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www.hvnlreview.ntc.gov.au

RE: 'Assurance Models' Issues Paper

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to comment on the 'Assurance Models' Issues Paper.

As you may be aware, SAFC is the State's peak, multi-modal freight and logistics industry group that advises all levels of government on industry related issues. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

Assurance models within a revised HVNL are critical to ensuring safety of road freight operations. Industry has significant issues with several of the schemes currently in use – there is considerable scope to improve models under a revised law.

We note that much of the analysis and appendix information presented in the paper relies on the 2008 Austroads paper *'Analysis of the safety benefits of heavy vehicle accreditation schemes'*. We are concerned that so significant a proportion of the issues analysis is based on a paper over a decade old, particularly as this paper predates the NHVR and commencement of the HVNL by 5 years.

Given the high reliance on this paper, it should have been re-done prior to issuing the issues paper. An update should now be commissioned by the NTC as a matter of urgency.

Responses to the individual questions posed in the paper are below.

Should you wish to discuss any element of this submission further, please feel free to contact me on (08) 8447 0664 or via email knapp.evan@safreightcouncil.com.au.

Yours Sincerely,

Evan Knapp
Executive Officer,
SA Freight Council.

LINC
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Question 1: Have we covered the issues relating to assurance accurately and comprehensively? If not, what do we need to know?

The first dot point under 'key points' (p16) states '*Assurance Schemes give parties confidence and trust in one another*' – this is incorrect. Assurance schemes provide a regulator with confidence and trust **in** the regulated. They do not provide confidence in the regulator **by** the regulated.

Page 19 notes that *'to avoid fickle entry and exit, schemes may require a minimum commitment period'*; but fails to identify why this is a problem. In a road transport context, an operator may choose to join a scheme to facilitate a particular contract where higher mass or longer hours are required, and then leave the scheme when that business need is no longer applicable. The NTC has failed to make a case for 'lock in' provisions.

In section 2.4.2, process for setting up an assurance scheme (page 20) the paper states: *'Develop an assurance scheme that lets regulated parties demonstrate their compliance with the objective identified. In a risk based regulatory environment, the scheme should be owned by the government or the regulator'*. The case for government/regulator ownership has been **assumed**, not **made**. The industry owned TruckSafe scheme (for example) allows companies to demonstrate compliance with HVNL safety requirements to a standard that is arguably higher than alternative government schemes. As noted, many freight customers have accepted it as delivering a high quantum of confidence. There is however a case to be made for government or regulators to take a role as 'accreditation assessor' if such an accreditation scheme is to provide regulatory assurance. The difference between ownership and accreditation assessment is an important distinction that should be clearly recognised in this review.

Later, in discussion under Draft Regulatory Principle 3 (p34), the paper notes that standards should be set, or **at least overseen**, by governments. SAFC would like public clarification as to whether a government or regulator taking on an 'accreditation assessment' role meets this principle.

In section 4.2 (p31), the paper correctly recognises that '*only AFM requires operators to identify and manage their own risks*' – but does not make the important link between this and the better safety outcomes it provides, particularly by developing a safety culture within the operator.

On page 32, in section 4.4 'Low confidence in the systems' the section makes **no mention of IAP**. Industry has a very low level of confidence in IAP due to the significant number of incorrect non-conformances it generates. Confidence in the system is so low that virtually no operators use the system unless required to for access purposes. Lack of prosecutions under the system suggests that governments/regulators have little confidence in it either – but continue to require it for access in some jurisdictions.

Question 2: Is there evidence of third parties, such as site managers, customers or loaders, performing audits on heavy vehicle operators that duplicate certification audits? Can third parties be assured (by an accreditor or certifier, within the HVNL, or some other means) that their audits are unnecessary?

The South Australian Whiteline Transport case study on page 32 clearly demonstrates the problem, and provides the evidence sought. This commonly acknowledged as a widespread issue.

In essence, the revised law (or the regulator) need to make it clear that viewing a current certification from an accredited source/system constitutes taking reasonable steps to ensure that the road transport operator is compliant in regards to that element, and that any further auditing is not required.

Question 3: Does the HVNL need an assurance scheme? Could the flexibility operators want be achieved simply through performance standards, or are some operators and operations sophisticated or specialised enough to need alternative compliance options? Does technology or vehicles or any other operational area need assurance under the HVNL?

Performance standards form a base level of assurance, suited for small and unsophisticated operators. Assurance schemes, which should deliver higher levels of assurance as to safety, should be available and offer further benefits to those operators who take them on. In general, they should not be mandatory.

A system that only had performance standards could see the number of customer audits explode to extreme levels (and some would argue that customer audit requirements are already at extreme levels).

The revised HVNL needs to facilitate the existence and approval of accreditation schemes, but not necessarily provide them directly – i.e. NHVAS. Schemes that offer similar levels of assurance, i.e NHVAS and Trucksafe, should offer similar levels of regulatory benefit i.e. access to regulatory programs such as HML or BFM/AFM. A government/regulator scheme should not deliver higher benefits than an industry owned scheme (if approved by the regulator and) if they offer the same (or higher) assurance levels. **This should be a Regulatory Principle.**

EWDs are an example of a technology that currently requires assurance – not that any have yet been approved. Fatigue monitoring technologies, where used for assurance purposes, may be a near future example that would require technical sign off given that they may be considered as 'deemed compliance' if used correctly.

Question 4: Which of the models do you prefer? What should they assure and why? Do you have an alternative model? Who should perform the key roles in an HVNL assurance scheme?

SAFC prefers model 2, 'A market for regulatory certification' of the models provided.

The vertically integrated model 1 does not provide for industry based or multiple accreditation schemes to exist. Model 3 could lead to accreditor shopping, and a lowering of standards – but would be an alternative if the accreditor under model 2 was also the regulator and refused to accredit schemes other than their own; or if the regulator was allowed to accredit their own scheme and a separate accreditor was set up for non-regulator systems. Model 4 contains no assurance schemes, and is not considered feasible.

As noted, we prefer model 2, and have assumed that the NHVR will take on the Accreditor role. If they act in bad faith to preference their own accreditation system (NHVAS), that role would need to move to a neutral agency – this could be accomplished by making TIC the Accreditor, with the NHVR being delegated powers that could be overruled by TIC if required. The Standards body would essentially be the NHVL itself (assuming the requirements are set out through regulation) or the

NHVR, and there would be a variety of scheme owners – NHVR for NHVAS, the ATA/Trucksafe Foundation for Trucksafe, WA Government for WAHVA etc.

Question 5: Fully developing a new assurance scheme could take a long time, even if writing it into law is relatively simple. What can we use from what we have, and how can we transition to the desired end-state?

There are currently 3 veteran, well tested systems in operation – NHVAS, Trucksafe and WAHVA. There is no reason these can't be grandfathered immediately into the revised HVNL – including providing regulatory benefits to accredited entities of **all** three schemes. Some normalisation would be required – WAHVA operators could not operate beyond the maximum possible hours allowed in the HVNL when operating in HVNL participating jurisdictions, for example (this is assuming that non-participating jurisdictions do not apply the new law).

Development and/or revision of the schemes against any new requirements or standards could then take as much time as reasonably required to ensure their comprehensiveness.