clauses in contracts that address HVNL provisions, audit, compliance program, training, education and if a breach does occur, warranties and indemnities;
- (b) vetting of and education of service providers;
- (c) risk reporting and management systems in place;
- (d) systems to monitor fatigue and fitness of drivers;
- (e) systems to monitor vehicle loads and speed;
- (f) assigning a Road Transport Risk Manager for compliance;
- (g) internal risk assessment and audit for safety risks;
- (h) consultations with supply chain partners;
- (i) documentation of above steps taken.

Businesses should be conscious of their obligations under the HVNL and monitor their compliance to ensure that conduct by parties within the CoR does not directly or indirectly result in a breach of the HVNL and resulting prosecution.



