

## Queensland Department of Transport and Main Roads (TMR)

### Submission in response to the National Transport Commission Issues Paper 'Assurance models' August 2019

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#### Overview

TMR notes the 'Assurance models' issues paper incorporates a broad range of issues for stakeholders to consider in providing their preliminary views on regulating assurance frameworks through the Heavy Vehicle National Law (HVNL) Review.

As outlined in previous submissions, TMR suggests the draft regulatory principles be refined to focus on legislative reform matters, rather than operational issues that may be better addressed by other complimentary activities. The principles should focus on regulatory reform that seeks improvements to safety and efficiencies through an effective risk-based national assurance framework that is designed to reflect the diverse operational activities and risks across the heavy vehicle industry.

One of the key concepts underpinning the HVNL Review is working from a 'first principles' position. This presents an opportunity to substantively redesign existing arrangements, such as the National Heavy Vehicle Accreditation Scheme (NHVAS), to deliver the best outcome through new approaches and not necessarily limited to iterations of existing arrangements. TMR notes that transitional arrangements to a new assurance framework will need to give due consideration to appropriate timeframes and assistance required for industry to understand and adopt elements. However, transition to a new scheme should not be deterred by complexities and timeframes associated with any significant change.

Provided below is information in response to the questions contained in the issues paper that TMR trusts will be helpful in developing policy issues and options for consideration in the upcoming Consultation Regulatory Impact Statement (RIS).

Note that the information provided in this document raises points for consideration and discussion for the purposes of the HVNL Review and does not form government policy.

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

The paper acknowledges that the NHVAS was first offered to industry as an alternative compliance scheme and has evolved as a formal process for recognising operators who have robust safety and other management systems in place. It is also increasingly being used to demonstrate compliance with general duty requirements under road transport law. However, the paper would have benefited from in depth comparison of the NHVAS and Safety Management System (SMS) frameworks to highlight the differences in approaches, along with a comprehensive comparison of the principles of each framework. Tangible evidence of benefits including improvements in safety, efficiency and productivity realised through participation in an assurance scheme would also be valuable.

***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?***

It is understood that certification duplication may be common practice, however TMR has no direct evidence that this is the case. A new HVNL should remove the ability for customers or larger companies to require contracted delivery partners to meet legal and contractual compliance under their own preferred assurance arrangements. A new framework should recognise that any heavy vehicle accredited under a new HVNL assurance scheme, is regarded as compliant, simply because it is demonstrated to have met the legislated standards.

As suggested in the overview, rather than a prescriptive approach to managing issues such as this, resolution may be achieved through an alternative approach such as a targeted communications campaign. Ensuring that all parties are informed of, and understand the requirements of the HVNL, could be an effective way of eradicating the practice of duplicating certifications.

To achieve confidence in compliance, a scalable approach to assurance may be an appropriate way of recognising the diverse risks associated with different vehicle and freight types. For example, a small operator delivering turf locally may be able to prove compliance in a different manner to a large operator whose vehicles are long haul and oversized.

As such, it would be beneficial for the RIS to consider options for establishing a scalable approach to assurance requirements based on the risk that the activity attracts.

***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?***

A report undertaken for the National Heavy Vehicle Regulator (NHVR) in February 2018 by Fellows Medlock and Associates, titled *An Analysis of Heavy Vehicle Safety Accreditation Schemes in Australia*,<sup>1</sup> suggests that only 20 percent of heavy vehicle operators currently participate in an assurance scheme. TMR acknowledges that the lack of participation is most likely due to the diverse nature of the industry and the prescriptive nature of the NHVAS, proving the one size fits all approach is not suitable. Further, it found that approximately 70% of all operators only have one heavy vehicle in their fleet and approximately 24% have two to four. Less than 0.5% of all operators have fleets with more than 100 heavy vehicles. These figures support the notion that an assurance scheme needs to be scalable, have a proportionate level of governance for entry and provide different benefits for different stakeholders.

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<sup>1</sup> *An Analysis of Heavy Vehicle Safety Accreditation Schemes in Australia*,  
<https://www.nhvr.gov.au/files/201812-0966-analysis-of-hv-safety-accreditation-schemes-in-aus.pdf>

Road managers want an assurance scheme that ensures heavy vehicles are compliant with set standards and are operating to optimal safety standards on the roads at all times. Conversely, heavy vehicle operators benefit from the potential to achieve higher productivity, financial and safety outcomes afforded to them through assurance schemes. All road users should benefit from an assurance scheme that results in safer heavy vehicles on the road, every day, rather than being exposed to operators who seek to ensure that their vehicles are compliant with set standards at certain points in time.

### ***Performance Standards:***

An assurance scheme needs to incorporate different compliance methods that provide performance-based outcomes to give operators the ability to demonstrate compliance in an effective and economic way for their business. This would provide alternative options for the more sophisticated and specialised operators while also providing schemes fit for smaller local operators. While performance standards would provide the flexibility that the industry would welcome, it would require additional resources on the ground to conduct both targeted and random compliance checks.

### ***Technology***

As outlined in TMRs submission to the 'Easy access to suitable routes' issues paper, data analysis is the key to measuring system performance, policy effectiveness and the benefits of change. The new law should support the NHVR and jurisdictions in sharing information and managing programs to receive, interpret and use data. Investment will be required to ensure that regulators have the capability and capacity to use data effectively, monitor outcomes and detect failures in risk management controls if they arise.

Specifically, consideration should be given to how technology can best be leveraged to ensure the development of a robust national database comprising of detailed heavy vehicle performance and compliance data which can be used to support a risk-based approach to compliance.

The RIS should consider how data could be used for risk profiling purposes to provide a modern approach to identifying the causes of non-compliance and the higher risk operators who are repetitively not achieving compliance. For complete transparency, the HVNL should also include provisions for mandatory accident reporting. Consideration should also be given to providing operators with the ability to prove compliance with the law using their own reporting mechanisms. The transfer of this data directly from the operator to the regulator could streamline compliance processes, provide suitable levels of assurance, and provide the regulator with information to build suitable targeted education and awareness campaigns.

### ***Summary***

Overall, in considering options for the RIS, TMR suggests that any assurance framework should provide alternative compliance mechanisms for regulated parties to demonstrate compliance with set standards. These mechanisms should be unambiguous, accessible, scalable and financially viable for operators. The framework must also provide assurance for regulators by primarily supporting a safe and efficient heavy vehicle journey. Additionally, it is important to recognise that any regulatory exemptions or concessions offered under the HVNL should be limited to schemes under direct control of the NHVR. It may be

inappropriate for third parties to make decisions about the approval, suspension or withdrawal of an operator from a scheme, unless there are associated strong control and feedback mechanisms.

***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?***

***Vertically integrated Model***

The vertically integrated model under which Queensland currently operates, provides reasonable control mechanisms for regulators. Despite the existence of a number of assurance schemes under this model, the NHVAS is the only assurance scheme that is formally recognised under the HVNL. While the objective of the NHVAS maintenance module is to improve roadworthiness, there is a need to consider overall improvements to the scheme for assurance purposes. Specifically, more rigorous auditing procedures could be implemented, including the requirement for a random sample of vehicles to be inspected at the time of audit to provide physical evidence of compliance, rather than a desk top audit certifying an operator's maintenance management system. An important element of the NHVAS is that vehicles are subject to both targeted and random compliance inspections on road as part of the NHVR's compliance strategy.

***Certification market model***

The certification market model provides potential for a more innovative and collaborative approach to assurance schemes. This model presents the opportunity to better manage risks, particularly those relevant to specific industry sectors, such as the Grain Harvest Management Scheme.

Under this model, scheme operators and certifiers do not have access to compliance information and this will result in a lack of visibility and transparency. Additionally, the certification model provides restricted information flow to the regulator, limits the regulator's control over accreditation systems and visibility of operator performance.

***Accreditation market model***

As the name suggests, the accreditation market model creates a market for consultants and auditors. From a regulator's perspective, there may be too many layers between the regulator and operators. There is a risk with this model that because the accreditors and certifiers are systems experts and not heavy vehicle experts, this could create a lack of industry expertise and failure to recognise critical issues. Additionally, this model could see inconsistencies between accreditation systems that would create problems for operators and regulators.

***Performance standards only***

This method would provide a level of scalability by allowing operators to design an SMS approach to suit complexity or size of operations and risks. However, from a regulator's perspective, this model presents barriers for the regulator such as a lack of oversight and access to necessary information, particularly where it is needed for regulatory exemptions. There is also a need for additional resources in this approach to ensure compliance. Overall, this model has a high risk of non-compliance, lacks flexibility for industry bodies and is not suitable for links to any regulatory exemptions.

## **Summary**

The purpose of an assurance scheme is to achieve safer heavy vehicle performance supported by a framework that provides the regulator, road manager, operators and the public with confidence in the safety standards of heavy vehicle fleet operating on the network.

This purpose needs to be clearly identified before developing a new scheme so that the most suitable elements from other schemes/best practice can be recognised, assessed and where suitable, incorporated to achieve these outcomes. The focus should be on the elements that best ensure that operators are meeting legal obligations, accreditation standards, safety standards and managing risks effectively.

It is suggested that some elements of the vertically integrated model that work well could be successfully combined with some elements of the certification market model as a basis for a new model. The accreditation market model invites too many inconsistencies that arise from numerous control layers. Therefore, TMR does not envisage this model as a suitable option, due to the diversity of the heavy vehicle industry for a 'one size fits all' approach.

In any chosen model, responsible Ministers should approve the standards to meet objectives and an agreed vision, with the regulator to maintain direct control over accreditation decisions. As noted above, this is particularly vital when tied to regulatory exemptions or concessions. The emphasis needs to be placed on having consistency in the application, implementation and regulation of a national assurance scheme/s under the direction of the NHVR. Any assurance scheme/s should be legislated appropriately within the HVNL and supported by relevant standards and business rules.

### ***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?***

While certain attributes of the current law can be identified and used, it is important to maintain a first principles-based approach. The RIS should seek to develop the elements of an assurance scheme that will deliver the desired outcome. A scheme should be designed on evidence and best practice, rather than from an assortment of elements from various existing schemes. As such, the RIS should be clear in articulating the purpose and objectives of an assurance scheme and then consider suitable elements that will ensure agreed outcomes are achieved. This may include:

- scalability
- a framework that is easy to understand, comply with and enforce
- proportionate approaches to enforcement
- more robust surveillance and enforcement, along with robust auditing of assurance systems, such as inspection sample of vehicles in addition to the desktop audit
- collection and use of data and technology

To support transition to a desired end-state, the RIS should consider options for dual compliance requirements and an appropriate period of time for the transition. A long transition period should not deter governments or regulators from pursuing the approach that best meets the needs, objectives and delivery of desired outcomes.

The information provided in this document raises points for consideration and discussion for the purposes of the Heavy Vehicle National Law Review and does not form government policy.