AUSTRALIAN LOGISTICS COUNCIL
SUPPLY CHAIN EFFICIENCY AND SAFETY

23 September 2016

Secretary
Transportation and Utilities Committee
Parliament House
George Street
Brisbane QLD 4000
Via email: tuc@parliament.qld.gov.au

Heavy Vehicle National Law and Other Legislation Amendment Bill 2016

Dear Committee Secretary

The Australian Logistics Council (ALC) welcomes the opportunity to make a submission on the *Heavy Vehicle National Law and Other Legislation Amendment Bill 2016.*

Most of the Bill gives effect to decisions made by the COAG Transport and Infrastructure Council (TIC) to extend the Chain of Responsibility concept contained in the Heavy Vehicle National Law (the **HVNL**) as well as, more generally, amending the HVNL to more closely reflect the structure of generic workplace health and safety law in force in most Australian jurisdictions.

As a general proposition, there are no surprises contained in the Bill and so ALC hopes the legislation has a swift passage through the Legislative Assembly.

One comment ALC has is in relation to the Bill is the manner in which the legislation is drafted.

Clarity is important, given that clause 10 inserts a new 26F into the HVNL, which imposes in some circumstances a maximum penalty of $3 million for particular breaches of the Law.

In this context, it is noted that another part of clause 10 proposes the insertion of a new section 26A of the HVNL, which declares that 'the safety of transport activities relating to a heavy vehicle is the shared responsibility of each party in the Chain of Responsibility for the vehicle'.

While this correctly sets out what the HVNL Chain of Responsibility is meant to encourage, it is uncertain as to what such a broad statement adds to the legislation.

This is particularly the case, given that the new section 26B, which sets out the principles that apply to HVNL duties (set out in the proposed Part 1A2 of the Law), appears to say something very similar.

This means it is uncertain as to what a court would make of the declaration contained in subsection 26A(1). Given the new and heavy penalties imposed by the Bill, this is undesirable.

ALC would therefore recommend the repeal of proposed section 26A, and insert subsection 26A(2), which does have a legal purpose, into section 26B.

This would leave descriptions of the Chain of Responsibility as a shared responsibility to training materials and other communications – its legitimate place.

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ALC also draws your attention to the definition of 'transport activities' proposed to be inserted into the HVNL by clause 7.

It reads (in part):

> ***transport activities means*** *activities,* ***including*** *business practices and making decisions, associated with the use of a heavy vehicle on a road,* ***including****,* ***for example****— (and then examples are given).*

A definition that extends a concept ('activities') through both an inclusion that extends the natural reach of the first concept ('business practices' – a defined term, and 'making decisions associated with the use of a heavy vehicle on a road' – an undefined term of indefinite ambit) **and then** provides examples (which could inadvertently narrow what is hoped to be considered a 'transport activity') means that the definition is somewhat uncertain.

The duties regime for the Chain of Responsibility created by the Bill is imposed on those conducting 'transport activities'. Moreover, as previously discussed, the level of penalties contained in the HVNL is to be increased.

Given this, ALC recommends the Committee satisfies itself that what is a 'transport activity' for the purposes of the Chain of Responsibility provisions of the HVNL is a sufficiently certain concept to form part of a scheme imposing significant penalties on Chain of Responsibility participants.

ALC members have also noted that under the HVNL as it presently stands, industry members can prove that they took all reasonable steps to avoid the commission of an offence either by leading their own evidence or by demonstrating compliance with an industry code of practice registered under the Law.

However, clause 99 of the Bill removes Part 10.4, Divisions 1 and 2, which are the current sections which deal with the matters that can be relied upon to prove the 'all reasonable steps' defence, whilst clause 101 adds a new section 632A, which sets out how industry codes registered under the National Law (or a code of equal or greater standard) can be used in a defence to a prosecution.

On one reading of these amendments, the capacity to prove that all reasonable steps have been taken using evidence other than compliance with a code could be said to have either been removed or at least substantially modified.

ALC recommends that the Committee satisfy itself that the capacity of a person to prove that all reasonable steps were taken to avoid the commission of an offence without use of some form of code has not been either removed or diminished as a result of the amendments proposed in the Bill.

Finally, clause 137 deals with indexing fees and charges imposed under the HVNL. It proposes the insertion of a new subsection 740A(3), which reads:

> *(3) A recommendation of the responsible Ministers for national regulations prescribing a method for the increase of fees may not be made unless the responsible Ministers are satisfied the method generally accords with increases in relevant inflation indexes or similar indexes.*

It is uncertain as to what are 'relevant inflation indexes or similar indexes'. The Committee should seek to understand precisely what sorts of things would fall within this phrase.

More generally, if the subsection is designed to protect industry against the use of an indexation method increasing fees well in advance of inflation rates (the presumed purpose of the clause), ALC believes the test should be whether a reasonable person would conclude a proposed fee uplift mechanism 'generally accords with increases in relevant inflation indexes or similar indexes' – that is, an **objective** test – rather than a **subjective** test (what the Responsible Ministers think is the case, a judgement which could be infected by political and other considerations).

Accordingly, ALC would recommend that the phrase 'the responsible Ministers are satisfied' be removed from subsection 137A(3).

ALC believes these sorts of technical drafting issues can be dealt with prior to the introduction of amendments to the HVNL before they reach Parliament.

ALC has recommended to the Transport and Infrastructure Council that those with responsibility for the preparation of amendments to the HVNL should publish a final exposure draft of any legislation prior to parliamentary introduction, which is the practice adopted by the Commonwealth Treasury in relation to changes to taxation and competition law.

ALC requests the Committee to support this request.

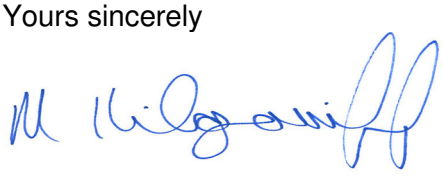
In conclusion, ALC notes that the substantive amendments to the HVNL are to commence on proclamation.

ALC trusts that the proclamation date will be sufficiently prospective such as it will allow both regulators and industry to develop practices and procedures that reflect the requirements of the new law.

From industry's perspective, this particularly means sufficient time to allow for the preparation and registration of registered industry codes of practice that are prepared against the provisions of the HVNL, as amended by the Bill.

Please contact me on 0418 627 995 or at Michael.kilgariff@austlogistics.com.au should you wish to discuss this submission further.

Yours sincerely



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