



SUBMISSION

Heavy Vehicle National Law Review

Consultation Regulation Impact Statement

23 October 2020

1. Contents

1. Contents	2
2. Background.....	3
3. Industry Consultation	4
4. Introduction	4
5. Submission Response	4
Duties	5
Regulatory tools.....	5
Technology and data	6
Assurance.....	6
Fatigue.....	6
Access	7
Vehicles and roadworthiness	7
6. Next Steps	8
7. Submission Contact.....	8

2. Background

The Motor Trade Association SA/NT (the MTA) is an employer organisation representing the interests of over 1,200 members and their more than 15,000 employees in the automotive retail, service and repair sector throughout metropolitan and regional South Australia (SA) and the Northern Territory (NT).

Eighty per cent of these businesses employ less than 20 employees. The automotive retail, service and repair sectors in SA and the NT add more than \$3 billion to the economy annually and employ over 30,000 people.

The MTA also operates a Training and Employment Centre in SA, comprised of both our Registered and Group Training Organisations. It is the automotive industry's training provider of choice with more than 900 apprentices in training and is the largest employer of automotive apprentices in South Australia with 500 employed through over 240 host businesses.

As a representative body, the MTA has 12 divisions representing the full range of trades within the automotive industry including:

- Automotive Dealers Association (SA/NT)
- Automotive Repair and Engineering Specialists (SA/NT)
- Automotive Dismantlers (SA/NT)
- Body Repair Specialists (SA/NT)
- Commercial Vehicle Industry Association (SA/NT)
- Farm and Industrial Machinery Dealers Association (SA/NT)
- Licensed Vehicle Dealers (SA/NT)
- Motorcycle Industry Association (SA/NT)
- Service Station (SA/NT)
- Towing Services (SA/NT)
- Tyre Dealers (SA/NT)
- General (SA/NT)

3. Industry Consultation

This submission summarises the views of the MTA's members. In developing this submission, the MTA has consulted with members in the bus and coach and heavy vehicle sales, repair and transport sectors.

4. Introduction

In 2019, the MTA and its members took the opportunity to provide feedback on each of the seven issues papers released by the National Transport Commission (NTC) for feedback on the development of a new Heavy Vehicle National Law (HVNL).

The MTA's consultation with industry revealed a broad support for the apparent intent of the NTC to move away from overly prescriptive language and regulation.

The MTA's consultation has also shown that industry supports legislation that makes the heavy vehicle industry a safer industry in which to operate. Transport operators have unreservedly expressed the view that safety is a paramount consideration in how they manage their business.

The heavy vehicle industry incorporates a wide range of operator types: including long haul transport, tow truck operators, transporters of livestock, refrigerated products transport, and bus and coach operators. In view of this, MTA members felt it imperative that the HVNL review takes into account the unique circumstances of each type of operator and their management of safety. Our members called for flexibility to address the differing environments in which the heavy vehicle industry operates.

5. Submission Response

The MTA applauds the NTC's findings that the HVNL is overly prescriptive, inflexible and complex; that it uses a one-size-fits-all approach despite the diversity of the industry and its operators; and that it doesn't properly support the use of data and technology. Furthermore, that work and rest hours under the HVNL aren't well linked to scientific evidence and often discourage drivers from resting when fatigued; and that the regulatory burden associated with managing fatigue and access decision making is too high.

The MTA has taken an in depth look at the policy options for the future HVNL outlined in the consultation regulation impact statement (RIS), as well as the *HVNL 2.0 A better law scenario* document.

The MTA observes that the NTC's vision for the future HVNL is that it will:

- be a modern law that provides a risk-based regulatory framework to ensure the safe and efficient operation of heavy vehicles on Australian roads;

- empower industry and government to take advantage of future innovation and technology opportunities; and
- improve safety and reduce costs to benefit the community, industry and government at all levels.

The MTA provides feedback on the policy options related to the following areas:

Duties

Under the current HVNL the primary duty only applies to a defined list of parties in the Chain of Responsibility (CoR). Our members have told us that this list doesn't reflect those parties who impact heavy vehicle safety, meaning that they aren't held to account under the law.

On this basis, our members support policy Option 4.1 which proposes expanding the primary duty to parties who influence the safety of transport activities. In particular, several of our members expressed the view that drivers should be included in the CoR. Owner-operators felt that it is imperative that drivers should have a duty to ensure the safety of transport activities relating to the heavy vehicle they are driving (policy Option 4.3).

For our members, under the current HVNL there are issues around loading and securing the load in the CoR, especially for tow truck operators, crash repairers and dismantlers. It is submitted that the driver should have a responsibility to look after their and other people's safety, in the same way owner-operators are required to. However, fines for non-compliance should be appropriately adjusted.

Regulatory tools

The MTA agrees with the NTC's conclusions that the HVNL is currently unable to respond to change in timely manner; that the regulator and industry are adaptable and that the law that services them should be too.

The MTA has reviewed the policy options that propose the establishment of a Code of Practice (CoP) mechanism, as well as a Standards mechanism.

With regard to the CoP mechanism, the MTA queries whether this really addresses concerns around responsiveness, but does acknowledge that the use of CoPs would in many instances serve to make the law clearer and easier to follow, helping parties to understand their duties under the HVNL.

Turning to the Standards mechanism, whilst it is acknowledged that their use would make the law more responsive to changes and emerging safety risks, it is queried whether there is the potential for their use to create more red tape for operators.

It is the MTA's view that industry would certainly need to be involved in the development of any standards, as they are at the coal face of the HVNL's practical application. While policy Option 5.2 notes that consultation 'may' be

required, it is the MTA's view that consultation on a proposed standard should be mandatory.

Technology and data

The MTA and its members are comfortable with the policy options proposed for dealing with technology and data under a future HVNL.

The MTA and its members recognise that technology and data can deliver safety and efficiency benefits. However, in view of the diversity of operators, it is important that there is flexibility and choice while industry moves to new technology. For example, in considering a move away from paper based records, our members were pleased to note that policy Option 6.2a (Ability to carry and produce electronic documentation) included the flexibility that operators would still be able to carry paper-form documents if they preferred.

It is acknowledged that chipped driver's licences/digital tachographs have been used in Europe and the UK for well over a decade, and that the technology is easily transferrable to Australia, particularly in brand new vehicles. However, our members have advised that there could be some issues with retro-fitting older analogue trucks (most US trucks pre-2018) as they may not interface easily with the digital technology. Furthermore, the MTA understands that even a retrofit of a late model European truck could cost in excess of \$5,000t, and that it would be a complex procedure most likely only able to be undertaken by an OEM dealer.

Assurance

Our members generally agree that an evidence and risk-based model is preferred over an overly prescriptive or rigid approach. The MTA therefore welcomes the NTC's view that a future HVNL should recognise the diversity of heavy vehicle operations and heavy vehicle operators; that it should encourage operators to create and use safety management systems, and raise confidence in their ability to operate safely.

Our members support policy Option 7.1a which advocates voluntary enrolment with the National Heavy Vehicle Regulator (NHVR). As an extension of this option, it is suggested that enrolments should be updated/reviewed annually to ensure that the NHVR has the best picture of who they regulate, helping to build the best risk profile of industry and better engage with operators.

Fatigue

Our members concerns' with the current HVNL's approach to fatigue is that it does not have the flexibility needed to regulate the diversity of freight types and tasks and differing compliance capacities of operators (e.g. transporting furniture vs transporting people on a coach).

It is our members' desire that a future HVNL develop safety protocols for each heavy vehicle transport type, and in this regard it is noted that the intention of the proposed policy options for addressing fatigue seek to create a framework with options reflecting the diversity of operators in heavy vehicle transport. This approach is welcomed by the MTA.

Access

A clear priority for the MTA's members is that under a future HVNL, the requirements to be met when applying for a permit be reduced. Therefore, the MTA welcomes the NTC's approach that a future HVNL should support quicker, streamlined and transparent access decision making; prioritising productivity where it is safe and reasonable.

Where MTA members are applying for and making use of permits, they have expressed significant concerns with the timeframes associated with obtaining them. Operators are generally unable to apply for permits too far in advance, however, this can create real problems to the continuity of business when for example a renewal of an application has not been approved and an existing permit is about to, or has expired.

While the proposal to 'escalate' permit requests in instances where no action is taken within a defined timeframe is in theory commendable, it assumes that the escalation process itself is effective at generating outcomes in a manner that is more efficient to existing practice.

Above all, MTA members want to see a streamlined permit system which is responsive to the needs of industry first.

Vehicles and roadworthiness

During our consultation, members were concerned about inconsistent inspection and enforcement processes, and so the MTA supports policy Option 11.2 which looks at addressing inconsistencies in inspection regimes. In particular, the NHVR's development of a national regime of risk-based inspections of heavy vehicles.

The MTA is aware that nationally there is an inconsistent approach to heavy vehicle inspection requirements, as well as who conducts the inspections, with differing experiences state to state, and NHVR to police.

Clearly understood roadworthy inspection parameters which are consistently applied, regardless of the location and authority, are therefore critical for industry to be able to undertake their business with confidence.

In support of this aim, many of our members are seeking an approach which requires authorised officers to have a minimum qualification level which is subject to periodic update and review.

6. Next Steps

The MTA is available to provide further information in relation to this submission and to clarify any aspect of it.

This includes meeting with agency representatives and facilitating further consultations with industry on proposed changes.

7. Submission Contact

For further information relating to this submission please contact:

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