



## **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) (now known as the National Federation Reform Council (NFRC)) 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 fourth Memorandum of Understanding (MOU) between the NTC and the NHVR and replaces the second MOU dated 31 January 2018.

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) (replaced by the Infrastructure and Transport Ministers Meeting (ITMM)). 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 then-Transport and Infrastructure Senior Officials Committee (TISOC) (now known as the Infrastructure and Transport Senior Officials Committee (ITSOC)):

*... 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. The previous MOU began the process of operational policy and routine maintenance transfer to the NHVR. These functions have now been fully transferred to the NHVR. This MOU recognises the new roles of each organisation following the transfer.

It supersedes the MOU of 31 January 2018.

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 (now NFRC) 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 Infrastructure and Transport Ministers;
- (e) Will, in as far as practicable and where relevant, align industry consultation engagement arrangements; and
- (f) Will concentrate stakeholder consultation to matters relevant to 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 NTC and other stakeholders to ensure a wide understanding of the objects of the law and to 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 ITMM. 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 ITMM. 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 prior to being submitted to the ITMM 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 Strategy and Policy 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.

The NTC and NHVR will ensure that the views of the other party are appropriately considered and the views of subject matter experts within each organisation are

taken into account as required as part of any process to make changes to the HVNL and/ or National Regulations.

### **3.4 Transition of operational policy**

Prior to the NHVR, the NTC developed operational policy documents. The NHVR has now taken full 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 ITMM, 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, and being provided the opportunity to provide 'subject matter expert' input to options / solutions; and
- the NTC addressing the issues raised by the NHVR

The NTC will keep the NHVR informed of proposed reforms directly, and as appropriate through the NHVR's National Policy and Strategy Group and 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. Prior to the finalisation of any reforms impacting NHVR operations, the NTC will consult with the NHVR regarding operational implications and confirm timeframes with the NHVR.

### **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:

- substantive and material (ie strategic and not operational) policy changes agreed to within the HVNL, notably reforms agreed as part of the HVNL Review; and
- changes to subordinate legislation that relate to:
  - strategic and non-operational 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); and
- regulations covering in-service vehicle standards, specifically the Heavy Vehicle (Vehicle Standards) National Regulation.

The NHVR will have 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. It also includes changes to the HVNL (and consequential subordinate legislation changes) that are confirmed with the Commonwealth Department of Prime Minister and Cabinet to not require a COAG (NFRG) Regulation Impact Statement.

### **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 ITMM cycle.

### **3.8 Monitoring and reporting of reform objectives**

The NTC is responsible for monitoring, evaluating and reporting to the ITMM 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 ITSOC and ITMM 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 will be reviewed on ministerial agreement of legislative changes relating to the HVNL Review.

The MOU may be terminated by written notice, or varied at any time by agreement, in writing by the nominated NTC Commissioner or the NHVR CEO.

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 parties' Chief Executives. Should a mutually satisfactory resolution not be forthcoming, the issue will be referred to the nominated NTC Commissioner 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.

Executed by the **National Heavy Vehicle**

**Regulator** (ABN 48 557 596 718) on 19<sup>th</sup> February 2021

in the presence of:



Signature of Authorised Representative



Signature of Witness



SAL PETROCCITTO

Name of Authorised Representative

Hayley Dunn Johnston

Name of Witness

**Executed by the National Transport  
Commission** on 16 February 2021 duly  
authorised representative in the presence  
of:



Signature of Authorised Representative



Signature of Witness

Dr Gillian Miles

Name of Authorised Representative

Paul Davies

Name of Witness

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

Land transport mode		
Intermodal	Road – heavy vehicle	Road – light vehicles
<p><b>NTC</b></p> <ul style="list-style-type: none"> <li>Model laws for the transport of dangerous goods</li> <li>Preparation for more automated road and rail vehicles                             <ul style="list-style-type: none"> <li>identifying any regulatory and operational barriers</li> </ul> </li> </ul> <p>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</p>	<p><b>NTC</b></p> <ul style="list-style-type: none"> <li>Heavy Vehicle National Law and Regulations (strategic legislative development, review, and evaluation)</li> <li>Heavy vehicle pricing (calculating annual adjustments to charges, and cyclical review and update of the calculation methodology)</li> <li>Implementation of HVNL Review reforms as per a ministerially-agreed reform implementation plan.</li> </ul>	<p><b>NTC</b></p> <ul style="list-style-type: none"> <li>Australian Vehicle Standards Rules for light vehicles (review and amendment)</li> <li>Collates and publishes CO<sub>2</sub> emissions data relating to new light vehicles annually</li> </ul>
<p><b>NTC</b></p> <p>Australian Dangerous Goods Code (overall responsibility for maintenance/update of the code)</p>	<p><b>NTC</b></p> <ul style="list-style-type: none"> <li>Australian Road Rules model laws (includes both heavy and light vehicles and other road users)</li> <li>Cooperative Intelligent Transport Systems policy</li> <li>Australian Defence Force Exemption framework</li> </ul> <p><b>NHVR</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>Implementation of HVNL Review reforms as per a ministerially-agreed reform implementation plan.</li> <li>Permits</li> <li>Gazette notices and related instruments</li> <li>NHVAS business rules and standards including:                             <ul style="list-style-type: none"> <li>mass management standards and business rules</li> <li>NHVAS BFM and AFM standards and business rules</li> </ul> </li> <li>Engine brake noise test procedures</li> <li>Work diary</li> <li>National Heavy Vehicle Inspection Manual</li> <li>Code of Practice for the Approval of Heavy Vehicle Modifications</li> <li>Approved Guidelines for Granting Vehicle Standards Exemptions for heavy vehicles</li> <li>Approved Guidelines for Granting Access</li> <li>Vehicle Standards Bulletin 11</li> <li>Vehicle Standards Bulletin 12</li> <li>Load Restraint Guide</li> <li>Performance based standards (PBS) vehicle design approvals, vehicle approvals, vehicle modification approvals, access approvals and route declarations</li> <li>National roadworthiness review and NHVAS Maintenance module revision (undertaken jointly with the NTC)</li> <li>Managing the implementation and administration of Electronic Work Diaries</li> <li>Monitoring and optimising compliance activities by partner organisations (such as transport operators and police)</li> <li>Administration (and if needed, development) of a national heavy vehicle registration system and register of written-off and wrecked heavy vehicles</li> </ul>	
<p><b>Operational policy (and the administration / evaluation of the policy instruments)</b></p>	<p><b>NTC</b></p> <ul style="list-style-type: none"> <li><i>Assessing fitness to drive</i> guideline update in collaboration with Austroads</li> <li>National stationary exhaust noise test procedures for in-service motor vehicles</li> </ul>	

## **Schedule B - Routine HVNL Maintenance Process**

### **Background**

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

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

This annual cycle is currently subject to broader process of the NTC-led HVNL Review.

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 ITMM 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 ITSOC 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 ITSOC, into one amendment Bill, for consideration by the ITMM.

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

The NTC will prepare the paper for the ITMM regarding the amendment Bill. However, the NHVR will lead the drafting of text for the ITMM paper in relation to the NHVR-led amendments.

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

The NHVR and NTC will be individually responsible for liaising with jurisdictions and TMR to determine the commencement date for any amendments they have led, but where practical this should be coordinated.

The NTC and the NHVR will meet regularly to ensure a coherence of HVNL and subordinate legislation amendments, as well as other initiatives of these two organisations. Meetings will be scheduled quarterly by mutual agreement, with particular emphasis given to the meeting preceding corporate planning for each organisation (corporate plans are typically approved by ministers in May each year, for the following financial year).

## **Schedule C - Contacts**

### **NTC**

Primary contact:

Paul Davies  
Executive Leader, Productivity  
Ph: (03) 9236 5046

Secondary contact:

Michael Hopkins  
Executive Leader, Strategy and Engagement  
Ph: (03) 9236 5051

### **NHVR**

Primary contact:

Don Hogben  
Chief Regulatory Policy and Standards Officer  
Ph: (07) 3309 8780

Secondary contact:

Emma Higginson  
Director, Office of the CEO  
Ph: (07) 3309 8529

