



# Reforms to Heavy Vehicle National Law

## Consultation Regulation Impact Statement: NHVR Response

November 2023

---

---

**This page is intentionally left blank**

## Introduction

The National Heavy Vehicle Regulator (NHVR) thanks the National Transport Commission (NTC) for the opportunity to comment on the Consultation Regulation Impact Statement (C-RIS) for the review of the Heavy Vehicle National Law (HVNL).

The HVNL established the NHVR to improve heavy vehicle safety and productivity, reduce the impact of state and territory borders, and deliver a more consistent and efficient regulatory approach. Accordingly, the NHVR and the HVNL are intended to:

- promote public safety
- manage the impact of heavy vehicles on the environment, road infrastructure and public amenity
- promote industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles, and
- encourage and promote productive, efficient, innovative and safe business practices.

The NHVR acknowledges that the HVNL Review provides an opportunity to pursue a more modern, flexible and effective regulatory system. Whilst the C-RIS highlights a number of broad concepts for reform relating to fatigue, access and a proposed National Auditing Standard (NAS), the success of these reforms will be determined by the ability to practically implement them within the regulatory environment. Once clearer, evidence-informed options are agreed upon, the industry, the Regulator and our law enforcement partners can provide further practical insight into how the concepts may translate into effective outcomes.

In the following submission, the NHVR outlines its broad positions in relation to each C-RIS reform area (fatigue, access and NAS), as well as the outcomes that these reforms should seek to achieve. The submission then addresses a number of the options canvassed in the C-RIS within the context of these broader positions.

The following legend indicates the NHVR's positions:



# 1 Fatigue

As a modern, risk-based regulator, the NHVR collects and applies data-driven intelligence to identify and address the greatest safety risks relating to heavy vehicles. The management of driver fatigue has, and will continue to remain, a key safety focus for the NHVR.

At present, the HVNL is prescriptive in relation to a driver’s fatigue related work and rest hours. The HVNL does, however, provide a performance-based approach for operators and drivers to manage driver fatigue when operating within the Advanced Fatigue Module (AFM) of the National Heavy Vehicle Accreditation Scheme (NHVAS).

The NHVR is of the view that empowering operators and drivers to manage their fatigue through robust safety management systems produces more effective safety outcomes. Encouraging the uptake of AFM by streamlining administrative requirements and providing practical guidance and tools for industry has been a key priority for the Regulator. The proposed introduction of a performance-based fatigue tier as part of the new NHVAS 2.0, will support this approach and provide greater capability for the heavy vehicle industry to more effectively manage their fatigue safety risks.

The NHVR also considers that electronic work diaries (EWDs) offer a more effective and simpler tool than written work diaries (WWDs) to assist industry in meeting their fatigue record keeping obligations. The recommendations and proposals provided in the C-RIS would largely be addressed through greater adoption of EWDs. In this respect, the NHVR is seeking a commitment to reform that would encourage greater adoption of EWDs. At the same time, the NHVR acknowledges that the adoption of EWDs needs to be supported by compliance arrangements that ensure drivers aren’t unfairly fined for minor and non-safety related fatigue breaches.

## C-RIS proposed policy options:

The below sections outline the NHVR’s position in relation to reform options for fatigue as specifically outlined in the C-RIS.

### 1.1 Record keeping and administration

#### 1.1.1 Reform Option 1a – Remove duplicate prescriptive work diary requirement and streamlining offences

<p><b>Option 1a: Remove duplicate prescriptive work diary requirements and streamlining offences</b></p>	<p>The NHVR supports the removal of duplicate prescriptive work diary requirements, including offences such as failing to record specific information (section 298), when information is to be recorded (section 297), and how information is to be recorded (sections 301 and 303).</p> <p>The NHVR considers that the adoption of EWDs will address challenges relating to simplifying unnecessary information contained in the WWD.</p> <p>The NHVR supports streamlining offences to a single offence that controls how work diaries are filled out.</p>
--	--

#### Simplification of work diaries

The NHVR is committed to the simplification of work diary record keeping and supports key initiatives that reduce the administrative and regulatory burden on the heavy vehicle industry.

The NHVR is of the view that a commitment to support adoption of EWDs as a simplified approach to record keeping will provide greater overall benefits where EWDs are less burdensome on drivers, record keepers,

operators, and regulatory agencies. EWDs remove the need to manually count hours, and general feedback provided by drivers is that they provide greater insight to better plan work and rest.

Other key benefits of EWDs include:

- improved data accuracy and transparency for drivers, transport operators and authorised officers
- provision of real time data, enabling transport operators to respond immediately to actual breaches and monitor performance over time
- in-vehicle driver information, enabling drivers to plan their work and rest and take action when alerted to an imminent or actual breach
- allows a simpler way for drivers of fatigue-regulated vehicles to record their work and rest information
- automatically pre-populates some records to reduce the amount of time it takes for drivers to manually record work and rest information
- reduces the administrative burden for operators and drivers,
- helps transport operators to monitor their business and improve their fatigue risk management, and
- support moving to a more consistent compliance and enforcement approach to managing fatigue work and rest hours.

The NHVR also recognises that encouraging the adoption of EWDs requires a supporting compliance regime. The NHVR's Regulatory Intervention Strategy (endorsed as part of the National Regulatory Model) supports an "Inform, Educate and Enforce" approach to compliance that would ensure drivers aren't unfairly fined for minor work and rest hour breaches.

The NHVR is seeking to explore improved EWD adoption with ministers, regulatory partners and the heavy vehicle industry to better understand how EWDs and a supporting compliance regime can be better addressed through the HVNL Review process.

### Multiple offence provisions

The NHVR agrees that multiple offence provisions in the HVNL control similar (or even identical) conduct. These duplicative offences reduce clarity for industry participants, complicate enforcement of the HVNL, and provide little value in terms of achieving a safety outcome. Duplicative offences include:

- failing to record specific information (section 298)
- when information is to be recorded (section 297), and
- how information is to be recorded (sections 301 and 303).

The NHVR supports the creation of a single offence provision to control how work diaries are filled out (as prescribed by the national regulation) to support clarity and efficiency in this space. A singular offence would manage all requirements for compliance monitoring and enforcement purposes. Where particular record keeping requirements are needed, these can be adequately addressed through a mixture of regulations and instructions, as well as guidance contained in the work diary itself.

As outlined in *Table 1* below, NHVR offence data highlights the complexity of the current HVNL in relation to WWDs. Broader offences (such as section 296, section 297, and section 301) are often enforced, while discrete offences are rarely utilised. A driver must follow all six provisions, each of which may also be affected by or interpreted through provisions in the Fatigue Regulations. This is in addition to other HVNL provisions relating to work diaries, record keeping more generally, and counting work and rest hours.

**Table 1: Summary of incidences of work diary offences by jurisdiction (2017 to 2023) from RCMS, NSW Truck Scan and NHVR Intercept Application**

	Section 296 Recording information under the national regulations— general	Section 297 Information required to be recorded immediately after starting work	Section 298 Failing to record information about odometer reading	Section 299 Two-up driver to provide details	Section 301 Recording information in written work diary	Section 302 Recording information in electronic work diary	Section 303 Time Zone of Driver's Base Must Be Used
<b>Total</b>	2886	2759	91	7	1830	9	24

Additionally, the NHVR notes that these offences contain significantly different maximum penalty levels – with section 296 as low as \$1500, and section 297 as high as \$6000. For example, section 298 duplicates odometer recording requirements controlled by section 296 (through the *Heavy Vehicle (Fatigue Management) National Regulation*). The NHVR recommends that analysis is undertaken to determine the most appropriate penalty level for a streamlined offence.

### 1.1.2 Reform Option 1b – Removing administrative process requirements and offences

<b>Option 1b: remove administrative process requirements and offences</b>	<p>The NHVR supports, in principle, the reform of administrative process requirements and offences.</p> <p>The NHVR supports greater use of the NHVR Safety and Compliance Regulatory Platform (SCRIP) and Roadside Compliance Monitoring Solution (RCMS) to manage compliance of record keeping arrangements.</p>
---	--

#### Returning lost or stolen written work diaries

The current process for lost or stolen work diaries are burdensome to both industry and the regulator, and do not provide an identifiable safety or regulatory benefit.

Section 308 of the HVNL requires a driver who recovers a previously lost or stolen written work diary to cancel any unused daily sheets and send it to the NHVR within a set timeframe. The NHVR must cancel any unused daily sheets if the driver has not done so, and then return the work diary to the driver.

In the period 2022 to date, the NHVR received 106 notifications of lost or stolen work diaries, and only seven lost work diaries have been returned to the NHVR when found. The provided case study provides an overview of the complexity for lost or stolen diaries.

**Case study**

A driver loses their work diary when travelling remotely and is in an area with no phone coverage for longer than two days. The driver proceeds to abandon their work task and travel to an area with phone coverage and a licence service centre, knowing there is a requirement to advise the NHVR about the lost work diary.

The driver then recovers their work diary three weeks later and proceeds to try and comply with the law, posting the work diary to the NHVR. The driver forgets to cancel unused daily sheets, realising after posting the recovered work diary to the NHVR. The driver is concerned that they have committed an offence.

The NHVR must then apply its Regulatory Intervention Strategy, after receiving the recovered work diary in a way that does not comply with requirements under the HVNL and determines not to take further action. The NHVR returns the work diary to the driver. The NHVR did not require this information for a regulatory purpose, and it has not supported safety outcomes related to the driver’s work. The driver has been exposed to numerous administrative offences, with these prescriptive obligations being unnecessarily burdensome in the context of their work tasks.

**A National WWD Database**

As outlined in response to 1a, the adoption of EWDs provides a simpler and less burdensome approach to supporting the recording of work and rest hours. The use of EWDs also helps reduce the compliance of WWDs outlined in this section.

The NHVR’s Safety and Compliance Regulatory Platform (SCRIP) is already an established system that provides a central database containing heavy vehicle registration and compliance information across all the states and territories. The information from SCRIP is accessed and updated on the roadside in real time by NHVR Safety and Compliance Officers through the Roadside Compliance Monitoring Solution (RCMS).

The use of RCMS is being successfully utilised to support the NHVR’s risk-based approach to addressing the greatest safety risks. It is used in all local and national roadside operations. The RCMS tool and sharing of national heavy vehicle safety information is currently being expanded to WA. Work is also underway with police agencies to provide improved sharing of data.

Improving the sharing of data arrangements through the established national platform and RCMS would provide greater safety value rather than developing a national database. This reform should focus on better utilising the RCMS to support compliance of fatigue record keeping, rather than the creation of another database.

**1.2 Scope of fatigue regulated heavy vehicle**

The Kanofski Report recommended that all vehicles over 4.5t gross vehicle mass (GVM) be included in the definition of ‘fatigue-regulated heavy vehicles’<sup>1</sup> (FRHVs). As a result, the C-RIS outlines proposed reform options to alter the scope of FRHVs in this manner.

**1.2.1 Reform Option 2 – Increasing the scope of Fatigue-Regulated Heavy Vehicles**

<b>Base Case 2: Prescriptive fatigue requirements for</b>	The NHVR supports, in principle, a reform to increase the scope of fatigue regulated heavy vehicles (FRHVs). Further work is required to understand
---	---

<sup>1</sup> Attachment A – Ken Kanofski Advisory Reform Propositions, p. 8, 5 August 2022, accessed at <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/infrastructure-and-transport-ministers-meetings>>.

**HVs > 12t only, work diary exemption for drivers doing local work**

the safety profile of vehicles that fall within the 4.5 tonne to 12 tonne category to better understand the benefits of this reform.

Further work is required to understand the fatigue risk posed by heavy vehicles between 4.5-12 tonnes GVM before this reform proposal can be supported. Similarly, more work needs to be undertaken to identify the nature of operations of the sectors that will be captured by this change. With the increased adoption of electric vehicles and the increased mass that comes with these vehicles, further work will need to be undertaken to understand the scope of vehicles that will now fall within the 4.5 tonne plus heavy vehicle category.

The analysis of the move to increasing fatigue regulations to 4.5 tonne vehicles also needs to consider the number of vehicles this would cover (taking into consideration the move to electric vehicles as mentioned) as well as the regulatory efforts that would need to be expended on these vehicles and how this impacts regulatory compliance costs across the industry. The NHVR's current analysis identifies that an additional 30% of the heavy vehicle fleet would be captured that would require fatigue regulatory efforts.

Without an effective analysis of the operations and fatigue risk profiles of heavy vehicles between 4.5-12t, the NHVR cannot fully support the proposed reforms to increase the scope of FRHVs.

### 1.3 Enforcement of fatigue offences

The NHVR undertakes compliance and enforcement activities in line with the *NHVR's Regulatory Intervention Strategy (as part of the endorsed NHVR National Regulatory Model)*.<sup>2</sup> The Strategy directs the NHVR to apply regulatory effort to the greatest safety risks, and where it will have the greatest influence in achieving improved safety outcomes. These intervention activities are undertaken in response to identified safety risks and non-compliance behaviour, including to enforce the HVNL where necessary.

The NHVR has been adopting a successful risk-based approach to compliance activities for several years now and this has been acknowledged by the heavy vehicle industry. This approach adopts an "inform, educate and enforce" approach to heavy vehicle compliance activities. The NHVR supports changes to the fatigue laws that provide NHVR Safety and Compliance Officers with more ability and tools to better utilise this approach with the heavy vehicle industry, including the ability to issue formal warnings without current constraints.

#### The current state: the NHVR's Regulatory Intervention Strategy and proposed fatigue reforms

The NHVR determines appropriate regulatory responses through considering the safety risk and the compliance behaviour of the industry participant. For example, when dealing with systemic issues of non-compliance of a high-risk nature, the NHVR would utilise stronger intervention responses compared to a lower-risk issue of non-compliance where the industry participant is willing and able to comply. Conversely, if an industry participant is willing to comply but the severity of the safety risk is serious, stronger intervention tools (including prosecution) may be appropriate. This concept is represented in the Regulatory Intervention Pyramid<sup>3</sup> below:

<sup>2</sup> National Heavy Vehicle Regulator (n.d), *Our Regulation Intervention Strategy*, nhvr.gov.au, accessed at <<https://www.nhvr.gov.au/files/media/document/81/202209-1324-regulatory-intervention-strategy.pdf>>.

<sup>3</sup> Ibid, p.4.



## ***Case Studies for the application of the NHVR's Regulatory Intervention Strategy***

### ***Inform and educate***

A driver of a fatigue-regulated heavy vehicle is intercepted by an authorised officer for a routine compliance inspection.

The authorised officer obtains the driver's National Driver Work Diary and on inspection, the officer notices that throughout the past couple of weeks, the driver has not made all the required entries in their work diary, specifically by not recording the registration number of the vehicle he is driving at the top of the work diary daily sheet. In all other respects, the driver's work diary and the driver's work and rest hours are fully compliant with the HVNL.

The driver informs the authorised officer that he was unaware that he had to fill out that field on each sheet as he drives the same vehicle every day. Using information recorded in the work diary and other heavy vehicle monitoring information available the officer is satisfied that the driver has been driving the same vehicle and has not intentionally tried to deceive or mislead the officer.

The authorised officer takes an 'inform and educate' compliance approach and explains to the driver the importance of completing the work diary daily sheet completely and accurately, including the registration of the vehicle they are driving. The officer makes a note in the driver's work diary about their discussion to inform future intercepts.

### ***Formal warning***

A driver is intercepted by an authorised officer for a routine inspection and the officer obtains a copy of the driver's National Driver Work Diary.

The officer notices that a couple of the pages do not correctly indicate the total number of hours worked, noting that the other pages do. The driver acknowledges they were aware this was an offence, however had struggled adding time up and incorrectly entered the incorrect total hours.

The authorised officer issues a formal warning to the driver to ensure that hours are added up correctly in future and provides informal education at the roadside on how to add up time.

### ***Infringement***

A solo 'standard hours' driver transporting goods and has agreed to meet a strict timeframe. In attempt to make their agreed timeframe, the driver works two instances of more than 13¼ hours within a 24-hour period (severe risk breach), as well as two instances of 7¼ hours' work in an 8-hour period (minor risk breach).

After their latest rest, the driver is intercepted by an authorised officer. The officer notices that the driver has worked longer than the permitted hours and subsequently issues an infringement for a severe risk breach.

### ***Chain of responsibility investigation and prosecution for fatigue***

A civil engineering and contracting company breaches its primary safety duty after eight of the company's heavy vehicle drivers allegedly committed a total of 193 fatigue-regulated breaches between 1 July 2020 and 6 August 2020. It is alleged that:

Drivers sought to maximise their income by working excess hours and not having regard for their work/rest times. In addition, the drivers would falsify their work records to indicate they had taken rest breaks when in fact, they had not.

The company was aware that its drivers were exceeding their standard hours. The issue of the drivers' work hours was only discussed in the context of how expensive it was and the possibility that some drivers were attempting to inflate their hours.

The company had no policies, procedures, or safety management systems to manage the risks of their transport activities.

The company did not provide its drivers with any toolbox talks or training relating to the technical aspects of its plant and equipment, site inductions, training on compliance with the HVNL, or general fatigue management training.

The company pleaded guilty to thirty-seven offences contrary to section 26H (Category 3) of the HVNL for breaching its primary safety duty by failing to ensure its drivers did not work in excess of their maximum standard work time. This failure created a safety risk to both its drivers, other road users and members of the public. A total fine of \$1,200,000 was imposed on the company.

### **1.3.1 Reform Option 3a – Limiting the timeframe for issuing work and rest breach infringements**

#### **Option 3a: Limit on the timeframe for issuing a work and rest breach infringement.**

The NHVR believes that limits on timeframes for issuing work and rest breach infringements can be more effectively managed through regulatory operational policy rather than through legislative reform.

The NHVR is of the view that positive behavioural change, and therefore safety, is not best achieved by infringing a driver for a non-compliance that occurred well over a month ago. Instead, regulatory efforts should focus on patterns of behaviour and encouraging industry participants to return to compliance.

As the Kanofski Report emphasised 'fatigue enforcement and compliance should focus on patterns of behaviour, risk profiles, systemic issues, and serious deliberate breaches,'<sup>5</sup> any changes to the timeframe should consider the NHVR's requirement to consider older breaches in order to respond to systemic patterns of non-compliant behaviour.

NHVR roadside data finds that Safety and Compliance Officers increasingly use education as a roadside regulatory tool. Use of roadside education has grown over 18% in the past five years, with Safety and Compliance Officers spending over 2100 hours educating heavy vehicle drivers at the roadside on fatigue and work diaries.

<sup>5</sup> Attachment A – Ken Kanofski Advisory Reform Propositions, p. 8, 5 August 2022, accessed at <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/infrastructure-and-transport-ministers-meetings>>.

Additionally, the NHVR provides a variety of alternative avenues for education. The NHVR Call Centre received approximately 60,000 calls over 22-23FY. In the same period, the NHVR has released 16 regulatory advice documents and two Codes of Practice, with another three advice documents and six Codes of Practice under development.

In the NHVR’s view, the recommendation to limit the timeframe for issuing work and rest breach infringements, is best managed through regulatory operational policy rather than through legislative provisions and needs to be considered in the broader regulatory context. Limiting the timeframe for issuing work and rest breach infringements may constrain authorised operators from applying the appropriate inform, educate and enforce intervention approach at the roadside.

This proposed reform may require the NHVR to ignore instances of non-compliance or use intervention tools that sit higher up the intervention pyramid to enforce the HVNL. For example, a series of offences may not be appropriate for an improvement notice, but also not be of a serious enough nature for prosecution.

**1.3.2 Reform Option 3b – Risk profile for work and rest breaches**

<b>Option 3b: Risk profile for work and rest breaches.</b>	The NHVR does not support Option 3b, as profiling work and rest breaches as outlined in the C-RIS would overly complicate enforcement and potentially reduce safety outcomes.
--	---

As outlined, in the NHVR’s view, the recommendation to undertake risk profiling work and rest breaches is best managed through regulatory operational policy rather than through legislative provisions. The NHVR is concerned that including operational approaches to risk management in the law will make regulation more prescriptive and reduce the ability for officers to apply discretion when undertaking risk based compliance.

The NHVR already undertakes risk profiling activities through the use of the Safety and Compliance Regulatory Platform and the Roadside Compliance Monitoring Solution. The RCMS records all interactions with a driver so the NHVR can determine past history which helps inform the appropriate action taken. The NHVR is currently investigating the feasibility and legality of sharing this information with policing agencies to assist them in making more informed compliance decisions.

This option may also significantly impact the NHVR’s capacity to intercept at the roadside. Increasing the complexity of each roadside interception will increase the duration of each interception and may reduce the total number of vehicles that an authorised officer can intercept over time.

The NHVR notes that effectively operationalising these regulatory policy reforms would require continuing work on data-sharing between law enforcement agencies, the NHVR and jurisdictional road transport agencies. The NHVR also considers that these issues related to fatigue are best resolved through providing the Regulator with the flexibility to develop risk-based regulatory policy.

**1.3.3 Reform Option 3c – Enabling a review of fines for ‘trivial’ or ‘trifling’ work diary offences**

<b>Option 3c: Enable a review of fines for ‘trifling’ work diary offences.</b>	The NHVR supports, in principle, further analysis on reviewing fines for trivial and trifling offences. However, the NHVR recommends that legal advice be sought regarding the extent to which the HVNL may be able to alter the operation of a jurisdiction’s infringement legislation to provide reviews of trifling or trivial infringements.
--	--

Anecdotal evidence suggests that drivers believe they are being penalised for administrative offences in their work diaries, including minor spelling errors. The NHVR supports further analysis to address protection for such trivial or trifling offences.

The NHVR suggests that the current rights of review in jurisdictional legislation may not effectively address industry concerns in these instances. The NHVR further notes that these rights of review are not consistent across jurisdictions. For example, reviews for trivial and trifling expiations occur in South Australia but not in other jurisdictions. Further, reviews of infringements are often limited in their ability to be brought by the accused. This does not provide an opportunity to consider the appropriateness of an infringement over a formal warning or other regulatory tool, or whether the infringement should have been issued at all for the offence.

The NHVR recommends that legal advice is sought to determine the extent to which the HVNL may be able to alter the operation of a jurisdiction’s infringement legislation to provide reviews of trifling or trivial infringements.

### 1.3.4 Reform Option 3d – Driver defence for minor administrative offences

<b>Option 3d: Driver defence for minor administrative errors.</b>	The NHVR does not support Option 3d, as allowing for a driver defence at the roadside may result in complexity for enforcement, as well as increased times required for intercepts. In a practical sense, this has the potential to heighten the risk to both drivers and authorised officers as a result of this confusion (due to an escalation of the issue). Instead, the NHVR considers a review of work diary offences is most appropriately managed at a distance from the roadside encounter – using a documented review process.
---	---

This option would provide drivers with a defence for work diary offences where the driver can allege the error or omission is ‘administrative’ or ‘low risk’.

The NHVR recognises that industry would benefit from the ability to dispute an issued infringement notice. This would allow drivers to resolve a penalty without undergoing a larger formal review process.

However, the NHVR is of the view that this option (when implemented at the roadside) may heighten risk for both drivers and authorised officers, as well as create complexity and confusion in enforcement.

The NHVR does not believe that this defence would protect drivers from perceived unfair application of work and rest rules. A driver receiving an infringement notice may consider that the officer has unjustly applied a fine, but the authorised officer would still be responsible for determining whether that fine is appropriate. As a result, the NHVR is of the view that this option is very unlikely to improve the perceived fairness of infringements relating to minor fatigue breaches.

Instead, the NHVR considers a review of work diary offences is most appropriately managed at a distance from the roadside encounter and would support discussions on this approach.

### 1.3.5 Option 3e – Use of formal warnings

<b>Option 3e: Support the use of formal warnings for administrative offences relating to work diaries.</b>	The NHVR supports the use of formal warnings for administrative offences relating to work diaries.
--	--

The NHVR is of the view that the HVNL does not currently provide fully flexible, fit-for-purpose enforcement options that achieve optimal safety outcomes. Accordingly, the NHVR supports reform on the use of formal warnings.

At present, the HVNL heavily restricts when a formal warning can be issued, and authorised officers are often required to intervene using stronger enforcement tools.

Removing section 590(1)(b) means an authorised officer no longer needs to be satisfied that the person was both unaware of the offence and exercised reasonable diligence to prevent the offence. This test is highly subjective and is often difficult to satisfy. Enabling an authorised officer to issue a formal warning where they believe it is reasonable to do so will:

- Align the HVNL with other regulatory schemes and police discretionary powers
- Shift enforcement focus away from minor or administrative offences of low safety risk
- Prioritise and recognise the value of education and information, especially where a gap in education levels is identified in a particular area
- Achieve greater consistency of interventions, and
- Ensure regulatory responses are proportionate to any perceived safety risk.

This amendment will bring the HVNL closer in line to other similar regulatory schemes, including the model work health and safety law.

The case study below outlines the current constraints of issuing formal warnings.

#### ***Case Study – Formal warning***

A driver is intercepted by an authorised officer for a routine inspection. The officer obtains a copy of the driver's National Driver Work Diary. The officer notices that a couple of pages do not record the driver's name inside the correct box, and it is instead printed at the bottom under the signature box. The driver has also not signed one of the pages. The driver acknowledges that they were aware this was an offence but made a genuine mistake and did not understand the importance of putting the required information in its designated place on the work diary page.

The authorised office cannot issue a formal warning in this instance, as formal warnings under the current HVNL can only be issued where the officer is satisfied that the driver was unaware of the offence and exercised reasonable diligence to prevent the offence.

In this instance, a measurable formal warning would have been a more appropriate intervention tool (if legislatively available).

### **1.3.6 Reform Option 3f – Allowing for formal education in lieu of a fine**

#### **Option 3f: Allow for a formal education option in lieu of a fine**

The NHVR supports the development of a formal education option in lieu of a fine (noting that the HVNL does not currently allow for flexible, fit-for-purpose enforcement options that achieve optimal safety outcomes).

The NHVR supports the development of a formal education option in lieu of a fine. Embedding formal education into the HVNL, similar to the current formal caution provision, would fill a necessary regulatory gap in the HVNL's intervention toolbox. The NHVR believes that formal education is a measurable way to support industry participants to understand and voluntarily comply with the law. A formal education option would allow the NHVR to:

- Respond proportionately and appropriately to minor offences of a low safety risk
- Support industry participants to understand the law and voluntarily comply in future, and
- Provide an alternative to punitive enforcement tools whilst achieving the required safety outcome.

While authorised officers can use discretion to offer informal education at the roadside, there is no provision in the HVNL that provides an ability to require an offender to undertake education in lieu of a punitive

penalty. Informal education usually occurs quickly at the roadside and does not require an offence to be committed (nor proven).

The NHVR proposes that the Regulator would lead this reform implementation and introduce an online electronic learning option. The NHVR has specific expertise in how to comply with the law and could develop these courses in an accessible and easily understandable manner to support drivers and parties in the chain of responsibility.

There is significant research to suggest that formal education in lieu of punitive punishment can encourage and increase future compliance when implemented and optimised effectively. This option is most effective where an offender demonstrates a willingness to comply and who offers an understanding or insight into the offending. These types of programs are embedded in some police powers laws, as well as other regulatory laws. It is also available to Magistrates in some jurisdictions.

In terms of implementing this reform, the NHVR is of the view that operational and regulatory policy would be the most appropriate mechanism for managing the application of these provisions.

The below case study outlines the current restraints to providing education in lieu of a fine.

***Case Study – Formal education in lieu of a fine***

A driver is intercepted by an authorised officer for a suspected breach of the loading requirements under the HVNL. Upon assessment, the officer determines that the driver has committed a minor risk breach and, because it is the driver's first offence, informal education at the roadside is appropriate over a formal warning or a fine. The officer helps the driver to make the load compliant, which mitigates any immediate safety risk.

A few months later, the same officer intercepts the same driver for a suspected load restraint breach. The officer checks the load, determines there is a minor risk load restraint breach and decides to fine the driver. Despite providing the driver with informal education a second time, and helping the driver make the load compliant to mitigate the immediate safety risk, the officer is of the view that the driver may still require more detailed information or training on loading requirements under the HVNL.

Under the current law, the authorised officer is not able to take any additional steps other than informally providing resources such as the Load Restraint Guide. There is currently no appropriate mechanism under the HVNL to support the driver with formal education in a measurable, enforceable manner that supports future compliance.

## 2 Access

The NHVR is of the view that the proposed reforms to access (general mass limits (GML) to concessional mass limits (CML), length and height) will greatly improve productivity outcomes whilst also ensuring safety. These reforms would allow for increased productivity across the heavy vehicle industry, whilst simultaneously achieving a possible reduction in the number of vehicles on the road network.

These initiatives to support improved productivity outcomes would assist with current challenges related to increasing demand for freight movement on the network and the heavy vehicle driver shortage being experienced across the country.

Currently, the NHVR’s Performance Based Standards (PBS) scheme provides heavy vehicle operators with an opportunity to improve productivity, sustainability and safety through innovative and optimised vehicle design. While PBS is designed for innovation, vehicles with slight changes to length and height (particularly 20 metre vehicles) are pursued through the PBS scheme and have proven their safety performance. Improving access for these vehicles will ensure that the scheme remains a proving ground for innovation.

To continue supporting the uptake of safer and cleaner vehicles to the market, the adoption of Euro V compliant or higher (built from 1/1/2010) could be considered a requirement for GML to CML, at the same time older vehicles could continue to access mass concessions through an accreditation pathway. This proposed option would:

- Driver uptake of newer, safer, and more productive vehicles, as these vehicles have more safety equipment
- Provide greater productivity to industry
- Support decarbonisation of the freight task through incentivising cleaner vehicles
- Enable Euro VI reforms
- Provide a simple amendment to mass limit tables – both in drafting and implementation, and
- Maintain ability for operators with older vehicles to utilise provisions of NHVAS which focus on improved safety outcomes.

The below sections outline the NHVR’s position in relation to reform options for access as outlined in the C-RIS.

### 2.1.1 Reform Option 4 – GML to CML

<p><b>Option 4b: Establish new GML in the HVNL by increasing the current General Mass Limits by up to five per cent to match the current CML. An additional mass allowance is provided for Euro VI vehicles for their higher tare weights which translates to up to five per cent increase to GVM, so there is no productivity loss for Euro VI vehicles.</b></p>	<p>The NHVR supports the increase in mass limits. In allowing vehicles to carry greater mass, this reform would potentially reduce the total number of journeys a vehicle would take. Reducing the number of vehicles on the road network is, in turn, likely to reduce risk and increase safety. Additionally, the NHVR sees Option 4b as preferable in this space, as it should not disadvantage safer and more efficient heavy vehicles.</p>
---	---

The NHVR supports The proposal to increase mass limits. This reform, in allowing vehicles to carry greater mass, has the potential to reduce the total number of journeys undertaken and therefore increase safety. Additionally, the NHVR prefers Option 4b over Option 4a in the C-RIS, as it does not disadvantage safer and more efficient vehicles.

In terms of measurable safety and productivity benefits, the NHVR (using the publicly available NHVR Freight PASS BETA version released this month<sup>6</sup>) has estimated these benefits to, at most, include (per billion tonne-kilometres)<sup>7</sup>:

- 4% fewer trips (1604 fewer trips)
- 4% less road space occupied (total 30,476 metres)
- 4% less likely to be in a fatal crash (22.82% chance reduced to 21.93% chance)
- 3.5% fewer carbon emissions (a total reduction of 3,789,672kg), and
- 3.5% less fuel consumed (total reduction of 1,418,715 litres).

While movements of loads on the network provide economic benefits, movements of freight vehicles increase wear on the road. As a result, increasing the allowable load mass increases the aggregate economic cost-to-benefit ratio of heavy vehicle movements. Overall, whilst the mass on the road *per vehicle* will potentially increase under this reform, *the total mass on the road overall* is likely to decrease.

The NHVR notes that this reform also needs to be further considered in the context of the broader HVNL. For example, section 136 of the HVNL requires that PBS vehicles up 20 metres in length can only operate at GML on general access routes. Accordingly, reform in this space, will need to ensure that it takes into consideration other aspects of the HVNL that will need to be appropriately updated.

### 2.1.2 Reform Option 5 – Length

<b>Option 5a: General access limit increase to 20m</b>	The NHVR supports the length limit increase to 20m for general access vehicles.
--	---

The NHVR supports the length limit increase to 20m for general access vehicles. The NHVR notes that this would be utilised by industry to support increased in length to the sleeper cab to support driver well-being as well as improve productivity in the use of trailers.

The NHVR analysis of swept path impacts comparing the use of 19m vehicles and 20m vehicles has found that there is minimal difference between the performance of the two vehicles.

### 2.1.3 Reform Option 6 – Height

<b>Option 6a: Height increase for general access vehicles to 4.6m</b>	The NHVR supports, in principle, the height limit increase to 4.6m for general access vehicles. Further consideration will need to be given to infrastructure constraints and centre of gravity.
---	--

The NHVR supports, in principle, the proposed height limit increase to 4.6m for general access vehicles. In progressing this amendment, the NHVR suggest the following areas are taken into consideration:

- Centre of gravity of vehicles will need to be assessed which can increase rollover risk. The NHVR's PBS stability requirements could be utilised to assess this risk.
- Consideration needs to be given to how infrastructure constraints such as bridges and the current challenges with over height tunnel incidents in Sydney will be addressed with the amendment.

<sup>6</sup> National Heavy Vehicle Regulator, October 2023, accessed at <<https://www.nhvr.gov.au/consultation/2024/01/17/freight-pass-beta-release>>.

<sup>7</sup> Using a six-axle semitrailer as reference vehicle, moving 1,000,000 Tonnes a distance of 1000km at an average speed of 80km/h.

### 3 Enhanced Operator Assurance

<b>Base Case 7: National Audit Standard (NAS) is prescribed in primary law only, no requirements in regulations</b>	The NHVR supports this option as it will allow the NHVR to develop the NAS further and provide a fit for purpose auditing scheme for the heavy vehicle industry.
<b>Option 7a: NAS is prescribed in primary law, NAS requirements are included in regulations</b>	The NHVR does not support this option, as it will create an inflexible instrument.

The NHVR notes that the proposal to achieve enhanced operator assurance builds upon the design of the National Audit Standard (NAS) as outlined in the August 2023 *Decision-Regulation Impact Statement*.<sup>8</sup>

The two options presented in the NTC's C-RIS clarify the level at which NAS details will be prescribed.

As established in the Kanofski Report Item 1.6,<sup>9</sup> 'to the maximum extent possible the new law should place detail into regulations and subordinate instruments'. This recommendation is intended to allow the Regulator to regulate – to enable a modern, flexible regulatory framework that supports the Regulator in delivering real-time safety and productivity improvements; a framework that can easily adapt to future developments in the heavy vehicle space. The NHVR supports this recommendation and is of the view that Reform Option 7 (Base Case) has the potential to achieve this outcome.

The NHVR does not support Option 7a as it would require the preservation of an inflexible, static instrument to outline auditing requirements. Inflexible instruments often result in inflexible regulatory framework. This inflexibility is a key limitation of the current NHVAS Business Rules and Standards, which require consideration by ITMM for amendment. The NHVR believes that changes to auditing requirements are most appropriately considered by the NHVR Board. As a result, the NHVR considers the Base Case option to be a more flexible and appropriate structure for the NAS. Further, the NHVR expects that flexibility will be of key importance in the transition from the current NHVAS to any future accreditation scheme. The large numbers of NHVAS participants and the complexity of the scheme highlight that issues need quick resolution. A more flexible instrument will allow the NHVR to deliver prompt responses and ensure that unnecessary costs are not placed on industry in these circumstances.

The key issue regarding the national auditing standard is the need to ensure that the standard is recognised and accepted by third parties to reduce the multiple audits and inductions that the heavy vehicle industry is currently required to undertake.

<sup>8</sup> National Transport Commission, 2023, accessed at

<<https://www.ntc.gov.au/sites/default/files/assets/files/Heavy%20Vehicle%20National%20Law%20High-Level%20Regulatory%20Framework%20Decision%20Regulation%20Impact%20Statement.pdf>>.

<sup>9</sup> Attachment A – Ken Kanofski Advisory Reform Propositions, p. 8, 5 August 2022, accessed at

<<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/infrastructure-and-transport-ministers-meetings>>.