



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

**HVNL Review: Consultation Regulation Impact Statement: Technology and
Data**

2 September 2020

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the *HVNL Review Consultation Regulation Impact Statement (CRIS)*¹ prepared by Frontier Economics and published by the National Transport Commission (NTC) on 25 June 2020. This is the fourth submission in a series of submission, with the first being dated 31 July 2020 and provided to the NTC on that date and the second and third dated 18 August 2020 and provided on that date.
2. We also note the publication of the NTC document *HVNL 2.0 A Better Law Scenario*.² (Better Law) That document sets out one possible scenario for a future law.
3. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.
4. This submission responds to some of the issues raised in Chapter 6. It is not structured around the questions posed. This is because, as we have mentioned in prior submissions, we believe they do not provide a good structure for a narrative response.

Technology driven regulation?

5. The NatRoad policy in relation to the use of vehicle generated data was recently comprehensively communicated to the NTC in response to the discussion paper entitled *Government access to vehicle-generated data* (Discussion Paper) issued by the NTC in May 2020.
6. The NatRoad submission³ on the Discussion Paper mentions the linkages between the two inquiries, stating:

*In particular the link to the review of the HVNL is noted. The outcome of the review in relation to the use of technology as a data generator as it relates to compliance, enforcement and assurance is an integral consideration in the current context. The two difficulties isolated, especially the lack of trust in providing data to governments, were raised by members, inclusive of being reiterated by members who were consulted on a draft of this submission. The main concern is that the data would be used for enforcement rather than other purposes. Trust is not high.*⁴

7. "Trust is not high" should be regarded as an understatement. The challenge for all industry participants is to change the attitude of distrust and fear into an opportunity. The Better Law document leads with a focus on technology facilitating prosecution:

HVNL 2.0 sets out options for robust assurance of technology and data used for prosecution or other evidentiary purposes. The framework presented also supports

¹ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvnlawreview.files/5715/9304/9833/HVNLR_RIS_25_June.pdf

² <https://www.ntc.gov.au/sites/default/files/assets/files/HVNL-2.0.pdf>

³ https://www.ntc.gov.au/submission_data/874

⁴ Id at para 7

*other technology and the easy flow of other information that doesn't need formal assurance.*⁵

8. As we expressed in the first submission made on the CRIS, the subsequent discussion of investigation and enforcement is not helpful when so much of what is proposed to be in the new law relates to the function of prosecution, as emphasised in the extract from the Better Law document.
9. The Better Law document also indicates that the future law should enable data to drive risk-based regulation and inform governments on matters such as road investment decisions while protecting drivers' and operators' rights. The protection of those rights and the need for different protocols to apply where data is used for enforcement are priorities of NatRoad members. Technology and data use under the HVNL must be instrumental⁶: technology should be used to facilitate compliance with performance based standards and to improve safety. A central aim should be to ensure all heavy vehicle operators proactively manage transport safety risk. Aspects of heavy vehicle can also, to use the words of one NatRoad member be a tool to: "Treat us like robots where we will be fined and held to account on every minor thing."

Overarching technology and data certifier

10. In the third submission on the CRIS, we indicated support for Option 5.4, whilst indicating that it is too limited in its scope. We note that the Better Law document deals with Option 5.4 and Option 6.1 together. We agree that the two options are connected.
11. We agree with the summation in the Better Law document that the HVNL could recognise a standard setter and assurance provider for telematics technologies and associated data, not just one for the Intelligent Access Program (IAP). We have already indicated in other communications that a technology neutral outcome is preferred to one that is expressed through government requirements as encapsulated in the IAP. The Better Law document says that:

*This role will only be needed for technology and data requiring high levels of assurance - for example, where it could be used for prosecution or where data aggregation should be undertaken 'at arm's length' from the regulator.*⁷

12. This proposition reinforces the point made in paragraph 8 above. The prosecution role will involve technology and data requiring high levels of assurance. But the use of technology and data in this context must be kept separate from data used for other regulatory purposes. That is the main distinction that NatRoad wishes to communicate rather than answer a question about whether the Transport Certification Australia agency or the National Heavy Vehicle Regulator (NHVR) should adopt a role as an overarching technology and data certifier.

⁵ Above note 2 at p5

⁶ This is not an attempt to invoke fundamental debate such as set out in Heidegger, Martin. "The question concerning technology: and other essays"(1977)

⁷ Above note 2 at p12

13. It is NatRoad’s policy position that governments should not mandate a specific technological solution, particularly in an area as complex as vehicle telematics. The answer lies in introducing technology neutral laws that permit operators to use technology to meet performance-based targets. The proposal by Austroads in its submission⁸ to the NTC inquiry mentioned in paragraphs 5 and 6 of this submission says:

Austrroads supports the establishment of similar organisation to the European Union’s Data Taskforce that would work closely with government and industry to establish data standards and communication protocols. The Australasian Data Taskforce would work closely with colleagues in Europe, the United Nations and the International Standards Organisation to harmonise Australia and New Zealand’s government access to vehicle generated data and vehicle manufacturer access to road agency generated data.

14. That Taskforce should be given the role of determining data standards and protocols under the HVNL that would, we contend, have the purpose of isolating the agencies that would be best able to manage the complexities of data management and heavy vehicle technology assurance. This would, of course, require consideration of the levels of assurance set out in the CRIS⁹ and, very importantly, the appropriate privacy provisions, also touched on in the CRIS.
15. We note that the CRIS refers to the ability of “authorities” broadly defined, as having the ability to create HVNL applications. The CRIS says:

This approach would recognise jurisdictions, police and the regulator as authorities, allowing a more dynamic (and justified) approach to data collection and use. As authorities, jurisdictions, police and the regulator would be able to prescribe requirements for technology and data, with varying assurance levels, for regulatory or planning purposes.¹⁰

16. We oppose the dispersion of the process. Data collection and use by government agencies, including the police use for enforcement, should be co-ordinated within statutory parameters. We do not, however, oppose the creation of technological solutions that the assurance agency/HVNL regulator agrees meet performance standards from being proposed by any party, including operators. But the outcome must be that the creation of these applications must be centralised and quality assured.

Ability to carry and produce electronic documentation

17. NatRoad fully supports the CRIS’ options signalling a move away from a paper-based system. We note that this issue is inextricably linked to enforcement. We therefore reiterate our criticism¹¹ of the purported later consideration of this topic when it is integral to consideration of the issues raised by the CRIS’s options to move away from the carriage of paper documents as a means of showing compliance with the HVNL.

18. To illustrate that latter point, we note the CRIS says:

***Providing electronic documentation at the roadside** could impose delays for some operators due to the time spent accessing and verifying information by enforcement. However, given the opt-in nature of the option, operators and drivers could choose the*

⁸ https://www.ntc.gov.au/submission_data/882

⁹ Above note 1 at p67

¹⁰ Above note 1 p 68

¹¹ Made in the first NatRoad submission https://www.ntc.gov.au/submission_data/918

lowest cost way to comply with documentation requirements. Therefore, we can assume industry would only shift to electronic documentation where it is efficient to do so, such that any upfront costs would be balanced out by the reduction in ongoing administrative costs.

19. One of the issues that NatRoad promoted during the early stages of this review was the need to assess the utility of roadside enforcement as part of moving to a risk-based system of regulation. Having said that, we support Option 6.2(b) which would permit some documentation to be provided some time after interception and inspection at the roadside. We also note that the CRIS says “with some documentation no longer available at the roadside, it is possible that this option will focus roadside inspections more on on-road safety risks rather than administrative compliance issues.”¹² There is a clear linkage here with the substantive law: NatRoad proposed that administratively based offences would not attract a monetary penalty and should be subject to a warning process only, along the lines of the self-clearing defect notices currently in operation. We emphasise that in the context of the development of technology that policy is even more important as a reform priority.

Conclusion

20. NatRoad supports the option where the HVNL would recognise a standard setter and assurance provider for telematics technologies and associated data. How this would be actioned should be placed in the hands of the Austroads proposed Australasian Data Taskforce. There should be a term of reference in respect of referrals to that Taskforce which required the separation of data and assurance systems used for enforcement and other data and assurance systems.
21. NatRoad supports Option 6.2(b) and any moves that would see less or a nil future focus on paper based proof and the need for drivers to carry paper based documentation.

¹² Above note 1 p71