

**Please receive my comments on the proposed changes to the HVNL Part 1**

**1.0 Introduction: The Shift to a Risk-Based Accreditation Framework**

The Heavy Vehicle National Law (HVNL) is undergoing a significant reform, with the current National Heavy Vehicle Accreditation Scheme (NHVAS) set to be replaced by a modern, two-tiered framework scheduled to commence in mid-2026. This new system is designed to be more flexible, risk-based, and outcomes-focused. While the reform's objectives are to improve safety and productivity, its structure introduces a systemic structural conflict where the mandatory audit process, intended to facilitate compliance, can be leveraged by the National Heavy Vehicle Regulator (NHVR) as a basis for prosecuting company Directors for failures in their executive due diligence obligations. This inherent legal contradiction creates what can be termed the "Director's Paradox"—a central risk that threatens the viability of the new scheme.

The reform introduces several fundamental changes to the accreditation landscape:

- **New Two-Tiered System:** The NHVAS will be replaced by a new system comprising General Safety Accreditation (GSA) and Alternative Compliance Accreditation (ACA), designed to provide more tailored and flexible solutions for operators.
- **Centrality of Safety Management Systems (SMS):** A scalable SMS becomes a new core requirement for accreditation, embedding a proactive, risk-management approach into the application and audit process.
- **New National Audit Standard (NAS):** The current NHVAS Audit Framework will be replaced by the NAS, introducing a more rigorous, safety-focused audit process designed to assess the effectiveness of an operator's SMS.
- **Regulatory Focus:** The stated goals of the reform are to improve safety, increase productivity and efficiency, deliver more consistent and fair enforcement, and accelerate the adoption of new technology.

This new, more rigorous framework, however, establishes a direct and perilous pathway from compliance audit to executive prosecution.

**2.0 The Director's Paradox: The Audit Report as Prosecutorial Evidence**

The fundamental conflict at the heart of the new framework, where a company Director, by engaging an independent auditor for the express purpose of achieving accreditation, inadvertently creates a formal record that can be used by the NHVR as primary evidence in a prosecution against them is of a concern. The link between the new audit framework and a Director's personal legal liability is established through the specific, granular details required by the new standards, which create a prosecutorial roadmap.



The regulatory design creates a direct line from audit finding to legal liability:

1. The draft Safety Management System (SMS) Standard—the foundation of the new scheme—explicitly creates the legal duty for Directors. Standard 1.1 requires that "Senior management must demonstrate that they have taken all reasonably practicable steps to ensure the safety of transport activities, in accordance with section 26 of the Heavy Vehicle National Law." This directly invokes the executive due diligence obligation.
2. An audit under the new National Audit Standard (NAS) provides the documented, third-party evidence of failure. The audit is designed to rigorously identify and record non-conformances. For instance, the non-conformance identified as CAR-01-MAINT-5.3f in the *NHVAS Audit Report Example*—that "Persons maintaining vehicles... are [not] suitably qualified"—is no longer just an operational issue to be fixed. Under the new framework, it becomes a formal, documented record that directly contradicts the Director's due diligence duty under Section 26 of the HVNL, as enforced by SMS Standard 1.1.
3. The NHVR is empowered to use this evidence in legal proceedings. With the new laws to allow the NHVR to use an auditor's report as evidence that 'due diligence' is either being practiced or not by the executive. Therefore, if a company fails an audit, the executives could be prosecuted under section 26 of the HVNL.
4. This sequence creates the Director's Paradox: the very tool a Director funds to ensure compliance and gain accreditation becomes a potential instrument for their own prosecution. The Director must commission a detailed report that, if it uncovers significant non-conformances, could form the cornerstone of a regulatory case against them.

This inherent conflict is illustrated in the table below.

Intended Purpose of the Audit	Unintended Consequence for the Director
To identify system gaps for corrective action and continuous improvement.	Identifies non-conformances that can be used as evidence of a due diligence failure.
To demonstrate compliance with NHVAS standards for accreditation.	Creates a formal, independent report that can trigger investigation and prosecution by the NHVR.
A company-funded tool for internal safety assurance.	Becomes a regulator-leveraged tool for enforcement against company executives.

The systemic consequences flowing from this paradox create powerful disincentives for the very parties the scheme is designed to engage, undermining the core objectives of the reform.

### 3.0 Systemic Consequences: Disincentives for Operators and Auditors

The Director's Paradox creates powerful disincentives that may undermine the foundational objectives of the new accreditation scheme. By positioning the audit process as a potential trigger for

prosecution, the framework risks discouraging participation from transport operators and alienating the independent auditors essential to its function.

### **3.1 Deterring Operator Participation and Undermining Safety Goals**

A primary risk of the new framework is that it may actively discourage company Directors from seeking or maintaining accreditation. If the scheme is perceived primarily as a mechanism for creating personal liability for executive due diligence failures rather than a partnership for improving safety and productivity, operators may rationally choose to opt out. This would defeat the reform's overarching safety objectives. An accreditation scheme that operators are afraid to join is one that cannot deliver its intended public safety benefits, as the goal of embedding effective Safety Management Systems across the industry is nullified if the legal risks of proving compliance outweigh the perceived benefits.

### **3.2 The Untenable Position of the Independent Auditor**

The framework places the independent auditor in a professionally untenable position. The NHVR's formal demand for auditors to eliminate "inconsistencies in the quality of audit evidence" and rectify issues like "Inadequate documentation to support conclusions," as stated in its "Audit Standards and Compliance Expectations" communication, directly creates the high-stakes environment. In addition to that Auditors are performing a quasi-regulatory function, "without the protection afforded to government employees." In fact the new laws are really asking auditors to do a job the NHVR should be doing, moving the NHVAS from a quality scheme to an evidence collection scheme that can lead to punitive outcomes for both the Operator/Director and the auditor.

Auditors are now required under the draft National Audit Standard to formally categorize failures as a "Major Nonconformance" (Section 4.11.1) and issue formal "Corrective Action Requests" (Section 4.12), turning observations into official records of non-compliance. They are caught between the regulator's mandate for prosecutorial-level detail and the client's extreme sensitivity to findings that create personal legal jeopardy. This will lead to a situation where many authorised auditors will feel that the risk is too great" This pressure could foreseeably lead to a shortage of qualified auditors or create a chilling effect on the thoroughness of audits, as auditors seek to mitigate their own risk exposure.

This untenable position not only threatens the auditor-client relationship but exposes auditors to the direct legal repercussions of their own findings.

### **4.0 The Risk of Litigation and the Lack of Auditor Protection**

The high-stakes environment fostered by the new framework exposes independent auditors to significant legal risks beyond regulatory scrutiny. A direct consequence of an audit report being used as evidence for prosecution is the corresponding risk of civil litigation initiated by Directors against the auditors who produced it. This risk is amplified by the auditors' vulnerability, as they operate without the statutory protections afforded to individuals performing quasi-regulatory functions.

#### **4.1 Potential for Civil Litigation Against Auditors**

A Director facing an NHVR investigation based on an audit report would have a clear legal strategy to mitigate prosecutorial risk: challenge the validity of that report through civil litigation. Such action could be aimed at preventing the report's submission to the NHVR or discrediting its findings to neutralise it as evidence. Potential grounds for litigation are numerous and could include claims of professional negligence, breach of contract, or misinterpretation of the National Audit Standard. The objective would be to create sufficient legal doubt around the audit's conclusions to undermine the regulator's case, placing the auditor at the center of a costly and complex legal dispute.

#### **4.2 Absence of Statutory Protection**

This litigation threat is magnified by the absence of statutory legal protections or immunities for auditors under the HVNL. Unlike regulatory officers, independent auditors are third-party contractors who are personally and professionally vulnerable to the financial and reputational consequences of civil litigation from a client. This lack of protection makes the role exceptionally high-risk, as an

auditor who diligently reports a major non-conformance—thereby fulfilling their regulatory obligation—simultaneously makes themselves a target for legal action from the operator. This combination of heightened litigation risk and a lack of legal immunity, a direct outcome of the Director's Paradox, threatens the integrity and long-term viability of the audit function itself.

## **5.0 Conclusion**

The Heavy Vehicle National Law reform represents a well-intentioned evolution towards a modern, risk-based approach to safety. However, the framework contains a fundamental structural flaw by positioning the mandatory compliance audit as a tool for prosecuting company Directors. This design choice creates the Director's Paradox, where the mechanism for demonstrating compliance simultaneously generates evidence for regulatory enforcement.

This analysis has identified three critical risks flowing from this conflict:

1. A powerful disincentive for operators to participate in the accreditation scheme, as Directors may perceive the personal legal risks to outweigh the operational benefits.
2. An untenable professional risk for independent auditors, caught between regulatory demands for rigor and client pressure to minimize findings that create legal jeopardy.
3. A heightened risk of civil litigation against auditors who lack the statutory protection afforded to regulatory officials.

Ultimately, this conflict between the assurance and enforcement functions of the audit process undermines the foundation of the new framework, creating a landscape of unacceptable and potentially unmanageable risk for both company directors and the auditors they engage.

## **Darrell Gascoyne**

Ph [REDACTED]

NHVR NHVAS Auditor 061

Transport for NSW Bus Safety Auditor

Western Australian Main Roads Principal Auditor 031

Exemplar Global Lead Auditor 130006

Cert IV Road Transport Compliance

Cert IV Government (Investigations)

Cert IV Government (Compliance)

Cert IV Training and Assessment

GC BA, (QU)

NHVAS Accreditation Systems and Audit

Western Australian Accreditation and Audit

CoR System Development and Risk Assessments

Over-dimensional Permits

ABN 613 781 776

Please receive my comments on the proposed changes to the HVNL Part 2

1.0 Introduction: Context and Purpose

The National Heavy Vehicle Regulator (NHVR) has released a new Draft National Audit Standard, slated for implementation in October 2025, which is set to supersede the existing NHVAS Business Rules and Standards (nhvr0142). This transition represents a significant evolution in the regulatory framework governing heavy vehicle accreditation in Australia.

The core purpose of this document is to dissect the practical implications of a key procedural change: the introduction of a mandatory timeline for audit report submission. While seemingly an administrative adjustment, this new requirement fundamentally alters the commercial and operational dynamics of the audit process. I think the NTC/NHVR needs to evaluate the resulting financial, operational, and professional risks it creates, providing a clear-eyed assessment for stakeholders across the industry. This needs to begin with a foundational comparison of the audit timeline rules in the current and draft standards, which is the source of the risks that follow.

2.0 Foundational Change: Audit Report Submission Timelines

The strategic importance of audit timelines in a regulatory scheme cannot be overstated; they dictate the pace of compliance, influence commercial relationships, and define procedural obligations. While both the current and draft standards aim to ensure that accredited operators maintain effective Safety Management Systems (SMS), the procedural mechanisms and deadlines for reporting have been significantly altered. This change in reporting protocol forms the basis for the specific risks detailed later in this analysis.

The table below provides a direct comparison of the rules governing audit report submission, highlighting the fundamental shift from a flexible pre-audit notification system to a rigid post-audit submission deadline.

Comparison of Audit Report Submission Protocols

Current Standard (nhvr0142)	Draft National Audit Standard (Oct 2025)
The current standard mandates a <b>pre-audit notification</b> . According to Section 11(7), an operator must submit a Compliance Audit Notification (CAN) form to the NHVR no later than <b>28 days before</b> the intended audit date. The NHVR often shortens this timeline in line with customer expectations.	The draft standard introduces a mandatory <b>post-audit deadline</b> . Section 4.10 states that auditors must submit all required information, including the completed Audit Criteria Report, into the NHVR system <b>within 28 days of</b> the audit date.
Critically, the standard does not specify a mandatory deadline for the auditor to submit the final audit report <i>after</i> the audit has been conducted. This procedural flexibility implicitly provides auditors with commercial leverage and also allows additional audit evidence to be produced, as the submission of the final report is not bound by a regulatory timeframe.	This rule creates a non-negotiable deadline for the auditor, compelling the submission of the report regardless of external factors, such as operator readiness or payment status. This directly contrasts with the current standard's lack of a post-audit deadline.

This move from a flexible, operator-driven notification timeline to a rigid, auditor-bound submission deadline is the single most impactful procedural change in the Draft Standard, giving rise to a new set of interrelated risks for all parties involved.

### 3.0 Analysis of Key Risks for Auditors and Operators

The shift from a flexible to a fixed audit reporting timeline is not a minor administrative change, but one that fundamentally alters the dynamics between operators, auditors, and the regulator. The introduction of a hard 28-day submission deadline introduces a series of pressures and obligations that did not previously exist, transferring risk in a way that warrants careful consideration. This section deconstructs the specific financial, operational, and professional risks that emerge as a direct consequence of this new procedural rigidity.

#### 3.1 Financial Risk: Compromised Payment Leverage for Auditors

Under the current standard (nhvr0142), the absence of a mandatory post-audit submission deadline provides auditors with critical, albeit unstated, commercial leverage. This allows an auditor to implicitly withhold the finalisation and submission of the audit report until payment for their professional services has been received from the operator. This practice serves as the auditor's primary commercial security, ensuring that payment is rendered for work completed before the operator receives the accreditation-critical report.

The Draft Standard's new 28-day rule (Section 4.10) effectively dismantles this leverage. An auditor is now compelled by the regulator to submit the report within the prescribed timeframe, irrespective of whether the operator has settled their invoice. This change transfers the financial risk of non-payment or delayed payment directly from the operator to the auditor.

Once the audit report is lodged in the NHVR system—a necessary step for the operator to maintain accreditation—there is little remaining commercial incentive for a delinquent operator to finalise payment promptly. This creates a significant cash flow and revenue risk for auditors, particularly those operating as small businesses or independent contractors. The desire to maintain the role of an auditor is clearly at risk.

#### 3.2 Operational Risk: Timeline Compression and Operator Unpreparedness

The fixed 28-day timeline creates significant operational challenges, particularly in common scenarios where an operator is not fully prepared for the initial audit visit. This gives rise to an "Auditor's Dilemma" that strains professional relationships and compromises audit integrity.

If an operator fails to provide all necessary evidence on the day of the audit, the auditor, constrained by the 28-day submission clock, faces two undesirable choices:

1. **Record a non-conformance:** As prescribed in Section 4.8 of the Draft Standard, if evidence is insufficient and no additional evidence can be provided, the auditor "must record a nonconformance for the relevant standard." This is a punitive outcome for the operator that may not reflect a systemic failure, but rather poor preparation for a single audit event.
2. **Schedule a follow-up visit:** The auditor can attempt to work with the operator to gather the missing evidence. However, coordinating a subsequent site visit that fits both the auditor's and the operator's schedules within the tight 28-day window can be logistically challenging, if not impossible.

This dilemma is a direct product of the new timeline. Under the flexibility of the current standard, such delays can be accommodated without placing the auditor in a position of regulatory non-compliance. The new pressure forces a more rigid, less collaborative audit process, which can lead to strained operator-auditor relationships and potentially rushed, incomplete audits submitted purely to meet a deadline.

#### 3.3 Financial and Procedural Risk: Management of Corrective Actions (CARs)

The Draft Standard is that all Corrective Action Requests (CARs) must be fully completed and closed out before the audit report can be submitted. This reveals a different, and more nuanced, risk. The procedure, as detailed in Sections 4.12.1 and 4.13, is as follows:

- The audit report must be submitted after CARs are **agreed upon and signed** by both the auditor and the operator.
- The timeline for the operator to **complete the corrective actions** only begins *after* the operator formally accepts the submitted audit report in the NHVR Portal.

This means the auditor is not required to wait for the CARs to be cleared before submitting the report. However, the true financial risk emerges in the post-submission phase. The auditor remains commercially and professionally obligated to perform the necessary follow-up work to verify that the operator has completed the corrective actions and officially close out the CARs.

Synthesising this with the payment risk identified in Section 3.1, a secondary financial vulnerability becomes clear. An auditor must submit the report to meet the 28-day deadline, thereby losing their payment leverage. They are then required to conduct additional work to close out CARs, with no mechanism to ensure they will be compensated for this subsequent, and often significant, effort.

### 3.4 Professional and Punitive Risk: Auditor Exposure to NHVR Sanctions

The combination of a tight deadline and the potential for operator unpreparedness places auditors in a professionally precarious position, directly exposing them to punitive sanctions from the NHVR. Section 3.2 of the Draft Standard is explicit: sanctions may be applied if a submitted audit report is found to be "incomplete, lacking sufficient detail, incorrect, or factually inaccurate." The operational pressures created by the 28-day deadline could easily force an auditor to submit a report based on incomplete evidence simply to avoid violating the submission timeline. Doing so, however, would place them in direct violation of the standard of quality mandated by Section 3.2.

This exposes the auditor to a formal performance review and potential sanctions. As outlined in Sections 5.4.2 and 5.4.4 of the Draft Standard, these remedial actions can be severe and career-altering, including:

- Formal written warnings
- Mandatory remedial training
- Temporary suspension of their registration
- Permanent cancellation of their registration as an approved auditor

The new standard, therefore, creates a high-stakes conflict for the auditor, positioning them between the risk of an operator's non-compliance on one side and the threat of direct regulatory sanction on the other.

### 4.0 Conclusion and Strategic Implications

I would suggest that the above demonstrates that the introduction of a mandatory 28-day audit report submission timeline in the Draft National Audit Standard is far more than a simple procedural update. While the NHVR's intent with this change is likely to enhance scheme efficiency and ensure the timely collection of compliance data, this single change inadvertently transfers significant and unmitigated financial, operational, and professional risk from operators and the regulator directly onto the approved third-party auditor. The core finding is that auditors are being made accountable for deadlines that are often dependent on the preparedness and cooperation of the operators they are auditing.

The overarching strategic implications for the heavy vehicle industry are significant and warrant further consideration by the NHVR and industry stakeholders.

- **Increased Financial Strain on Auditors:** The removal of inherent commercial leverage will likely lead to increased instances of delayed or non-payment for both primary audits and the subsequent work required to close out corrective actions. This could impact the commercial viability of auditing as a profession.
- **Degradation of Audit Quality:** Faced with a rigid deadline and potential operator delays, there is a tangible risk of auditors submitting rushed or incomplete reports to avoid sanction.

This could progressively undermine the integrity and assurance value of the entire accreditation scheme.

- **Strained Industry Relationships:** The new pressures may foster more adversarial relationships between operators and auditors. The collaborative, improvement-focused spirit of auditing could be replaced by a culture of deadline-driven compliance, diminishing the scheme's safety objectives.

A system that places its independent arbiters in a financially and professionally untenable position may ultimately struggle to retain the very experts needed to guarantee its integrity and success.

**Darrell Gascoyne**

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