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Submission

Thank you for the opportunity to respond to the report of the impact statement

The HVNL 2.0 document is a concern to the industry that the review process has already been decided and that this response is a futile document, that being so, we can only hope it will be read and opinions in it considered .

After reading the impact statement it is clear their needs to be more workshops especially on 2 points, fatigue and roadworthy vehicles as I explain in this response

Question 3.10

Penalties for drivers have currently exceeded their fairness on prescriptive law and the current provisions HVNL deny them due process of law and further attempts to use draconian fines as deterrent will affect the industry long term

I make the observation that the industry, in particular drivers, are at this time of the opinion transport law is revenue grabbing and revisiting 1979 ,1988,1992 using their common law rights to protest is possibility if this review does not bring reform on driving hours , which at this time would not be productive to all stake holders

Question 4.6

Our responsibility to the public good is the primary duty of the industry

Drivers safety will, improve dramatically if & when they are paid the right remuneration for work done, while this is not the mandate for these agency's COR should embrace this fact and expand the COR 26d to cover them per 4.1

Employers and hirers who do not pay their drivers and subcontractors the correct remuneration commit an offence under fair work law, contract law and contribute to road deaths of truck drivers and the public in Australia and as such must be an offence under COR 26d

Adding more driver duty and more complex law to follow and adhere to will not improve driver safety and will drive all experienced drivers from the industry

COR 26d must capture all heavy vehicle mechanics and repairers including transport companies own in house mechanics , and all third party mechanics ,and must include all state governments accredited and state operated heavy vehicle testers .the National Heavy Vehicle Inspection Roadworthy Manual is not being adhered to across Australia leading to heavy vehicle accidents causing death to truck drivers and put at risk the Public good.

There is a major shortage of properly trained heavy vehicle mechanics in Australia and this statement is supported by simply watching the news and seeing heavy vehicles on fire coming

from badly adjusted brakes or lack of proper servicing and also supported by the NTI report on truck insurance claims in 2020.

Every major fleet and or minor fleet and repairers has the same maintenance problem, lack of qualified mechanics to maintain and repair heavy vehicles, so they hire unqualified mechanical fitters to take their place, this places vehicles on our roads that are unsafe putting drivers and the public at risk .

COR 26d must capture heavy vehicle driver training, the Driver Training Association, Australia, (DTA) in submissions, to senate enquiry, admits heavy vehicle driver training members do not have the knowledge or ability to properly train heavy vehicle drivers .

In the event of an accident, if investigations by a heavy vehicle competent person show the driver does not have the ability or not competent or have the knowledge to operates that particular combination of heavy vehicle then the driver trainer should be held responsible under COR 26d for a failure of duty to ensure the driver was competent for that combination before allowing a competency pass

A driver who accepts a job that requires him/her to work more than standard hours and is not competent to do so and accepts the job should be liable as a primary duty under 26 d if he /she is proven not competent

Question 5.5

Many in the industry do not embrace a legally enforceable code of practice that is drafted by self-promoted transport associations and supply chain bodies that did not have input from the industry as a whole to be used by the NHVR

The NHVR as regulator as an entity of the government must not have the ability to make law on any subject, it must continue to advise on properly primary legislated law and enforce legislated law

Option 5.2 could be the best option on setting safety standards using COR 26 d as penalties Any COPS must have input from industry as a whole Australia wide

5.4 Until such time as NHVA is accepted Australia wide and all drivers are being policed the same and operating under the same law it cannot be allowed as it could further breach the rights of the industry participants on territorial jurisdiction of the courts as per the constitution on the separation of powers.

An example, the driver of a vehicle from a state not part of NHVL could not be prosecuted for driving a vehicle that was not compliant to the NHVL on vehicle roadworthiness .

It would appear that from the questions and the impact statement the NHVA would become a road safety authority as well as an enforcement authority that would only effect part of Australia at this time, and it would need further state government acceptance in that area do we need another safety authority

Question 6.5

Electronics enforcement in vehicles must never be mandated and must be on a voluntary basis While we understand that the NTC/NHVA believe that electronics is the savior of road deaths and enforcement we believe that opinion is flawed

Roadside cameras are already here for enforcement and surveillance so that is a given. And if operators need to operate on permits then electronics will be a demand, they will need to comply with

Clearly the NHVA want electrics technology for various enforcement, however without major reform on fatigue to a risk-based system and no prescriptive hours it is not in the interests of drivers to have further big brother forced on them just for easier penalties to be imposed on them .

The latest fatigue recommendations for electronic eye movement for fatigue breaches is an issue that is a flawed opinion on what is fatigue and when is a driver fatigued.

Electronic work diaries is an issue for drivers and not to be confused with companies abrogating their management duties to electronics to help them in compliance with other laws to gain their individual benefits and demanding and denying drivers their due process of law and the right to supply paper documentation of evidence depending on the driver or of that individual management.

6.3,6.2.a

Electronics place a monetary burden on the transport operator and it should be up to the operator to decide at what time his business can afford to go to electronics and until that time 6.3.3 would apply

Until an EWD can capture all the total time in any given day the driver has been involved in work on a vehicle , not just the time the engine has been turned on, it will have not have support of the majority drivers to voluntary use them .

When it does that, and the employee driver can use that record against the employer to be paid for all hours worked, and when a self-employed driver can use that record and against a hirer for remuneration of hours worked it could get voluntary support from cross section of industry .

At this time drivers are compelled to use and cannot opt out of AFM as employees of major transport companies who use them too abrogate their company's legal responsibilities and put their lives at risk .

Question 7

7.1c

Interstate Transport Act (cth) part 5, set out the licensing of the industry as an enforcement tool and to control the entry into the industry by new players without business experience and it should be used in that way in the future.

7.5 yes ,It is the most direct method of getting operators to comply with the law

Licensing of the industry should be a top priority of the NHVA, every person or entity who trades in hire and reward in transport, including any supply chain or manufacturing company using their own in house transport vehicles must have licence to operate.

The licence cost is not important in this day of computers, example, it can be \$100 per year per business, but it will track those heavy vehicle operators .

7.3 all operators MUST list registrations numbers of vehicles they operate that would be updated as vehicles change, this is no change to what is done in NHVAS compliance now.

As an enforcement tool for operators who constantly breach rules or law it is the cheapest to regulate, the licence can be cancelled, suspended by a court or by the regulator on the evidence as a section of the HVNL or alternatively incur fines .

In particular transport companies who continually breach corporation law when directors are ordered to not operate the company by a court continue to operate using false directors for phoenix companies .

Cancelling a company licence to operate would circumvent any attempt by corrupt directors and family members to continue to operate any vehicle by cancelling the registration of any vehicle they control individually or held in a holding company that is on record with NHVA .

Example, Companies who continually operate unroadworthy vehicles could have their licence to operate suspended.

Case study 8

Transport company from Shepperton in Vic who operate 48 vehicles had 274 various roadside breaches in 2017/218 recorded by NHVA . clearly good reason to keep annual roadworthy and or lose a licence to operate

This would need to be separate from any other accreditation schemes

How it is done in simple terms

A director has no assets in his name , a holding company holds all property and equipment at arm's length of other companies, leases equipment to the trading company that incurs all costs ,and will always be in debt to the holding company as they never pay the leasing fees, and will finally could be the vehicle to apply for liquidation ,a hiring company that pays all wages ,an invoicing company who collects the money and controls contracts ,all companies are at arm's length to each other .

A company will be liquidated before it goes court with no assets to sell

This method or similia of setting up avoidance companies is common in transport and has been around for 50 years.

There is a family owned transport company in Shepparton in Victoria renowned for this or a similia method of operation .

The courts have held that this operating system is legal under the corporation's act for avoidance and is legal unless evidence can be supplied to men's rea or of criminal intent.

7.3

Most transport companies who apply for accreditation to NHVAS do it to gain weight accreditation to CML and or HML

Originally Truck Safe and NHVAS operators were given free pass at roadside check points if they also signed up to mass management and the maintenance programs.

Any statement that all vehicles under either Truck Safe or NHVAS are always in a roadworthy condition is a fallacy.

Experience has shown me that a large percentage of companies using the maintenance accreditation, failed when testing these vehicles for annual roadworthiness at our Vic Road accredited testing station .

With the current national registration under NHVA, annual roadworthy testing no long applies, I can attest our current roadworthy testing of fleets that we previously performed annual testing on, shows major faults on some vehicles that would have been rectified under the old system of accreditation .

In any scheme adopted must have annual roadworthy testing as set out in the NHVA roadworthy manual for all states as condition for all heavy vehicles, without exception, no matter what size of their fleet, including fleets using the ATA Truck Safe accreditation and NHVAS.

There would also need to be a way under any new scheme for operators gaining accreditation to CML or HML

8 FATIGUE

This is an issue than effects 99% of the stakeholders involved in this review, the driver's. The question is not when is an individual driver fatigued but when is he/she recovered from fatigue

The fatigue and the deeming of prescriptive times under the fatigue act is an issue that needs multiple workshops before it can be settled and while the Coronavirus has held things up we hope that consideration to get the review done properly without using time restraints excuse on behalf of road safety for Australians ,that workshops on the matter will be done before the matter is closed

The NHVA AND and NTC must be prepared to bring to workshops their fatigue evidence on prescriptive hour provisions that deem when all drivers need rest without taking into consideration the drivers age ,weather ,gender, health , location ,time worked ,where rest is taking place , and how this same deeming states these all the same drivers need the same recovery time after resting without consideration of the same elements as previously mentioned.

The NTC and now the NHVA has never been prepared to bring evidence on in support of its deeming provisions now is the time to bring to work shops these alleged experts to debate the case and explain why drivers individual body clocks are not the precedent we should base law on. to explain with evidence how any unknown driver of the future can be assessed to show he/she is competent to drive 17 hour days or as required by tier 3 schemes .

While a company can show it can provide the management needed to comply with AFM doesn't mean the drivers can perform the duty safely

Personally what my professional experience has taught me and many other drivers, is that some days my body clock has woken me after 2 hrs, 3 hrs, sometimes 12 hrs or any times in between ,**but every day is different** ,and the same applies to every driver, **as every individual body clock is different** , and this applies when I am either at my place of abode or in a heavy vehicle .

What minimum rest time an individual driver needs today, will change tomorrow and I will put my professional opinion on this point against any other academic fatigue expert

8.7.7 Deeming without absolute evidence by roadside enforcement officers whether the driver is fatigued would be a subjective opinion of that officer .

And a denial of due process of human rights and legal rights that could raise issues of unlawful imprisonment or depravity of liberty .

Because a driver may have breached work diary provision does not mean the driver is fatigued and any opinion by authority must be objective, provable.

While the fatigue act penalties imply if you make a breach of the act you are fatigued it is unproved, when in fact you breached provision of the act and the wording of the act should say that

QUESTION 8.8

8.1 yes

Badly trained drivers or incompetent drivers is common and as driver training is not mentioned it must be debated.

It is the NTC mandate to bring to state ministers' attention all reasons that effect road safety and driver licensing, ability, competency is a major cause

It fails to address the lack of approximately 2000 rest truck stops across Australia that is needed for drivers to comply with prescriptive law and leaves any dispute up to roadside enforcement officers to decide.

8.2.1

The amendments over the years by the NTC and its fatigue experts and its attempts to cover every possible scenario of breaches have made the fatigue act a cumbersome and ill-informed ,ambiguous law this includes the making a 3 tier system of enforcement with night time driving restrictions that now takes a law degree to understand and no more than a revenue raising act by those enforcing the act and a avenue for large corporations to abrogate their responsibilities on road safety

8.2.2 12 Hour Driving Work Day, Standard hours s249 NHVL

The framers of law must start treating drivers as adults not children and allow some common sense self regulation on work hours

Drivers and operators should be able submit to the NHVA the following self-regulating plan under standard hours

Working on a 12 hour driving in 24 hrs of time starting work, that leaves 12 hours of rest, grass root drivers have held that the mandatory minimum rest time should be no more than 4hours with a further 2 hours minimum at the drivers discretion after any 4 hrs of driving time , and the remaining 6 hrs of rest be at the drivers discretion for that 24 hour period ,.72 hours a week doesn't change

Drivers are consistent that all work time should not exceed 6 days per week and 12 hour days ,

Some drivers say that 2 hours extra each alterative days are needed to work time (not driving time) would this be under be under BFM

Only stake holders who represent their members who need tier 2 or 3 because of bad business practices would object to a 1 tier standard hours scheme

7 hours of continuous rest per day is the prescriptive time that most drivers are objecting to as hard to comply with and that this is the current provision causing truck accidents and driver deaths.

NHVA 2.0 states by inference, if industry want changes it will need to adopt electronics, this is blackmail and not in the interests of driver safety

There is no mention of the NHVA adopting WA type fatigue law so there is no national law being considered on WA provisions

There is no mention of the NHVA removing from the act penalties for nondriving or work-related offenses. such as any provision that is not a risk to the general public but is a clerical error.

Prosecution of the industry members as one section of the Australian work force for clerical error in their work place is discrimination and breaches the human rights and in particular the Charter of Human Rights and Responsibilities Act VIC 2005

SAMPLE

Writing wrong time zone in Diary

Not signing a log book page ,

Wrong date or day on page ,

Not totaling daily hours on the page

Not handing page copies to the relevant person within the time set out in the act

Spelling mistakes ,

Town abbreviations ,

Failure to write your name in your work diary
Failure to write where diary copies are kept
All these points do not put the public at risk they are simply gotcha offences .

That being the standard this review is about and bring back common-sense enforcement
And while we acknowledge this may be untenable to NHVA by reducing enforcement
revenue it is what is required to go to risk-based enforcement

8.7.5

The refusal of the NHVA to accept old style electronic record keeping (tachographs) for a
cost saving for operators is an issue. This could be called level 1 assurance of recording
hours.

It is my opinion, as I have stated previously, the time a human body needs to reboot itself
from fatigue has been settled by police and safety experts from all states including the NTC
fatigue experts, with the fatigue program that is advocated every holiday period by the
safety messages put out to motorist, *when you are tired stop for a power nap until you feel
fit enough proceed* ,a power nap is considered ¼ to ½ hour .

It is my opinion these messages put an estoppel on prescriptive hours of the time it takes
to recover after rest provisions of fatigue law. .

7.7 AFM provisions should be should be removed from NHVL

9 Access

9.4.6

Option 3 should be accepted

We have sought allowance of 36.5 mtre road trains in to Victoria, after trying for 25
years to get have VicRoads allow this generally or on permit has been defeated on
the grounds the minister would not consent because of the danger to other motor
vehicles

Even though the practice of type 1 road trains and cars is accepted allowed on all
other states and car drivers adapt, the Victorian road managers will not consent

THE NHVA should seek to override the road managers of Victoria in the interests
of productivity and fairness for all operators of class 1 road trains

Permits could used to go from Tocumwal at the NSW border to Shepperton or to
Somerton on the out skirts of Melbourne.

10.2.2

Should be the accepted way forward

11 Roadworthiness

11.1

This is a main contributor to road deaths and it would appear from the statement members
of the review are being persuaded by stake holders looking after their own agendas that it is
not an issue,.

This question should go to workshops for debate if the panel is serious about road safety

I can attest on this point with authority as the owner of an accredited VicRoads testing
station.

What is fact ,W.A only do heavy vehicle road worthies on change of ownership otherwise it is left to the operator to keep vehicles roadworthy

To make the assumption that all heavy vehicle's coming into the eastern states are kept up the NHVA standard would be foolhardy ,

We have never tested a current or ex WA vehicle that has passed first inspection

S.A are projecting to go to bi annual heavy vehicle road worthies for all heavy vehicles in 2021/2022

And this should be adopted across Australia

Case study 1

Brakes and front end maintenance faults always fail

As does Body rust and major oil leaks and tyres on WA vehicles

Since the adoption of NHVA registration and the repeal of the FIRS and annual road worthies that were mandatory we have observed more Victorian registered vehicles failing on major items .

Case study 2

A client of mine who operates a fleet of late model vehicles doing approximately 280000 klm per annum and whose vehicles we tested annually under FIRS and who now operates under HNVA, recently tested some vehicles pursuant to NHVA request in a permit application .

The vehicles are maintained normally by in house maintenance and had just had brakes repairs, our test showed one prime mover only had at best 25% of braking capacity because of repairs not being done according to NHVIM , both vehicles had excess oil leaks brakes and other issues and failed the test..

Likewise test on vehicles requiring roadworthy on change of ownership average \$5000 in repairs, the worst are vehicles purchased from auction yards that have been travelling Australian road prior to auction where often it costs up to \$10000 or more to rectify

Our records show that only 1 in 60 heavy vehicles pass the first test on a NHVIM road worthy based test and we expect that will only get worse under the current NHVA registration laws and that risk would fail on the shoulders of this enquiry members

Case study 3

We have found that some of the worst unroadworthy are vehicles are up to 5 tonnes which are not covered in annual inspections, brakes, rust, oil leaks, front spring bushes, and are being driven in major built up areas which is danger to the public.

Under heavy vehicle accreditation requirements of Vic roads, it is proven in the Batman Tafe school, it takes one mechanic 4 hours on his own to complete to test a heavy vehicle to a standard of NHVIM.

This should b the standard across Australia no matter what the cost to individuals and companies

Case study 4

The vehicles used by Batman Tafe Victoria to teach mechanics are purchased from a heavy vehicle's auction left as the they find them for testing mechanics

One is an ex TOLL fuel tanker prime mover which has 20 major defects that every mechanic must find to pass accreditation

One is an ex Chemtrans chemical prime mover which has 19 major defects that the mechanics must find if they draw that one in their test to pass accreditation.

And IT should be remembered that these two vehicles were operated by 2 major companies and on dangerous work. prior to auction

The NT transport departments annual tests are fairly complex but close to a NHVIM test

QLd department of transport testing is A flawed safety inspection that only takes 45 minutes on average

Case study 5

Vehicle presented for inspection at our Victorian premises, just had QLD inspection prior to purchase 3 weeks earlier

It failed on king pins, spring shackles, ADR on way body was affixed to chassis

NSW testing is also hit and miss and relies too much on its drive on roller testing as the criteria of roadworthiness which does not comply to vehicles meeting NHVIM standard

Case study 6

Young man buys his 1st truck presents to our premises a vehicle purchased in NSW, it looks magic, has had annual inspections in NSW for 10 years ,

On inspection we found steering box faults rear brakes seized and inoperable and many more critical faults ,

It was dangerous and we informed owner if he tried to drive it away for repairs, we would ring police and have it defected, this is the only remedy we have if vehicles are found really bad on inspection

Case study 7 some of the worst trucks we see are those owned by farmers from the 4 eastern states we have tested .

These owned for years by farmers large and small they only get repaired when they break down and we find seized brake Components Are a common Fault

They travel all over Australia, and now with NHVA plates are not able to be recognized as such without the stamped farmer number plates on them .

11.4

11.4.2

The minimum standard across Australia should be the NHVIM 2.4 scheme

Every vehicle should work to the same standard no matter what class remembering every vehicle has the same risk no matter if they travel 10 000 klm a year or 300 000 ,no matter what state they are registered

Every heavy vehicle testing should be objective by the tester using NHVIM

Attempting nominate a separate class on risk for testing could open a pandoras box

Risk based would be a disaster for the above reasons

11.2

Making the age of a vehicle a different risk to newer vehicles would be a huge mistake as we have found in our inspections.

Truck owners not paying out huge monthly truck payments don't have the resources to keep maintenance up to top condition whether 1 truck operations or major fleets and older truck owners without that finance requirement spend money on their vehicles

The cost to owners on annual inspections should not be used to mitigate their responsibility to road safety neither should the inconvenience which should never be used to mitigate their responsibility, this especially applies to supply chain operated vehicles

Bookings for owners to have vehicles be tested must be up to truck owners to think ahead while compliance history is a common sense way to record non compliance

11.5.2

To ensure proper testing across Australia , the cost to test should be the same as accredited testers in Victoria who charge a rate based their time to compete the test whatever that may be ,but it is up to each individual testing site to decide what they charge for that service, and that should apply across Australia .

Unlike in NSW and QLD where there is a statutory charge which will not compensate mechanics to take the appropriate time for that safety check than should be applied subject to NHVIM . which puts the safety of all road users and people at risk ,

The statutory charge in those states is so low and the tester would lose money, there is no incentive by that roadworthy tester to do an appropriate NHVIM roadworthy check on vehicle's presented to him

Truck operators would need to facture the cost of annual roadworthy in their budget

11.3.1

Minor defects on vehicles could be left to individual operators to rectify problems and self-clear the notice

Defects that require full roadworthiness should able to rectified in any state and the clearance document for either minor major defects given or posted to the road authority of that state where it is cleared

It would be a dereliction of duty of members of this enquiry to reduce annual roadworthiness on heavy vehicles due to risk to the public

Case study 8

Transport company from Shepparton in Vic who operate 48 vehicles had 274 various roadside breaches in 2017/218 recorded by NHVA . clearly good reason to keep annual roadworthy.

I look forward to hearing of further workshops for more in put

Jerry brownsarre