

**ASSURANCE MODELS
HVNL REVIEW ISSUES PAPER**

**SOUTH AUSTRALIAN ROAD TRANSPORT ASSOCIATION SUBMISSION
25 OCTOBER 2019**

1. About the South Australian Road Transport Association (SARTA)

The South Australian Road Transport Association (SARTA) is the peak road transport body in SA and with hundreds of members and a far wider industry based operator network, with which we are continually engaging throughout the Review of the HVNL. SARTA is committed to safety, professionalism and viability.

2. Introduction

In August 2019 the National Transport Commission (NTC) released the Assurance Models issues paper for the Heavy Vehicle National Law (HVNL) review. SARTA makes the following comments on the Paper and the issues it raises.

1. At page 22 re 3.1.3 Mass, the paper argues that Mass management certified HVs that are not also Maintenance Management certified, have higher levels of defects than those that are. This is irrelevant as the same can be said about all non-Maintenance certified HVs and there is no valid argument for this point in relation to Mass accreditation, which is about infrastructure protection at Higher Mass.
2. At page 23 re Maintenance Management, the paper recognises the reality that the highest take up is in jurisdictions that offer regulatory benefits to accredited operators. The industry has been making this point for many years. For operators to go further that the HVNL requires at the base level, there must be a return to the operators and it is naive of government to expect anything different.
3. As an absolute minimum, the new HVNL must provide for a single national accreditation framework and that any and all accreditation schemes that **the NHVR approves** as meeting the standards, including an assurance framework based on AS ISO/IEC 17011, **which should be set by the NHVR** and not by Ministers, should attract whatever regulatory benefits are provided by governments and regulators at any given time. These were all sound recommendations of the Medlock Review and they should be implemented.
4. To **ensure the integrity and reasonable longevity of approved accreditation schemes**, the NHVR should establish **appropriate and rigorous entry conditions**, consistent with the principles used by TCA in approving telemetry providers.
5. At page 23 re BFM the paper makes the statements that:
 - a. BFM allows some shifts that represent a high risk of fatigue impairment.
 - b. The scheme is seen (by jurisdictions presumably) as encouraging minimum compliance rather than proactive risk management;

6. These statements have no basis in fact and deny the reality, as:
 - a. Firstly the base level, the Standard Hours regime, which by default applies to all HV drivers, place NO RISK management requirements on any party, other than the all-encompassing obligations under the CoR Reforms of 1 October;
 - b. BFM requires formal training in managing fatigue and induction into the operator's BFM program, including its management procedures and policies, as well as regular medicals. None of which is required under Standard Hours.
 - c. The Risk Classification Scheme used by the NHVR in assessment of AFM program applications identifies numerous behaviours and practices as representing a high risk, **including having a 7 or even an 8 hr continuous sleep break**. Given that the Standard Hours Fatigue regime only requires a 7 hr continuous sleep break, the reality is that the law that applies to ALL Heavy Vehicle operators *theoretically* applies standards that encompass or 'allow' activity that "represent a high risk of fatigue impairment" and so this point in the paper is grossly misleading. The key is that effective fatigue management practices are in place.
7. At page 24 the paper asserts that "it is difficult to measure the effectiveness of AFM" but offers no evidence or substantiation for this assertion. It also claims that "jurisdictions have concerns with the total hours of work allowed under AFM" without stating which or how many jurisdictions, or what exactly those concerns are. It is well known that two eastern seaboard jurisdictions, NSW and VIC, have long had such philosophical views, as distinct from valid evidence-led concerns and it's also known that they have never been able to provide any substantiation for those philosophical positions. The reality is that the AFM regime and assessment process are heavily based in the scientific advice of Fatigue Management Experts and the assessment of the NHVR is that the safety outcomes from AFM are far better than either BFM or Standard Hours.
8. The paper further argues, or at least states, that the low level of take up of AFM means that the scheme "is of little value to the NHVR and to the industry overall". Well one might use the same spurious logic to argue that IAP is of no or little value. The fact is that AFM is only used by operators whose operations require more hours or flexibility than is available under the Standard or BFM options and they are primarily operators working in or through rural and remote Australia. So of course the uptake is more limited but that said, the uptake is growing as eastern seaboard operators increasingly identify the safety benefits of the greater operational flexibility of AFM. Moreover whether or not AFM is of value to the NHVR is irrelevant as it is NOT an enforcement regime, it's for the operational flexibility FOR THE OPERATORS AND DRIVERS.
9. At page 33 the Paper argues that "Well resourced, capable operators, who understand their operations better than anyone else, may be more effective at identifying risks or specifying controls than a regulator or government" and goes on to argue that other operators don't have access to the capacity or data "required to manage certain risks". This is an absurd statement as it:

- a. Implies that only large operators are able to identify and manage risks, which we utterly refute;
 - b. Implies that big operators are implicitly responsible and effectively manage the risks associated with their transport activities, including through their dealings with sub-contractors, which we also utterly refute, as the industry's long experience of dealing with large prime contractors is that size is no indication of either responsibility or lawful operations; and
 - c. Implies that small operators can't identify and manage their risks, which we again utterly refute as they are in immediate daily contact with their drivers and vehicles and are far better placed to manage the operations responsibly.
10. Perhaps the point that the Paper was seeking to make but didn't, is that the issue with small operators is more that, by and large, they are not well placed, with their limited and very flat management structure, to operate sophisticated Safety Management Systems with extensive reporting etc; and they really don't need to as they have their finger on the pulse continually. In addition these small businesses that make up the bulk of the industry would generally prefer the greater certainty that what they are doing is accepted by government as meeting their obligations under the law by virtue of operating in accordance with prescribed rules and measures specified by Governments.
11. Accordingly we believe that the **best approach under the new HVNL would be to provide a dual stream approach** that offers ALL operators a choice, in meeting their statutory obligations regarding safety under the HVNL, between:
 - a. **A set of far simpler regulatory requirements and rules** that provide some flexibility whilst providing certainty for operators regarding what's required of them and that what they are doing is legal; and
 - b. An alternative more flexible outcomes-based regime that enables operators, **of all sizes**, to implement safe practices. This would include:
 - i. Use of a simple **Safe Practices Guide** for Owner-Operators and small fleets; and
 - ii. Development and implementation of their own Safety Management System, approved by the NHVR.
12. At page 35 the Paper asks if there is evidence of third parties performing audits on Heavy vehicle operators that duplicate certification audits.
 - a. There is an abundance of evidence, from innumerable operators, that this is increasingly the case. If the NTC actually requires that proof, SARTA can readily provide it. This is the single greatest complaint to SARTA from members and non-members alike, regarding the CoR law and it has ramped up to ridiculous levels since the CoR Reforms of 1 October triggered an escalation of ill-informed awareness and concern from Prime Contractors and other Third Parties as they seek to cover their legal position. The irony is that

they have ignored, or don't believe, the NHVR's clear documented public advice, including a joint Media Release issued by the NHVR with SARTA (copy at Attachment A) stressing that by going beyond their level of "influence and control" under the HVNL, these parties are actually **increasing their own legal liability**, not to mention costs.

- b. What is required to return the CoR pendulum to equilibrium is for the new HVNL to provide a **clear and effective defence** under which Third Parties may rely upon the fact that their subcontractors have current accreditations in the relevant areas, such as Maintenance and Fatigue Management and that they therefore need only focus on meeting their own internal CoR obligations including in their business dealings with their contractors, such as the schedules etc.
- c. SARTA therefore supports the proposal of the ATA in relation to this issue, namely that:
 - i. **All businesses certified by an approved scheme would be deemed to comply with the safety duties under the HVNL.**
 - ii. **Customers and other chain parties, including prime contractors, would be able to rely on a trucking business's certification as evidence that the business was compliant with its safety duties and obligations.** The customer would be able to focus on meeting its own obligations rather than second guessing the trucking operator's systems.

13. **Certified and validated businesses should be subject to preferential roadside enforcement**, comprising a lower level of enforcement, or at the very least be afforded greater scope to self-manage apparent defects detected at the roadside within their accreditation regimes.

14. SARTA supports the ATA proposal that a new section should be added to the new HVNL to **ban requests or contracts that would require or encourage businesses to be certified under a particular approved scheme.**

15. Of the models proposed, **SARTA supports Model 2** as the only effective option. We challenge the statement that this is less robust than Model 1, as the existing NHVAS scheme could hardly be accurately described as "Robust".

16. Model 1, the current vertical integration scheme, is ineffective and should NOT be perpetuated in the new HVNL because it:

- a. would not provide governments or the NHVR with any incentive to bring NHVAS up to date or maintain it;
- b. would not address the proliferation of customer and certification audits; and
- c. would continue to be in breach of governments' competition policy obligations.

17. Model 3 would add unjustifiable complexity and cost for no additional safety gain and Model 4 would simply be unworkable and ineffective, placing an enormous enforcement burden on the authorities.
18. The paper asks whether an assurance scheme is needed under the HVNL. SARTA believes that **an assurance scheme is needed** because:
- a. There is enormous diversity within the industry, the type of operations, the operating environments, the risk profiles of the operations and those environments and the markets that they service and underpin;
 - b. No single set of rules can ever account for all the iterations;
 - c. If the law is to be a truly risk-based and safety-focussed law then appropriate flexibility must be provided. The only constant should be the baseline safety and risk outcomes that must be achieved;
 - d. HOW those are achieved will necessarily vary between operators and even between environments and seasons within which a single operator operates.
 - e. Many operators will prefer the confidence and certainty that comes from working within a simpler and adequately flexible prescriptive regime but there should always be the option of operating outside of the prescriptive regime and within the required safety outcomes;
 - f. That does not necessarily require formal accreditation regimes but rather just an obligation on each party to be able to demonstrate that they are appropriately and effectively managing safety and risks within their operations to at least the required outcomes.

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