



Memorandum of Understanding

between

National Heavy Vehicle Regulator
(‘NHVR’)

and

National Transport Commission
(‘NTC’)

1 Introduction

1.1 Background

On 2 July 2009, the Council of Australian Governments (COAG) agreed to establish the National Heavy Vehicle Regulator (NHVR) and national law governing the regulation of all vehicles weighing more than 4.5 tonnes. COAG agreed that the basis for the Heavy Vehicle National Law (HVNL) should be the reforms developed by the National Transport Commission (NTC) that were mostly captured in model legislation.

On 4 November 2011, the transport ministers approved the draft HVNL, which mostly commenced on 10 February 2014. The HVNL is hosted by Queensland and enacted in jurisdictions through enabling state/territory law.

This is the third Memorandum of Understanding (MOU) between the NTC and the NHVR and replaces the second MOU dated 4 March 2016.

The first MOU (dated 29 November 2013) was revised following the *2015 Review of the National Transport Commission* that was undertaken by an expert panel appointed by the Transport and Infrastructure Council (the Council). The review found (inter alia) that:

- *The NTC remains highly valued as a strong, independent advocate on national policy and reform issues, accessible to both industry and jurisdictions alike.*
- *There is a strong view amongst stakeholders that the NTC should focus more on progressing the major strategic transport policy issues that fall within its remit. This will allow more operationally focused projects to be undertaken by other organisations.*

The review recommended (inter alia) that the Transport and Infrastructure Senior Officials Committee (TISOC):

... should provide targeted oversight and clarification of the work programme boundaries to the NTC to ensure the efficient and effective transition of operational policy and the routine maintenance of national law to the national regulators which takes into account the developing capacity of the regulators and avoids duplication of roles.

The Council endorsed the recommendation and stated:

The Council acknowledges the NTC will maintain responsibility for strategic policy and ongoing regulatory and law reform. The Council directs NTC to work with the national regulators to:

- *expedite transition of operational policy and the routine maintenance of relevant national law to the national regulators;*
- *strengthen their formal working relationship to improve collaboration and share knowledge and expertise;*
- *ensure respective work programmes are harmonised and complementary; and*
- *reflect these commitments in revised MoUs between the NTC and national regulators by January 2016.*

On 31 March 2017, TISOC agreed to the NTC transferring responsibility for operational policy and routine maintenance of the HVNL to the NHVR. This MOU delivers on the decision of TISOC.

It supersedes the MOU of 4 March 2016.

The NTC and the NHVR recognise that they have a shared interest in improving heavy vehicle regulation through the adoption of national solutions and that it is mutually beneficial to establish a co-operative relationship on matters relating to the HVNL and national heavy vehicle reform.

The NTC and NHVR acknowledge the requirement to provide feedback to each other in a timely manner in relation to all matters of mutual interest. These matters will include but are not limited to:

- proposed national transport reform initiatives affecting the heavy vehicle sector,
- proposed changes to operational policy settings affecting the heavy vehicle sector,
- proposed changes to business rules and guidance material affecting the heavy vehicle sector, and
- proposed changes to HVNL (including the regulations).

1.2 Purpose

The purpose of this MOU is to provide further detail on the relationship between the NHVR and NTC in heavy vehicle reform and to give effect to the direction of the Council in response to the *2015 Review of the National Transport Commission* and TISOC's decision of 31 March 2017.

This MOU seeks to:

- (a) Support the COAG objectives for heavy vehicle reform;
- (b) Foster a strategic relationship between both parties and align work activities where mutually beneficial; and
- (c) Recognise the distinct and complementary roles of both parties.

The parties to this MOU:

- (a) Acknowledge that the NHVR and NTC each have separate and independent mandates and roles;
- (b) Are committed to the common pursuit of the safe, efficient and sustainable national heavy vehicle industry without compromising safety and road infrastructure;

- (c) Will respond to urgent public safety related or emerging industry and government issues in a timely and coordinated manner within the resources available to them;
- (d) Will ensure that draft amendments to the HVNL are practical, fit for purpose, and meet the timeframes agreed by the Council;
- (e) Will, in as far as practicable and where relevant, align industry consultation engagement arrangements; and
- (f) Will concentrate stakeholder consultation to matters germane their role.

The NTC and the NHVR will seek to uphold the values of this MOU and fulfil their respective commitments. However, both parties acknowledge that this MOU is not legally binding and that nothing in this MOU can legally restrict the statutory duties, discretions and powers of either party under relevant legislation.

2 Roles

2.1 The National Heavy Vehicle Regulator

The NHVR is an independent body established under the HVNL. It is responsible for administering and operationalising the HVNL as passed in each participating jurisdiction.

The purposes of the NHVR are detailed in the HVNL. Section 659 of the HVNL outlines the functions of the regulator, including the main function to achieve the objects of the national law. It also provides for the NHVR to work collaboratively with the National Transport Commission and other stakeholders to ensure a wide understanding of the objects of the law and encourage participation in achieving the objects of the law.

The NHVR is funded by fees and charges related to the administration of the national law.

2.2 The National Transport Commission

The NTC is an independent authority responsible for higher level strategic policy and developing regulatory and operational reform for road, rail and intermodal transport. It develops and submits reform recommendations for approval to the Council. The NTC monitors and maintains national and model laws as well as other instruments to ensure they remain contemporary and consistent with their policy intent.

The purpose of the National Transport Commission is contained in the:

- *National Transport Commission Act 2003* (the NTC Act); and
- Inter-Governmental Agreement for Regulatory Operational Reform in Road, Rail and Intermodal Transport (the IGA).

The NTC is funded by governments that are party to the IGA.

3 Interactions between parties

In delivering their obligations under the HVNL and the NTC Act the parties acknowledge their roles in the following interactions.

3.1 Business and Strategic Planning – harmonising and complementary work programs

The NTC and NHVR will consult each other in a timely manner during annual strategic planning and work program development processes, including the development of any strategic and operational plans.

The NTC Act requires the NTC to prepare a draft Corporate Plan each financial year for approval by the Council. Further, the IGA requires the NTC to prepare an annual Work Program.

The HVNL requires the NHVR to prepare and give to the ministers for approval a corporate plan for each three year period.

The corporate plans and NTC Work Program are required to be approved by the respective Commissioners or Board at approximately February each year. Further, each plan and work program is considered by TISOC at its meeting in March or April prior to being submitted to the Council in May each year. Given these customary timelines, the NTC and NHVR undertake to liaise with each other from September through to January on their respective corporate plans and work programs.

3.2 Publications affecting both parties

The NTC and NHVR will invite comment from each other and collaborate as appropriate, on the development of, or response to, publications and other documents of mutual interest, particularly where the subject matter overlaps with, or makes commentary on, the responsibilities or performance of the other party.

3.3 Administering the HVNL and National Regulations - improve collaboration and share knowledge and expertise

The NHVR has responsibility for administering the HVNL. It performs the functions and responsibilities conferred/imposed on it by those laws. In particular, the NHVR will promote public safety, encourage improvements in regulatory efficiency and productivity by all stakeholders, and manage the impact of heavy vehicles on the environment, infrastructure and public amenity.

In doing so, the NHVR, where relevant, will invite NTC input and keep the NTC informed of the proposed outcomes, including through the NHVR National Operational Strategy and Policy Advisory Group. Where the NHVR believes it is appropriate it will work with the NTC to undertake public exposure of proposed changes to business rules, operational procedures and Ministerial guidelines.

3.4 Transition of operational policy

Prior to the NHVR, the NTC developed operational policy documents. The NHVR has now taken responsibility for maintaining and updating these operational policy documents. Further, Schedule A *Operational and strategic policy accountabilities of the NTC & NHVR* provides an illustrative analysis of operational and strategic policy.

3.5 Developing reforms

The requirements for the NTC to progress reforms are outlined in the NTC Act and the IGA. Prior to proposing a relevant reform to Council, the NTC will consult with the NHVR on the reform and the implications for the NHVR.

Consultation will include

- the NHVR identifying issues related to implementation and administration of the proposed reform
- the NTC addressing the issues raised by the NHVR.

The NTC will keep the NHVR informed of the proposed reform, including through the NTC's Strategic Planning and Liaison Group.

The NTC will work with the NHVR on implementation plans for the proposed reforms where relevant to the NHVR to ensure responsible Ministers are appropriately advised of the costs and preferred timing of implementation (for major reforms) and any impacts on the overall reform delivery schedule.

3.6 Maintenance of the HVNL and National Regulations

This MOU reflects the TISOC decision on 31 March 2017 that the NTC transfer operational policy and the routine maintenance of the HVNL to the NHVR.

In accordance with the TISOC agreement the NTC will retain responsibility for:

- policy changes agreed to within the HVNL; and
- changes to subordinate legislation that relate to:
 - policy changes agreed to within the HVNL that also require changes to the regulations;
 - regulations relying on sections of the law that have not commenced (responsibility for these regulations will be transferred to the NHVR once they commence);
 - regulations covering in-service vehicle standards, specifically the Heavy Vehicle (Vehicle Standards) National Regulation; and
 - matters relating to performance standards for the Load Restraint Guide (until formal handover to the NHVR).

The NHVR has lead responsibility for operational policy and routine maintenance to the HVNL and regulations. Operational policy and routine maintenance is considered

to involve most changes to subordinate legislation and changes to business practices of the NHVR when outlined in the HVNL.

3.7 Agreed process for legislative amendments

The process for managing the interaction between the NTC and the NHVR for progressing legislative amendments to the HVNL (including the Regulations) is set out at Schedule B.

This process applies where both agencies are progressing amendments in the same Council cycle.

3.8 Monitoring and reporting of reform objectives

The NTC is responsible for monitoring, evaluating and reporting to the Council on the progress of heavy vehicle reform objectives. The NTC will work closely with NHVR as part of this work.

The NTC will include derogations from the HVNL in the annual Reform Implementation Monitoring report provided to Ministers. The NHVR will report to TISOC and Council on the progress of the NHVR and other Ministerial commitments.

4 Information Sharing, Privacy and Confidential Information

The NTC and the NHVR agree that they will share information relevant to the powers and functions of each organisation in accordance with law.

Unless required by law, the NTC and the NHVR undertake not to disclose information received in confidence from the other organisation to a third party without obtaining the prior consent of the other organisation.

5 MOU Management

This MOU is effective from the date it is executed by both parties or a nominated post-date and will remain effective for a period of 3 years or until such time as it is terminated by the parties.

The parties will formally review the MOU annually on the date of its execution.

The MOU may be terminated by notice, or varied at any time by agreement, in writing by the NTC Chairperson and the Chairman (NHVR).

The primary contact persons for all matters concerning this MOU are the persons nominated by the parties in Schedule C.

In the event a dispute arises regarding the performance of any obligations under this MOU, it will be referred to the Chief Executives. Should a mutually satisfactory resolution not be forthcoming, the issue will be referred to the NTC Chairperson and the Chairman (NHVR) for resolution.

The parties shall each bear their own costs of administering this MOU.

This MOU will be made publicly available in the interests of transparency and accountability.

This MOU is authorised to take effect from the date of execution by the following authorised officers:



Sal Petrocchio
Chief Executive Officer
NHVR



Paul Retter AM
Chief Executive & Commissioner
NTC

Date 31.1.2018

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Schedule A – Operational and strategic policy accountabilities of the NTC & NHVR

	Land transport mode		
	Intermodal	Road – heavy vehicle	Road – light vehicles
Strategic policy	NTC <ul style="list-style-type: none"> Model laws for dangerous goods National Surface Transport Productivity Framework business case Who moves what where business case Preparation for more automated road and rail vehicles – identifying any regulatory and operational barriers business case Collates and publishes information on an ad-hoc basis regarding the operations of the transport system, for example Twice the task to address issues related to information asymmetry	NTC <ul style="list-style-type: none"> Heavy Vehicle National Law and Regulations (strategic legislative development, review, and evaluation) Heavy vehicle pricing (calculating annual adjustments to charges, and cyclical review and update of the calculation methodology) 	NTC <ul style="list-style-type: none"> Australian Vehicle Standards Rules for light vehicles (review and amendment) Collates and publishes CO₂ emissions data relating to new light vehicles annually
		NTC <ul style="list-style-type: none"> Australian Road Rules model laws (includes both heavy and light vehicles and other road users) Cooperative Intelligent Transport Systems policy Compliance Framework for Heavy Vehicle Telematics Transition Load Restraint Guide to NHVR Australian Defence Force Exemption framework 	
Operational policy (and the administration / evaluation of the policy instruments)	NTC Australian Dangerous Goods Code (overall responsibility for maintenance/update of the code)	NHVR NHVR is responsible for administering the HVNL and regulations and, where needed, updating and streamlining the processes, operational policy and documents under the HVNL including the following: <ul style="list-style-type: none"> Permits Gazette notices and related instruments NHVAS business rules and standards including: <ul style="list-style-type: none"> mass management standards and business rules maintenance management standard and business rules NHVAS BFM and AFM standards and business rules Engine brake noise test procedures (subject to legislative amendment) Work diary National Heavy Vehicle Inspection Manual Code of Practice for the Approval of Heavy Vehicle Modifications Approved Guidelines for Granting Vehicle Standards Exemptions for heavy vehicles Approved Guidelines for Granting Access Vehicle Standards Bulletin 11 (subject to NTC handover) Vehicle Standards Bulletin 12 Load Restraint Guide* (NTC currently updating) prior to transition to the NHVR Performance based standards (PBS) vehicle design approvals, vehicle approvals, vehicle modification approvals, access approvals and route declarations National roadworthiness review and NHVAS Maintenance module revision (undertaken jointly with the NTC) Managing the implementation and administration of Electronic Work Diaries Monitoring and optimising compliance activities by partner organisations (such as transport operators and police) Maintenance of a heavy vehicle database 	
		NTC <ul style="list-style-type: none"> Assessing fitness to drive guideline update in collaboration with Austroads National stationary exhaust noise test procedures for in-service motor vehicles 	

Schedule B - Routine HVNL Maintenance Process

Background

The NTC generally proposes changes to the HVNL once per year, to be considered by the Council. That is, the NTC:

- proposes an annual HVNL amendment package to the Council; and
- has an established process to develop the amendment packages and secure stakeholder agreement (commencing approximately 12 months prior to the relevant Council meeting).

Each HVNL amendment package may include a draft Bill and/or regulations, and usually includes maintenance amendments as well as substantive reforms developed in their own right, outside the maintenance process.

The NTC and NHVR responsibilities

The parties will independently develop amendment packages for Council consideration.

The parties are each responsible for deciding which amendments (that fall within their respective remits) will be included in their respective amendment packages.

The parties will work closely with a range of stakeholders. The NTC uses its Heavy Vehicle National Law Maintenance Advisory Group (HVNL-MAG) for consultation on amendments.

The NHVR may also consult with the same stakeholders as are in the NTC's consultation group. However, the NHVR may also consult with other stakeholders or stakeholder groups on relevant issues.

To avoid duplication of effort and the imposition of additional costs on jurisdictions and stakeholders, the NTC and the NHVR will, as far as practical, use the same procedures and processes in progressing their legislative amendments. The NTC and the NHVR agree to liaise about proposed dates and venues for the meetings, so that where possible, stakeholders can attend meetings at the same location on the same day or consecutive days.

The NTC and the NHVR will present their own amendment packages to stakeholders and each party will chair their own respective sessions.

The NTC and the NHVR will independently instruct the PCC's allocated drafter in developing an amendment package for TISOC consideration.

Drafting of all proposed amendments to the HVNL and regulations will comply with the requirements of the Parliamentary Counsels' Committee's (PCC) *Protocol on Uniform Drafting*.

If the amendment package is drafted by the Office of Queensland Parliamentary Counsel (OQPC), the process and practices will comply with *Working with OQPC on Queensland legislation* and the requirements of the Queensland Government's Cabinet Handbook and Legislation Handbook.

The NTC will be the lead instructing officer for PCC for consolidating all the various amendment packages (including the NTC and the NHVR's amendment packages), as endorsed by TISOC, into one amendment Bill, for consideration by the Council.

Each party will be responsible for preparing the paper for TISOC consideration about their respective amendment packages.

The NTC will prepare the paper for the Council regarding the amendment Bill. However, the NHVR will suggest text for the Council paper in relation to the NHVR-led amendments.

After TISOC endorsement, the NTC will be responsible for liaising with PCC and TMR regarding passage of the Bill through the Queensland Parliamentary process.

The NHVR will be responsible for liaising with jurisdictions and TMR to determine the commencement date for all amendments.

Requirement to conform to agreed timelines

For NTC-led amendment packages scheduled to go to the Transport and Infrastructure Council at its May meeting, the following is required:

- By the second Friday of the May of the previous year, the NTC is to:
 - o seek from stakeholders (including the NHVR) proposals to amend the HVNL and National Regulations
 - o set a date for a HVNL-MAG meeting and advise the NHVR and other stakeholders, and
 - o advise the NHVR and other stakeholders of the target Council meeting for the amendment package.
- By the first Friday of the June of the previous year, the NHVR is to provide the NTC any proposals to amend the HVNL and National Regulations that are the NTC's responsibilities.
- By the fourth Friday of the June of the previous year, the NTC is to offer the NHVR any proposals to amend the HVNL and National Regulations that are likely the NHVR's responsibilities.
- By the fourth Friday of the July of the previous year, the NHVR is to confirm which, if any, proposals to amend the HVNL and National Regulations offered to it by the NTC it elects to progress.

- By the first Friday of the August of the previous year the NTC will advise the NHVR of all the issues the NTC is progressing, including any that it has elected to progress which were rejected by the NHVR.
- By the end of August, the NTC and NHVR chief executives will send a joint letter to TISOC CEs outlining the finalised allocation of issues. The NTC and NHVR will share this information with all stakeholders.

For NTC-led amendment packages scheduled to go to the Transport and Infrastructure Council at its November meeting, the following is required:

- By the fourth Friday of the October of the previous year, the NTC is to:
 - o seek from stakeholders (including the NHVR) proposals to amend the HVNL and National Regulations
 - o set a date for a HVNL-MAG meeting and advise the NHVR and other stakeholders, and
 - o advise the NHVR and other stakeholders of the target Council meeting for the amendment package.
- By the third Friday of the November of the previous year, the NHVR is to provide the NTC any proposals to amend the HVNL and National Regulations that are the NTC's responsibilities.
- By the second Friday of the December of the previous year, the NTC is to offer the NHVR any proposals to amend the HVNL and National Regulations that are likely the NHVR's responsibilities.
- By the second Friday of the January of the same year, the NHVR is to confirm which, if any, proposals to amend the HVNL and National Regulations offered to it by the NTC it elects to progress.
- By the third Friday of the January of the previous year the NTC will advise the NHVR of all the issues the NTC is progressing, including any that it has elected to progress which were rejected by the NHVR.
- By the third Friday of February, the NTC and NHVR chief executives will send a joint letter to TISOC CEs outlining the finalised allocation of issues. The NTC and NHVR will share this information with all stakeholders.

If either party intends to make material changes to the proposed schedule or process they will advise the other party as soon as possible.

Nothing in this MOU prevents the NHVR from progressing Regulation amendments within its remit, unconnected to amendments to the HVNL, more often than once a year.

Nothing in this MOU prevents the NHVR from progressing amendments within its remit in a financial year in which NTC is not progressing any amendments.

Schedule C - Contacts

NTC

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