

# **VicRoads' submission to the National Transport Commission's Consultation Regulatory Impact Statement**

## **National Heavy Vehicle Roadworthiness Program**

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## 1 Overview

VicRoads welcomes the opportunity to provide feedback on the National Transport Commission's (NTC's) Consultation Regulatory Impact Statement (RIS) for a National Heavy Vehicle Roadworthiness Program.

Improving heavy vehicle roadworthiness and reducing the consequent road trauma from defective vehicles is a shared aim between national and state and territory vehicle regulators, including Victoria. Road trauma resulting from vehicle defects continues to be a problem that remains despite efforts from regulators and significant gains in other areas of road safety.

In achieving this aim, each jurisdiction has implemented roadworthiness programs with a unique approach to the rigour, frequency and cost impost of its inspection program. Accordingly, there is potential for road safety gains to be made by identifying more effective, harmonised approaches across jurisdictions.

Notwithstanding the above aims, governments also have the shared goal of maintaining the principles of efficient and effective regulation. In line with this, VicRoads has concerns regarding the justification for imposing regulatory changes as presented in the Regulatory Impact Statement (RIS) as no conclusive link has been established between increasing heavy vehicle roadworthiness inspection beyond current practice, reduced vehicle defects and reduced heavy vehicle crashes. It is also doubtful whether the cost to benefit ratios of the proposals could be fully realised in practice.

VicRoads acknowledges that there is scope for improvement to the current processes relating to heavy vehicle roadworthiness. However, given the uncertainty that remains around increasing regulated vehicle inspections and road trauma, VicRoads believes these improvements would be best yielded by better targeting roadworthiness programs to areas of greatest risk rather than imposing unwarranted regulatory burden on community and business.

The RIS provides four options for consideration with Option 3 – Regulatory and quasi-regulatory measures being put forward as the preferred option. This submission indicates VicRoads' position on each of the options, without presenting a single preferred option as there is insufficient data within the RIS to allow an informed relative assessment to be made.

Considering the disproportionate share of funding already provided by the Victorian Government to support the operation of the National Heavy Vehicle Regulator, any increase in funding from Victoria to implement national heavy vehicle roadworthiness reform would be extremely difficult to justify, regardless of whether this is required to fund new initiatives directly or to support increased activity by the NHVR. Sufficient funding would need to be provided to Victoria to allow for the successful implementation of training, transitional changes, systems changes and regulatory changes associated with Option 3. Alternatively, the National Heavy Vehicle Regulator (NHVR) would need to commit to delivering the proposed services in place of VicRoads, providing this can be done without increasing the existing impost on either Victoria or the industry.

## 2 Context:

VicRoads' current role with respect to heavy vehicle roadworthiness includes:

- heavy vehicle inspections at transfer of vehicle ownership
- the deployment of Transport Safety Services (TSS) officers to make on-road inspections
- administering heavy vehicle roadworthiness guidelines as per Vehicle Standards Information (VSI) 26 – Roadworthiness Requirements

VicRoads' role is supplemented by additional on-road enforcement activity carried out by Victoria Police.

As part of its role as a regulator of vehicle roadworthiness for all vehicle types, Victoria is required to re-justify its regulations every 10 years. The most recent review of the roadworthiness system was conducted in 2013 and found that Victorian roadworthiness requirements, in their current form, could not be justified. The system applies roadworthiness inspections to vehicle regardless of their likelihood of having a defect or of being part of an existing vehicle maintenance and inspection process.

The reforms proposed by this review included moving to a more targeted approach to roadworthiness with vehicles under 3 years of age not requiring inspection. In line with the principle established in the 2013 review, VicRoads supports the targeting heavy vehicle roadworthiness criteria based on risk factors (age, freight class, mass, operator compliance history etc...).

A 2001 Victorian Parliamentary Road Safety Committee Inquiry into roadworthiness demonstrated that the introduction of annual scheduled roadworthiness inspections could not be justified due to the additional costs that would be imposed by annual inspection systems on top of the existing systems employed by industry. As mandatory periodic inspections only ensure roadworthiness on a single day, a regulatory scheme and system of industry practice is needed to ensure vehicle roadworthiness throughout a vehicle's service life.

## 3 Commentary on options proposed by NTC:

### **3.1 Option 1 – Status quo (5.2 of RIS)**

This option is supported

Notwithstanding the comments regarding previous reviews of Victoria's roadworthiness system, VicRoads does not have any current plans to make changes to its system. Accordingly, VicRoads supports the option of preserving its existing roadworthiness system.

## **3.2 Option 2 – Non-Regulatory package (5.3 of RIS)**

This option is not supported

Option 2 proposes to use existing regulatory powers within the National Heavy Vehicle Law and jurisdictional law with improved training, enforcement practices and better targeting of inspections toward the areas of highest defect risk.

VicRoads requests further information on:

- The funding and implementation arrangements to be put in place to support introduction of the measures;
- greater detail around the proposals being provided so that implementation costing can be accurately determined; and
- measures proposed to ensure enforcement flexibility is maintained.

## **3.3 Option 3 – Regulatory and quasi-regulatory measures**

**3.3.1 Chain of responsibility duty on business practices to extend to operators, employers or prime contractors in the vehicle standards chapter of the HVNL (5.4.1 of RIS)**

This option is supported in part

This section of Option 3 recommends inserting a specific duty focused on business practices in the vehicle standards chapter (chapter 3) of the Heavy Vehicle National Law and recommends that specific parties (operators, employers and prime contractors) be required to take all reasonable steps to ensure their business practices will not cause a heavy vehicle to be used on a road in a condition that is unsafe, unroadworthy or non-compliant with vehicle standards. Option 3 notes that similar duties exist under the Heavy Vehicle National Law for speeding (section 204) and fatigue (section 230).

Victoria continues to express in-principle support for the extension of chain of responsibility to vehicle standards. The form of the provisions required to create this duty are being considered in the Chain of Responsibility Duties Review. The Duties Review was initiated at the request of industry and consists of a series of extensive reviews and recommendations which are progressively reported to the Transport and Infrastructure Council for endorsement. It is noted that the Duties Review will consider how general duties can be used across the HVNL, including vehicle standards, and how parties in the chain should be identified. The review will also consider the standard of care to be applied.

Victoria considers that this recommendation should be examined and dealt with in detail as part of the Chain of Responsibilities Duties Review.

### 3.3.2 Option 3 – Roadworthiness technical standards, and major and minor defect criteria notices and formal warnings, to be recognised under regulation (5.4.2 of RIS)

#### This option is supported in part

Following consultation, the NTC has clarified that referencing the National Heavy Vehicle Inspection Manual (NHVIM) under law would require inspectors to follow the NHVIM when conducting an inspection but with some flexibility retained. This means that if, during a particular inspection, circumstances dictate that deviation from the NHVIM is required, then an inspector is free to do so if they provide reasons for the deviation. This would appear to be a reasonable requirement for Licensed Vehicle Testers conducting a scheduled inspection.

However, this requirement would not be supported with respect to enforcement officers conducting roadside inspections. Flexibility is required in these circumstances as roadside inspections need to be conducted based on observations made at the scene, rather than following specific steps outlined in the national heavy vehicle law.

In Victoria there is currently no process in place for the issuing of formal warnings, only verbal warnings are issued. There is not sufficient evidence that the introduction of formal warnings as an alternative to defect notices will have a positive impact on heavy vehicle roadworthiness. There is a concern regarding legal and safety ramifications if, for example, a formal warning is issued to a heavy vehicle by an enforcement officer, and then that vehicle is later involved in a serious crash before action is taken to satisfy the requirements of the formal warning.

Questions arise around how, without supporting data systems, formal warnings could be centrally collected and distributed to other enforcement officers in Victoria and other jurisdictions. Victoria currently does not have data systems to ensure that enforcement officers are rapidly alerted to the issuing of a formal warning, let alone extending this nationally.

VicRoads is also concerned that officer discretion when issuing a defect notice will be compromised if defect criteria are to be recognised under regulation. A clear indication that flexibility will not be compromised is required from the regulator.

### 3.3.3 Option 3 – Applying regulatory recognition to standardised inspection types, practices and defect clearance processes proposed under option 2 (5.4.3 of RIS)

#### This option is supported in principle

This option recommends standardised inspection types, practices and defect clearance processes whereby enforcement officers are provided with greater requirements around the type of inspection that is performed at the roadside and the levels of inspection that are required to remove any pending defect notice.

VicRoads supports this option in principle as the harmonisation of inspections across jurisdictions is likely to lead to greater certainty for transport operators and efficiencies for enforcement officers. However, the introduction of this option will have significant operational

and implementation impacts including the training of all VicRoads licensed vehicle testers and Transport Safety Services officers.

In the short term, standardising inspection processes is likely to impact VicRoads Licensed Vehicle Testers who currently operate under a different roadworthiness standard (Vehicle Standards Information Sheet – 26) to other jurisdictions, who currently already apply the NHVIM. While standardisation of testing may provide more certainty for industry when a road side test or defect clearance is conducted, the standardisation will increase equipment levels (such as roller brake testers) at Licensed Vehicle Tester sites. VicRoads' initial assessment is that some of Victoria's older heavy vehicle licensed vehicle test sites will not be able to meet the proposed standard. This could raise access issues in country Victoria where less well equipped test sites are located and has the potential to reduce services in these areas.

Given the likely impacts on training and licensing of testers under a standardised inspection scheme, Victoria's support for this option is contingent on implementation funding being made available by the National Heavy Vehicle Regulator or for the NHVR to engage vehicle testers to carry out inspections in place of VicRoads, noting the need to avoid additional costs, as outlined in the Overview of this submission.

### 3.3.4 Option 3 – Enabling NHVR to require more frequent inspections of higher risk vehicles and vehicle categories (5.4.4 of RIS)

#### This option is not supported

This option proposes to move roadworthiness inspection criteria to a risk based model. Currently Victoria employs a model of inspection based on transfer of ownership. However, on implementation of the reform, the NHVR could make recommendations to Ministers that certain groupings of vehicle be prescribed a periodic inspection regime due to a history of identified risk through national heavy vehicle roadworthiness surveys or through a database of on-road inspections.

As highlighted above, Victoria already applies a roadworthiness system to vehicles which imposes regulatory impost upon business and community beyond the benefit derived from the system. The NTC's RIS makes an assumption that increasing inspection rates will lead to reductions in road trauma. A strong, evidence based case for increases in regulatory burden has not been established. Accordingly, VicRoads believes that while there is scope to better target roadworthiness inspection toward the areas of highest risk, this should not impose regulatory burden increases beyond what is already applied in Victoria. However, Option 3 proposes an increase in inspections rather than a better targeting of high risk vehicles and there is little evidence provided to support the case for an increase in inspections .

In considering whether a risk based system should be adopted for heavy vehicle roadworthiness, the NTC must also consider the impact of standardising roadworthiness technical standards. The overall impost of Victoria's roadworthiness system is impacted by the rigour behind inspections undertaken through VicRoads' Licensed Vehicle Tester network. VicRoads' current test, based on Vehicle Standards Information Sheet 26, applies an in-depth inspection of the vehicle which currently requires vehicles to be out of service for longer periods than the tests applied in other

jurisdictions. That is, Victoria currently tests vehicles less frequently, but with more rigour than other jurisdictions. It is not clear from the NTC's analysis which model provides the greatest road safety benefits, however, the overall design of the risk based inspection system needs to consider both frequency and thoroughness of inspection.

The implementation impacts of this option also remain a concern for VicRoads. To implement the option, a range of systems would need to be established which are currently not in place nor planned to be introduced. These include:

- registration systems that can identify vehicles by freight type, age, operator or other risk factors,
- registration processes to enable vehicles to be excluded from registration if a periodic inspection is not presented,
- resources for training, auditing and licensed vehicle testing,
- a regular on-road survey of vehicle roadworthiness,
- a national database of roadworthiness defects through on-road enforcement activities,
- implementation of testing requirements,
- agreed criteria for identifying high risk vehicles.

As the NTC's RIS does not identify a specific option for implementation, it is not possible to estimate order of magnitude implementation costs for this reform. Therefore, VicRoads cannot support this option until the scope of the option is more certain. As with other options, VicRoads' support would be contingent on provision of implementation funding by the National Heavy Vehicle Regulator, or the Regulator delivering these services in place of VicRoads.

### 3.3.5 Option 3 – Enforceable undertakings in the HVNL (5.4.5 of RIS)

This option is supported in principle

This section of Option 3 recommends an amendment be made to the HVNL to provide for enforceable undertakings in relation to heavy vehicle roadworthiness.

VicRoads notes that enforceable undertakings are also part of a suite of additional enforcement tools recommended as part of the Chain of Responsibility Duties Review.

VicRoads considers that an evaluation of how this enforcement alternative could be applied within the Heavy Vehicle National Law in general, rather than just being restricted to heavy vehicle roadworthiness, should be considered in detail. The Chain of Responsibility Duties Review may be the appropriate avenue to consider this further.

### 3.3.6 Option 3 – Regulatory NHVAS improvements, including changing the definition of NHVAS accreditation and introducing a power to make aspects of accreditation mandatory (5.4.6 of RIS)

This option is supported in part

This section of Option 3 makes a number of recommendations regarding regulatory changes to NHVAS.

- Option 3 recommends changing the definition of accreditation in s457 of the HVNL to make the NHVAS maintenance management module a pre-requisite for the NHVAS mass management module.

VicRoads does not support NHVAS maintenance management accreditation being a pre-requisite for NHVAS mass management accreditation. In Victoria, only vehicles with tri-axle groups operating under Higher Mass Limits have a mandatory mass management accreditation requirement. VicRoads questions whether this subgroup of heavy vehicles has a demonstrated increased safety risk due to poor roadworthiness compliance and hence whether mandatory NHVAS maintenance management accreditation is being effectively targeted. VicRoads considers the reasons for having maintenance management accreditation are not the same as the reasons for having mass management accreditation.

As this recommendation specifically references s457 of the HVNL, it should be noted that the definitions under the HVNL related to accreditation are subject to amendments in the forthcoming Heavy Vehicle National Law Amendment Bill 2015.

- Option 3 recommends changing s461 of the HVNL such that the NHVR may grant accreditation only where it is satisfied that the operator has in place a 'relevant management system' that incorporates the principles and practices of a safety risk-management approach.

While VicRoads generally supports the concept of a risk management approach to safety, the current recommendation to modify s461 of the HVNL is not supported as further clarification of the scope and intended outcomes of this proposal are required.

s461 applies to all heavy vehicle accreditation, not just maintenance management accreditation, hence the effect on mass management, accreditation and fatigue management accreditation (AFM and BFM) would need further consideration. The scope of the application of the safety management system would also need to be defined. For example, would the safety management system only apply to the area of operations covered by the accreditation or would it apply to the operation of the business as a whole?

Victoria recommends this issue be referred to the National Transport Commission for further consideration.

- Option 3 recommends a new power for the NHVR to make aspects of maintenance management accreditation mandatory for some classes of vehicles or classes of operator based on risk or operator roadworthiness performance.

VicRoads supports the concept that maintenance management accreditation could be made mandatory for some classes of vehicles or classes of operator based on risk.

The power to require mandatory maintenance accreditation of any major classes of vehicles, such as vehicles transporting dangerous goods, should be a provision under the HVNL rather than as a power to be applied by the NHVR. The application of mandatory maintenance

management accreditation within the HVNL will provide industry with both Ministerial oversight and legislative certainty.

A new power for the NHVR to make maintenance management accreditation mandatory for operators based on roadworthiness performance is supported subject to an appropriate level of oversight being applied. Options to provide this oversight may be to require the NHVR to seek a court order to impose the requirement and/or the development and application of clear Ministerial guidelines. VicRoads recommends further work be undertaken to explore options to provide this oversight.

The NTC has flagged the development of a national vehicle roadworthiness survey. This would provide increased data around roadworthiness defects and the risk based approach to roadworthiness. It could be used to prescribe periodic roadworthiness to certain classes of vehicles. VicRoads would be willing to re-visit the risk based approach if it can be demonstrated that periodic roadworthiness inspections are effective in reducing trauma.

### **3.4 Option 4 – Regulatory Standardisation (5.5 of RIS)**

This option is not supported

Beyond the reforms outlined in option 3, option 4 proposes mandatory scheduled inspections for all heavy vehicles, incorporating roadworthiness standards under the NHVIM into regulation, prescribing standardised inspection types, and a general duty for all parties in the Chain of Responsibility (COR) to ensure vehicles over which they have influence are roadworthy.

In line with the NTC's RIS recommendation, VicRoads does not believe that a compelling case has been provided by the NTC for the introduction of regulatory standardisation, particularly around periodic inspections. A stronger case, linking heavy vehicle inspections with defects and road trauma would need to be made prior to VicRoads supporting this option.

As proposed under option 3, the NTC have flagged the development of a national vehicle roadworthiness survey. Through the collection increased data around roadworthiness defects and the risk based approach to roadworthiness whereby certain classes of vehicles have periodic roadworthiness system prescribed, VicRoads would be willing to re-visit if it can be demonstrated that periodic roadworthiness inspections are effective in reducing trauma.

## **4 Questions to consider:**

### **4.1 Is there further information or data that may help more clearly assess the link between mechanical defects and heavy vehicle crash risk?**

VicRoads has provided data during the NTC's project development phase. At this stage, there is no additional data to submit.

As outlined in the response option 3, it is considered that the collection of roadworthiness surveillance data and on-road enforcement data is important to identifying the high risk vehicles to be targeted under option 3.

***4.2 What benefits will developing more nationally-standardised procedures for different inspection types and defect clearing provide? What, if any, problems have you experienced with existing variations in these matters?***

VicRoads has not identified any operational problems with jurisdictional based standards for inspection or defect clearance and consequently any significant benefit from harmonisation. Industry members may be better placed to identify issues with inconsistencies between jurisdictions.

***4.3 To what extent do you expect operational reforms – such as improvements to regulatory practices under the existing HVNL powers – to achieve the objectives of improved heavy vehicle roadworthiness?***

The RIS has discussed a range of measures to improve vehicle roadworthiness through increased regulatory power. However, using existing powers in the National Heavy Vehicle Law, the NTC should consider the optimum level of on-road inspections. This is an option that has not been considered in the RIS, but is one where there are substantially different approaches between jurisdictions.

***4.4 How are industry members who may provide heavy vehicle inspections and repairs positioned to support any increase in demand for these services? Is sufficient skilled labour available?***

VicRoads is not in a position to provide advice about the capacity of industry to provide increased heavy vehicle testing services.