

16 October 2020

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Chief Executive Officer
National Transport Commission
Level 3, 600 Bourke Street
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Dear Dr Miles

TCA'S SUBMISSION TO THE *HVNL REVIEW CONSULTATION REGULATION IMPACT STATEMENT*

Please accept this letter as Transport Certification Australia's (TCA's) submission to the NTC's request for comment on the Consultation Regulation Impact Statement (RIS) for the *Heavy Vehicle National Law Act 2012* (HVNL) Review.

TCA welcomes the opportunity to provide this submission, which complements and builds upon the inputs and support that TCA has already provided to the NTC team that is leading the review.

The primary focus of this submission is on the Consultation RIS's chapter six on Technology and Data and the problem statement relating to an overarching framework to support their use. Where information in this submission may also be relevant to other chapters of the RIS, effort has been made to highlight this.

We also highlight possible areas where subordinate instruments could be used to achieve the objects of the HVNL in relation to technology and data.

Summary of key positions

TCA supports Option 6.1 in the Consultation RIS – the establishment of a technology and data certifier, which would be responsible for certifying digital technology and data for use in achieving the goals of the HVNL. Complementing this, the following key positions are supported and put forward for consideration:

- A single assurance framework for technology and data be recognised by the HVNL. It is proposed that the National Telematics Framework (NTF), which already has the flexibility to support multiple models and levels of assurance, be leveraged and evolved to be the required single framework.
- A single entity as administrator of the assurance framework be recognised by the HVNL. While the single administrator should also have the power to certify technology and data, it is proposed that there be flexibility for the administrator to also recognise other certifiers where appropriate.
- TCA confirms it is well placed to undertake the framework administrator and certifier roles. TCA already performs these roles with the NTF, and benefits from having strong government oversight and appropriate separation from regulatory and policy entities.

- The scope of technology and data be limited to systems that are associated with telematics. This would include not just in-vehicle telematics systems and the data they generate, but also other systems, applications and data that interface with in-vehicle telematics systems.
- Compliance with the framework should be required at multiple levels of assurance, not just the high levels of assurance as suggested in the Consultation RIS.
- Strict data handling provisions relating to personally identifiable and protected data should be maintained in the HVNL. However, greater flexibility could be enabled for data that is de-identified and aggregated to be used for appropriate regulatory and non-regulatory purposes.
- The framework should ideally not be limited to heavy vehicles and the HVNL. Greater benefits for the transport system could be realised if the framework could also be leveraged to support non-regulatory purposes, and other vehicle types and emerging transport technologies.

The following sections of this submission expand upon these key positions.

A single assurance framework *(RIS questions 6.1, 6.4, 6.10 and 6.12)*

TCA supports a single assurance framework for technology and data being recognised by the HVNL. It is proposed that the NTF, which already has the flexibility to support multiple models and levels of assurance, be leveraged and evolved to be the required single framework.

The HVNL currently provides requirements for a small number of specific applications (such as the Intelligent Access Program), but does not provide an overarching framework or a clear, general process to enable new technology and data (e.g. for monitoring mass, driver fatigue, etc.) to be used to aid compliance and achieve the HVNL objectives. Further, the HVNL currently does not recognise commercial systems already being used by industry for safety, compliance and efficiency purposes. This presents a barrier to these systems being used to comply with regulatory requirements and can slow the deployment of technologies that can achieve public purpose outcomes.

The framework should be as adaptable as possible, technology neutral, risk-based, and outcomes focussed. It should enable digital devices and systems to be used for multiple purposes – avoiding transport operators having to manage duplicate systems, or technology providers needing approvals from multiple entities.

The NTF is an assurance framework that is currently being used to deliver this type of functionality, supporting a wide range of outcomes. It contains the core elements, functions and features that are required, and has built an existing trust relationship and precedence with key industry stakeholders.

Levels of assurance *(RIS questions 6.1 and 6.12)*

The Consultation RIS suggests that the assurance framework and the certifier role only be involved where a 'high level' of assurance is required. TCA suggests that this should be expanded to all levels of assurance. If there is a need for assurance, whether at a low level or a high level, the framework should be complied with. Only where there is no need for assurance should compliance with the framework elements be optional.

Levels of assurance should be a core component of the framework. Where a high level of assurance is required, the requirements will be more stringent. Where a low level of assurance is required, a lighter touch approach will be taken. This ensures an outcomes-based, fit-for-purpose approach, which can also be flexible to changing demands, including levels of assurance changing over time. What is critically important is that all assured systems and data, regardless of the level of assurance, are administered with a level of consistency and interoperability that enables outcomes to be optimised.

Assurance models *(RIS questions 6.1, 6.10 and 6.12)*

TCA suggests that the assurance framework needs to provide the administrator the flexibility to adopt multiple models for providing assurance. The framework should not be limited to one rigid assurance model, as that will not have the flexibility to align assurance with differing technology and functional requirements and will create unnecessary barriers. This issue is also highlighted in Chapter 7 of the Consultation RIS, where it describes the duplication and inconsistencies that currently exist across various assurance schemes.

The NTF is an example of an assurance framework that has evolved to support multiple assurance models. When developing an assurance model, some assurance elements are a bit like a sliding scale, which may vary depending on requirements and risks. Some high-level examples include the following:

- Approved system – could require TCA type-approval, third-party approval, or allow self-approval by an operator of its own system.
- Certified service – could involve certification by TCA, a third-party, or self-certification.
- Audited service – could involve audit by TCA, a third-party, or evidence of self-auditing.
- Validated data – could require full validation by TCA, a lighter-touch data-driven validation by a third party, or self-validation by a service provider.

These high-level examples are provided to highlight that the one assurance framework should be able to support multiple assurance models. This approach will also give the framework the flexibility to effectively support emerging technologies and data, ensure it can be tailored to specific technologies and data, and respond to changing requirements.

A single entity as administrator *(RIS questions 6.1, 6.10, 6.12 and option 9.1c)*

TCA supports a single entity being recognised by the HVNL as the administrator of the assurance framework. This will ensure that the framework is effectively and consistently administered in line with the objects of the HVNL, with clear authority and a single point of accountability.

The administrator should have the power to assure technology and data, and to develop standards, as suggested in the Consultation RIS. TCA suggests that the HVNL also provide flexibility for the administrator to recognise other certifiers and to adopt other standards, where appropriate. This additional flexibility will increase efficiency, reduce duplication and avoid conflict with other relevant certification programs and recognised standards. For example, TCA currently performs type-approval of telematics devices and On-Board Mass (OBM) systems itself, but in future could recognise type-approvals performed by a recognised international certifier to an agreed standard.

Due to the powers the administrator requires, TCA suggests it will be critical for the framework administrator to have strong government oversight. As described in the Consultation RIS, it should also be appropriately separated from policy and regulatory bodies. The need for clear separation has been emphasised by industry associations and privacy commissioners as essential for a range of reasons. These reasons centre on creating the trust with industry that their data will not be used for purposes other than what they consent to, that personally identifiable information will be appropriately and securely managed, and that any potential conflicts of interest are effectively mitigated. As per the Consultation RIS, the framework should provide for the entity to undertake functions at 'arm's length' from industry and regulators, and provide a 'safe harbour' for the data it collects.

Functions of the framework administrator should ideally include the following:

- Administer the assurance framework and operational schemes within it.
- Develop or adopt standards and specifications.

- Certify, approve, cancel and audit technology service providers to ensure they meet defined assurance levels defined through performance-based functional and technical requirements.
- Recognise other certification programs (based on requirements and agreements being established).
- Collect, store and disseminate data and analytics from certified technology providers and systems following clear data sharing rules.
- Generate certificates of evidence or assured data to support enforcement activities, as appropriate.
- Enable data collected to be used in analysis and reporting that provides added public good services, including safety analysis, productivity improvements, transport and land use planning, asset management, safety assessments and environmental analysis.

Scope of technology and data (*RIS questions 6.1, 6.4, 6.10, 6.12 and options 9.1c, 9.2c*)

The scope of technology and data should be limited to systems that are associated with telematics – that is, systems that detect, capture and wirelessly communicate digital data. This would include not just in-vehicle telematics systems and the data they generate, but also other systems, applications and data that interface with in-vehicle telematics systems.

While it is not proposed that the administrator be a certifier for cyber-physical systems that can have an active physical effect on the vehicle, such as an electronic braking system or automated driving system, such systems may interface with and provide data to telematics systems. Thus, it is suggested that any description of the scope for the administrator and certifier roles not inadvertently restrict such systems from being a source of data.

To ensure the evolution of technology can be catered for, it is suggested that the scope should be open to including any system that collects digital data from the vehicle or within it. Key examples of systems and data that should ideally be facilitated where appropriate include vehicle movement (incl. position, time, speed), OBM systems (incl. axle mass and configuration records), and potentially driving hours, fatigue monitoring, driver fitness-for-duty, and driving system activation.

In TCA's experience, the coordination and use of authoritative sources of geospatial map and road network data, including road geometries, features, names and other attributes is also highly desirable as it can enable greater consistency, interoperability and efficiency, which in turn better support desired outcomes.

Data handling and privacy provisions (*RIS questions 6.3 and 6.12*)

Strict data handling provisions relating to personally identifiable and protected data should be maintained in the HVNL. However, greater flexibility should be enabled for data that is de-identified and aggregated to be used for appropriate regulatory and non-regulatory purposes, to support a broad range of policy outcomes – for example, using highly granular data for road planning, while preserving the privacy of the vehicles themselves through data management protections.

Trust in the framework requires protection of privacy beyond the privacy principles. The framework should contain strong privacy protections in relation to the collection, access, use, protection and disclosure of data, in much the same way as is currently contained in Chapter 7 of the HVNL.

As with all data frameworks, the use and purpose for which data can be used should be clearly set out within the framework through transparent usage and consent arrangements – currently embodied through transport operator and service provider agreements established and maintained by TCA under the NTF.

Supporting purposes broader than the HVNL (RIS questions 6.10 and 6.12)

The framework should ideally not be limited to just supporting heavy vehicles and the HVNL. Greater benefits for the transport system could be realised if the framework could also be leveraged to support other vehicle types (e.g. light vehicles), emerging transport technologies (e.g. connected vehicles), and non-regulatory purposes (e.g. road network operations and services).

With appropriate privacy and data use protections in place, it will be possible for the framework to provide value to a wide range of purposes. The following provides a non-exhaustive list of data use purposes outside of the HVNL that TCA is commonly asked by government and non-government entities to support:

- transport policy, planning and investment decisions
- land use policy, planning and investment decisions
- traffic and road use operations
- asset management and maintenance programs
- road safety assessments
- environmental analysis
- research activities

By enabling the framework to support purposes broader than just the HVNL, a broader range of public purpose outcomes can be serviced, the risk of duplication and conflict can be minimised, and economies of scale can be realised.

Role of digital technology providers in the law (RIS question 4.8)

While the Consultation RIS highlights that mechanisms exist to enable parties in the Chain of Responsibility (CoR) to shift responsibility to parties outside the chain, such as through their contractual arrangements, TCA has seen little evidence to indicate that transport operators adopt such approaches with technology providers.

Option 4.1 proposes extending the defined list of parties for CoR, including technology service providers, to the extent they have control or influence on a heavy vehicle journey.

This option recognises the increasing reliance transport operators (and drivers) place on digital technologies to manage their duties (including such things as the use of OBM to manage loading, EWD to manage fatigue and route-guidance systems for restricted access arrangements).

To the extent that technology providers have the ability to *influence* the duties exercised by transport operators (and drivers), the inclusion of technology service providers within an extended list of parties is – at face value – reasonable.

Notwithstanding this, TCA supports the observations made in the RIS, in that expanding the list of defined parties could result in an increase in costs to industry. Technology service providers could, if included, seek to recover the additional costs and risks incurred by discharging their duties as a defined party.

Furthermore, any consideration to include technology service providers as a defined party highlights the need to consider consequential matters arising from a compliance and enforcement perspective. In particular, the entity to which the functions of the technology and data certifier are assigned will be critical to ensure any potential (or perceived) conflicts of interest are managed in the compliance and enforcement of technology service providers.

TCA's proposed role (RIS question 6.2)

TCA confirms it is well placed to undertake the framework administrator and certifier roles. TCA already performs essentially the same functions with the NTF. It has strong government oversight, including senior representation from the national, state and territory transport authorities on its Board. Further, it is an independent not-for-profit company, owned by Austroads, with an appropriate separation from regulatory and policy entities, and clear legislative responsibilities and obligations. Utilising TCA and the NTF would build upon investments already made and a framework that is successfully deployed and delivering value.

Importantly, TCA is not restricted to just administering and serving the objects of the HVNL, or to just serving those jurisdictions that are participating in the HVNL. This enables TCA to service government authorities with non-HVNL functions including transport and land use planning, asset management, safety assessments and environmental analysis.

Please don't hesitate to contact John Gordon, Manager Strategic Development at john.g@tca.gov.au or myself if you or your team have any queries or would like further information.

Yours sincerely



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