

NHVR Bill Tabled In Parliament

On Wednesday 24th March 2021, the Bill effecting the transfer of the Heavy Vehicle Inspection scheme and Heavy Vehicle National Law functions from TfNSW to the National Heavy Vehicle Regulator (NHVR) was tabled in Parliament.

The Bill's tabling is the first step in the process; whilst this is not the final legislation, the Bill provides guidance on what will occur to TfNSW employees if and when TfNSW transfer the functions to NHVR.

As the transfer progresses, the PSA will continue to meet with TfNSW and NHVR and will keep members informed about any changes.

The PSA has listened to members concerns about the transfer; below is information answering some of those concerns.

What is the NHVR?

The National Heavy Vehicle Regulator (NHVR) is Australia's regulator for all heavy vehicles.

They were established in 2013 as a statutory authority.

Who will transfer?

The Bill allows for the Minister to transfer employees whose functions relate to or give effect to the Heavy Vehicle Inspection scheme and Heavy Vehicle National Law functions.

The specific roles are yet to be identified. The PSA and TfNSW are meeting to identify roles whose function relate substantially to heavy vehicle regulation and inspection.

If the Bill becomes legislation, those employees who are transferred will not have the option to remain at TfNSW or take a redundancy; as the Bill provides for a forced transfer.

When will the transfer happen?

The final date for transfer is yet to be set; transport has indicated the last quarter of 2022. When we have more specifics, we will advise members.

What happens to transferring employees' employment on transfer?

If an Award employee transfers to NHVR, they transfer across on their current employment conditions. For example, if you are a permanent employee on a 35 hour a week contract and covered by the RMS Award you will continue to be employed as such.

It is proposed that contract employees (Non – Award covered) will transfer on conditions determined by the Minister.

Is there any employment guarantee for transferring employees?

Yes, the Bill provides for a 2 year employment guarantee period. After the 2 years, transferred employees will not have to reapply for their role; your role continues under the hours you transferred across as.

For example if you are a 35 hour a work week permanent employee you will continue your employment in this fashion with NHVR.

Temporary employees on transfer are guaranteed employment for their contract period before the 2



NHVR Bill Tabled In Parliament

years, or 2 years if your contract extends beyond the two years.

If a transferring employee remains employed after the 2 year guarantee period what happens to their conditions?

If an employee is transferred and is covered by an Award, the Award under the Fair Work Act becomes what is known as a copied State award and can then last up to 5 years from the transfer date. This means transferring employees conditions can continue beyond the 2 year employment guarantee. This includes temporary employees who have their contract renewed by NHVR.

After the 2 year guarantee, transferred staff will not automatically be placed under NHVR's existing Enterprise Agreement as the Award cannot cease as a result of an already existing enterprise agreement or one in which they have not been involved in negotiating.

Essentially, transferred employees' Award conditions can continue until NHVR enter into an enterprise agreement with transferred employees, or 5 years after the transfer date, whichever is later.

What happens to transferring flexible working hours arrangements and/or local arrangements?

After the PSA queried the protection of flexible working hours arrangements, TfNSW have amended the Bill to provide that the Flexible Working Hours Agreement made under the Local Arrangements clause of the RMS Salaried Award will continue to apply.

Where individual employees have entered into Flexible Working Hours Arrangements, TfNSW has proposed addressing this in an agreement with NHVR. As insisted by the PSA, the intent is for flexible working hours arrangements in place at the time of transfer, such as working from home arrangements, would remain in place. NHVR could only amend these after consultation with the transferred employee.

Does my leave transfer with me?

Employees sick leave, extended leave, annual leave, and FACS leave will transfer to NHVR. Service will also be recognised as continuous, therefore extended leave will continue to accrue.

TfNSW has indicated they will also give employees the option to cash out leave; this will not include sick leave or FACS leave.

If employees transfer to NHVR and return to the NSW Public Service, will their service with NHVR be recognised for the purposes of leave?

After the PSA raised the issue of recognition of service with NHVR if transferred employees were to return to TfNSW or another NSW Government Agency, TfNSW have taken steps to ensure the service with NHVR would be recognised.

The Secretary of TfNSW wrote to the Public Service Commissioner seeking for NHVR to be declared as an entity that would be recognised for the purposes of service.

We are pleased to inform members that service with NHVR will be recognised if you return to the NSW Public Service.

