

ALC SUBMISSION TO THE HVNL REVIEW CONSULTATION

REGULATION IMPACT STATEMENT

November 2020

HVNL REVIEW CONSULTATION REGULATION IMPACT STATEMENT

Introduction

The Australian Logistics Council (**ALC**) is the peak national body representing major companies participating in the freight logistics industry.

ALC's policy focus is on delivering enhanced supply chain efficiency and safety.

It welcomes the opportunity to comment on the *HVNL Review Consultation Regulation Impact Statement* (**the consultation RIS**).

ALC has been participating in the development of the Heavy Vehicle National Law (**HVNL**) since 2012.

The submissions made by ALC during the HVNL development process are set out in **Appendix 1**.

The general ALC position setting out the optimal design for a Heavy Vehicle National Law is contained in the October 2019 paper prepared for the former Transport and Infrastructure Senior Officials' Committee entitled *Making a Modern Heavy Vehicle National Law*.

Relevant extracts of that paper are contained in Appendix 2.

The consultation RIS is somewhat of a missed opportunity. The 'qualitative' nature of the consultation RIS asks the same questions and offers the same options as those published in the series of seven issues papers published by the National Transport Commission (**NTC**) during 2018.¹

The major ALC proposal

ALC believes that the most important amendment to the structure of the HVNL is the adoption of a **national operator standard**.

The nature of the proposed national operator standard is set out in Appendix 2. For ease of reference, the relevant text explaining the standard is in **bold**.

In summary, each heavy vehicle operator would:

1. Provide the NHVR with a list of heavy vehicles it operates and garaging information – this would impose minimal administration costs on the operator and would provide the Regulator with information as to the size of the industry being regulated in those jurisdictions where the HVNL is in operation.

¹ <u>https://hvnlreview.ntc.gov.au/issues-papers</u>

2. Ensure that each heavy vehicle has installed equipment compliant with ISO 15638, that records information regarding driving hours and location. This will provide regulators with information that can be used in the investigation of alleged breaches of the HVNL (so possibly limiting the social costs arising from safety breaches and the use of oversize vehicles on unauthorised routes) as well as providing operators with data that can be used to manage safety outcomes or otherwise provide road owners with information that can be used when applying for access to routes.

As discussed in Appendix 2, the cost of the installation of a compliant unit capable of collecting information in an appropriate format is now relatively modest. Indeed, many modern heavy vehicles have the relevant capacity is part of its original equipment. Therefore, the arguments made over the life of the development of the HVNL that the carriage of such equipment is a cost disproportionate to the net benefits offered by collecting data is simply no longer the case.

Thus, ALC is extremely disappointed that the issue of whether the mandatory use of telematics provides a net public benefit is not tested in this qualitative consultation RIS. This is an oversight that should be corrected in the Decision RIS.

3. Operators must maintain a safety management system (**SMS**) that meets standards established pursuant to an instrument a under the HVNL.

This will help improve safety performance, including those smaller operators who may need support in adopting best practice safety measures.

More sophisticated operators, such as those who are members of ALC, may choose to have an SMS audited by an accredited auditor so as to either gain access to particular routes, to other 'statutory benefits', or who otherwise propose managing safety through following the SMS rather than more granular statutory performance standards.

4. Finally, the standard would require a registered operator have sufficient capital available to ensure efficient safe operation of the heavy vehicles operated by the registrant.

It will be an opportunity lost if the Decision RIS does not test in a holistic way the National Operating Standard concept.

A final general observation.

Page 30 of the consultation RIS discusses the issue of what should be contained in the objects of the HVNL, including in particular whether encouraging productivity should be one of them.

Whilst the RIS says this is out of scope, for the avoidance of doubt, ALC's position remains that the encouragement of productivity is one of the major aims of the HVNL.

Case law has indicated that objects clauses can be used to throw light on the statutory purposes of object of legislation when ascertaining the meaning of an operative provision.²

Given the role the Law plays in areas such as access and the assessment of PBS vehicles, it is imperative that the productivity remain an objective of the HVNL, particularly given that one of the main reasons for embracing a national law is achieving productivity gains of \$12.4 billion.³

A discussion of the options contained in the Consultation RIS follows.

The submission has been prepared having regard to the recommendations contained in the Productivity Commission's Inquiry Report on National Transport Regulatory Reform. (**the PC Report**).⁴

² Wacando v. Commonwealth (1981) 148 CLR 1 as discussed in Pearce and Geddes Statutory Interpretation in Australia (7th Edition) paragraphs [4.48] and [4.49]

³ See National Transport Commission: *Heavy Vehicle National Law Draft Regulatory Impact Stetement* (2011):iii

⁴ No 94, 7 April 2020 - https://www.pc.gov.au/inquiries/completed/transport/report

Primary duties and responsibilities

The general ALC view on duties

As ALC said in its first submission to NTC on the HVNL Review during 2019:

Interrelationship between the Law and Workplace Health and Safety (WHS) legislation

The interrelationship between WHS and the HVNL can be confusing.

As ALC said in its 2015 submission Primary Duties for Chain of Responsibility Parties and Executive Officer Liability:

ALC remains of the view that section 18 of the HVNL sufficiently creates the nexus between the HVNL and WHS legislation.

The current legislative design makes clear that parties owe their primary safety duty to WHS legislation, with the HVNL clearly dealing with additional safety issues (arising from fatigue, speed, and mass, dimension and loading shortfalls) specific to the heavy vehicle industry.

In that case, the addition into the HVNL of the general principles applicable to primary duties similar to those contained in the model WHS law is simply a redundancy.

Equally, whilst appropriate in the specific operating environment of the rail industry (in which accredited operators follow approved safety management systems) the shared responsibility and accountability principles contained In the Rail Safety National Law are not of particular assistance in the more atomised road transport industry. That said, ALC members are sophisticated companies that take their WHS responsibilities in a holistic manner.

They have noted that the proposed addition of general duties in the HVNL duplicates the extended safety duties of a person conducting a business or undertaking (PCBU) imposed under WHS law and that the safety of supply chains and networks is an important focus area of the Australian Work Health and Safety Strategy 2012-2022.

ALC has held the view that a specialist safety agency such as the NHVR should develop the safety standards that should be applied to heavy vehicles.

However, if regulators see the need to duplicate WHS law in safety legislation, perhaps the time has come to move responsibility for policy development to the workplace safety silo, with relevant legislation sitting in that framework (with anything particularly industry specific sitting in regulations made under primary WHS legislation).

That would mean:

» rights and obligations are contained in one legislative suite, which should add to overall coherence in approach;

» government enforcement priorities and practices would be predictable and consistent, as only one agency would have the responsibility for administering the relevant law; and » companies can develop genuinely coherent WHS strategies that cover all facets of business, delivering cost and efficiency benefits. The HVNL would then focus exclusively on access and roadworthiness issues.⁵

The interrelationship between safety obligations imposed by both the Law and WHS legislation has been reconfirmed as ALC has commenced developing safety products to encourage compliance with the Master Code.

ALC members have advised that risk is now being treated in a holistic manner, with relevant systems designed to meet ISO 45001 Occupational Health and Safety Management Systems – Requirements.

Given that most duty holders identified in the Law would be a PCBU for the purposes of WHS law there may be scope to rely on the health and safety duties in WHS law⁶ to require a PCBU to ensure as far as is reasonably practicable the health and safety of workers and other persons, and leave within the scope of the primary duty contained in the Law the more heavy vehicle specific such as the ensuring maintenance of a heavy vehicle or risk of damage to road infrastructure is protected. (emphasis in original).

This remains the ALC position.

Given this, ALC has the following comments on the RIS options relating to primary duties and responsibilities.

Option 4.1: Expand application of the primary duty to parties who influence the safety of transport activities

The idea of extending the class of person subject to the HVNL chain of responsibility has been around for as long as the HVNL has been under development.

As ALC indicated in its August 2015 submission called *Primary duties for chain of responsibility parties and executive officer liability:*

Imposing CoR obligations on other parties

It is understood some regulators are arguing that CoR obligations should be imposed on other parties.

No evidence has been presented as to how such an extension will assist safety or productivity outcomes.

As would be understood, such an extension would need to be tested by a regulatory impact statement to ensure that such a step would provide the Australian community with a net public benefit.

⁵ <u>http://www.austlogistics.com.au/wp-content/uploads/2015/01/ALC-Submission-Primary-Duties-for-Chain-of-Responsibility-Parties-and-Executive-Officer-liability.pdf</u> : 9-10

⁶ Set out in Divisions 1-3 of Part 2 of the Model WHS legislation

That said, at this stage ALC cannot support any further extension of the CoR obligations under the HVNL.⁷

This view has not changed.

Unfortunately, the RIS contains no analysis on the cost of extending the current chain of responsibility beyond the parties contained in the 'chain of responsibility' definition contained in the HVNL

The current chain of responsibility provisions capture those parties most directly involved of ensuring the safe operation of a heavy vehicle.

Attempting to bring within the ambit of the HVNL those who can 'influence' relevant outcomes is too broad.

As the NSW Court of Appeal said in *Habib v. Nationwide News Pty.Ltd*⁶:

The Macquarie Dictionary Online finds "influence", relevantly to mean "modify, affect, or sway" while the Oxford English Dictionary Online refers to "influence" as to "affect the mind or action or; to move or induced by influence" and also "to affect the condition of, or to have an effect on". Neither of these definitions evokes a particularly high set of causation.

whilst page 42 of the consultation RIS suggests the 'reasonably practicable' test would limit the ambit of the provision.

ALC is of the view that the balancing exercise needed to determine whether a party such as (for example) a tyre installer putting tyres on a vehicle had 'influence' over a safety outcome in such a way as to trigger the enquiry as to whether the installer did 'all things reasonably practicable to ensure the safety of a heavy vehicle' would be an extremely costly forensic exercise for both regulator as well as the party under investigation.

As indicated in page 43 of the consultation RIS, most service providers owe common law and product safety duties. These should be sufficient to encouragement the provision of services not incompatible with the safe operation of motor vehicles.

'To conclude, it has been ALC's experience over the course of the development of the HVNL that those who have sought this extension to the chain of responsibility are generally investigators seeking to maximise the capacity to gain prosecutions when a relevant safety event has occurred.

Page 42 of the RIS suggests that extending the chain of responsibility '**could** result in incremental improvement in road safety....by virtue of facing the threat of punishment'.

⁷ Page 8

⁸ [2010] NSWCA 34 para.238

As indicated in the consultation RIS, drivers typically have duties imposed under WHS legislation, and more generally driver culpability is dealt with either through traffic laws applicable to all drivers or the general criminal law (for instance, exposure to the offence of manslaughter).

Further exposure to criminal liability appears to be unnecessary.

To further extend the chain of responsibility requires a proper test to see whether the additional costs involved (including the chilling effects on service providers providing services if there is a contingent liability of prosecution), particularly if the proposition merely offers 'incremental improvement in safety outcomes'.

Option 4.2 : Establish a separate driver duty (replicates work a duty under WHS laws); Option 4.3 Applying the primary duty (s26C) to drivers

For the policy reasons discussed above, ALC does not support the automatic replication of WHS duties in the HVNL.

ALC has no comment with respect to Option 4.4 Contained in the RIS.

Regulatory tools

Introduction

It is helpful to extract pages 9 to 12 of the submission ALC made on 31 May 2019 to NTC, during its HVNL process:

Structure of the Law

Page 33 of the Discussion Paper says:

The HVNL is 676 pages long and comprises 13 chapters. It is considerably different in scale and style from comparable laws.

Figure 13 provides a comparison of the size and regulatory styles used in the HVNL, Rail Safety National Law (RSNL) and model Work Health and Safety (WHS) Act.

By simple count of provisions in the primary legislation, the HVNL is more than twice the size of the RSNL and the model WHS Act.

The HVNL is also highly-prescriptive: almost two-thirds of the Act contains prescription. The HVNL has 10 prescriptive rules for each performance-based requirement, whereas the RSNL and model WHS Act are closely balanced between prescriptive and performance-based requirements.

The model WHS laws specify, at a very high level, the obligations of a person conducting a business or undertaking (**PCBU**). The principal legislation otherwise deals with issues relating to consultation and enforcement.⁹

However, the model WHS regulations run to some 429 pages plus 67 pages of schedules¹⁰ which deal with increasing specificity as to how risks should be controlled in well over a dozen areas of dangerous work.¹¹

Should a decision be made to only have high level duties in the principal legislation, as well as enforcement provisions¹² it would be possible to have more granular provisions contained in some form of subordinate instrument, however described (regulations, standard,

⁹ <u>https://www.safeworkaustralia.gov.au/system/files/documents/1702/model-whs-act-21march2016.pdf</u>

¹⁰ Excluding what are called jurisdictional notes, given WHS legislation is a model law and not an applied law

¹¹ <u>https://www.safeworkaustralia.gov.au/system/files/documents/1902/model-whs-regulations-15-january-2019.pdf</u>

¹² Enforcement provisions would need to be included in primary legislation so the Parliaments of the 'human rights jurisdictions' of the ACT, Victoria and Queensland can positively tested provisions that may would require a decision to be made as to whether the provisions of a particular an enforcement provision is proportionate when compared to the human rights charter contained in the legislation of the relevant jurisdiction.

guideline) by whichever repository of power to make the relevant subordinate instrument (either the Transport and Infrastructure Council (TIC) or the Regulator) to manage any identified risks.

This would facilitate the implementation of legislation that is more performance based.

As the Part 2.6.2 of the Discussion paper says:

Performance-based regulation can reduce certainty about what acceptable compliance may look like and requires a higher degree of competence from regulators and regulated parties. Comprehensive guidance material from regulators can greatly assist regulated parties with compliance.

Performance-based regulation may be supported by rules-based 'deemed-to-satisfy' provisions, which provides assurances for regulated parties without compromising the capacity of others to be innovative and comply in a manner that better suits their needs. This is effectively a dual regulatory approach that is designed in a way so as not to risk internal inconsistency. An example is the National Construction Code of Australia.

Because of the atomised nature of the heavy vehicle industry, a model of legislation similar to the Building Code of Australia approach would be advisable.

Such an approach would, for instance, facilitate:

- The efficient incorporation of standards, such as a requirement for a heavy vehicle to carry telematic equipment satisfying the standards contained in the telematic data dictionary maintained by Transport Certification Australia¹³, or the nature of a safety management system that an operator must maintain as part of national operator standard¹⁴; or
- An operator to be able to choose from a range of control measures the best way to manage fatigue risk in their business.

However, there is a significant caveat in endorsing this approach.

Clear need for industry consultation and a capacity to challenge any subordinate legislation that is introduced.

Part 5.3.2 of the Discussion Paper says:

¹³ Now a business unit of Austroads

¹⁴ As proposed in the 2019 ALC election document *Freight: Delivering Opportunity in Australia:* <u>http://www.austlogistics.com.au/wp-content/uploads/2019/04/Election-Priorities-Document-Final-compressed.pdf</u>: 14

A new law should be able to respond rapidly to changes in operations, technology and risk-management options.

Developing the structure of the new law will rely on consistency in deciding which instrument in the legislative hierarchy is appropriate to regulate particular matters, and how to move detail down the hierarchy of legislative instruments for maximum agility in the law. Matters that may change frequently are best dealt with by subordinate legislation (Department of Prime Minister and Cabinet, 2017, p. 33).

The desire for agility must be balanced against the oversight and authority needed to make changes to the legislative instruments. Changes to primary legislation and regulations require appropriate consultation with industry, ministerial agreement and follow a parliamentary process (primary legislation) or a ministerial process (supporting regulation). Other lower-order instruments may be approved, by delegation from ministers and the Parliament, to an administrative body such as the Transport and Infrastructure Senior Officials' Committee or by the NHVR. Consultation with affected parties remains crucial.

As ALC said in its 2011 Response to the Draft Heavy Vehicle National Law and Accompanying Regulatory Impact Statement¹⁵:

As part of its consideration of the Health Practitioner Regulation (Administration Arrangements) National Law Bill 2008 (the forerunner to the national health law), the Queensland Scrutiny of Legislation Committee said:

In The Constitutional Systems of the Australian States and Territories, Professor Gerard Carney provides a summary of concerns regarding the legislative scrutiny of national scheme legislation:

> A risk of many Commonwealth and State cooperative schemes is 'executive federalism'; that is, the executive branches formulate and manage these schemes to the exclusion of the legislatures. While many schemes require legislative approval, the opportunity for adequate legislative scrutiny is often lacking, with considerable executive pressure to merely ratify the scheme without question.

Thereafter, in an extreme case, the power to amend the scheme may even rest entirely with a joint executive authority. Other instances of concern include, for example, where a government lacks the authority to respond to or the capacity to distance itself from the actions of a joint Commonwealth and State regulatory authority. Public scrutiny is also hampered when the details of such schemes are not made publicly available. For these reasons, a recurring criticism, at least since the Report of the Coombs Royal Commission in 1977, is the tendency of cooperative arrangements to undermine the principle of responsible government. A further concern is the availability of judicial review in respect of the decisions and actions of these joint authorities.

Certainly, political responsibility must still be taken by each government for both joining and remaining in the cooperative scheme. Some blurring of accountability is an inevitable disadvantage of cooperation – a disadvantage usually outweighed by the advantages of entering this scheme. But greater scrutiny is possible by an enhanced and investigative role for all Commonwealth, State and Territory legislatures.¹⁶

There must be a clear pathway to allow stakeholders to challenge (politically, where necessary) decisions made via the TISOC/TIC process (in the case of regulations) because of its opaqueness, or by the Regulator.

The Regulator has a rule making regime in place modelled on the system used in the civil aviation system.

In the civil aviation system, the Civil Aviation Safety Authority (**CASA**) has developed a rule making system that has been developed to give effect to paragraph 9(2)(b) of the Civil Aviation Act 1988, which requires CASA to 'promote full and effective consultation and communication with all interested parties on civil aviation issues', and to section 16 of that Act which requires CASA to, where appropriate, consult with industrial and consumer bodies (as relevant) when exercising powers and functions.

For the purposes of rule-making under the Law, the Regulator publishes a notice of intention to make a rule that sets out the reason for change and the proposed draft rule, and then subsequently publishes a notice of final rule making which sets out the reasons for making the rule as finally presented, a summary of responses from submission makers, any variations to the draft rule to be made and implementation information.

ALC believes the CASA/Regulator model of rule-making is worthy of emulation.

Where the Law permits subject matter to be made either by a regulation endorsed by TIC, or by the Regulator (Rule-makers), the Law must contain a provision that requires the rule-maker to publish:

(a) a notice of making a rule (however described), which contains:

¹⁶ Queensland Parliament Scrutiny of Legislation Committee *Alert Digest* Issue 2/2008 (26 February 2008), pp.15-6.

- (i) a statement for the reason of the rule;
- (ii) a draft of the rule for comment;
- (iii) a discussion regulatory impact statement; and
- (iv) an invitation for submissions;
- (b) a notice of the making of a final rule, which sets out:
- (i) the reasons for making the rule as finally presented;
- (ii) a summary of responses from submission makers;
- (iii) any variations to the draft rule to be made; and
- (iv) Implementation information; and

(c) a requirement for any rule (however described) to be tabled in a parliament of a participating jurisdiction, and to permit any such rule to be disallowed in a manner similar to Division 4 of Part 11 of the Health Practitioner Regulation National Law (Queensland).

In this way, any proposed standard can be properly be reviewed for quality and, where necessary, political action can be taken where there is a dispute about either the quality or need for a rule.

It would also satisfy the expectations of COAG contained in Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies (2014)¹⁷ as well as ensuring that safety and productivity considerations are taken into account during the rule making process.

However, an absence of a transparent capacity to fully participate in the rule making process will mean that there will be limited industry support for moving subject matter out of the Law. In that case, the protection of parliamentary process will need to be retained.

Establish Code of Practice mechanism

Given the above, ALC supports in principle the further development of option 5.1, as set out in the consultation RIS.

¹⁷ <u>https://pmc.gov.au/resource-centre/regulation/best-practice-regulation-guide-ministerial-councils-and-national-standard-setting-bodies</u>

As a general proposition, the National Heavy Vehicle Regulator (**NHVR**) has the resources to develop any relevant code, although any entity should be able to propose a Code (see the discussion on the Master Code, below) and not just the NTC or jurisdictional regulators – the Regulator is not the font of all relevant knowledge.

The procedural requirements for the making of such a code should replicate the practice adopted in the civil aviation area, as discussed above should be codified into law.

Master Code

Part 13.2 of the HVNL permits the development of a registered industry code.

ALC has had experience in developing the current Master Code registered under section 706 of the HVNL.

A majority view of ALC members is that the capacity for industry to make such a code should be retained as it will encourage 'buy in' –playing a part in the development of a Code will encourage 'ownership' of the Code and thus subsequent compliance.

However, any guidelines made about the preparation and content of an industry code of practice (**the section 706 guidelines**) must be subject to the full review processes set out above prior to being made, with funding provided by the Regulator.

This is because it was ALC's experience that the section 706 guidelines (against which the Master Code was required to be designed against) required the inclusion of some requirements more appropriate for a compliance regime (what have you done in the past?) rather than one that requires risks to be assessed and managed (what are you going to do in the future?).

Establish Standards mechanism

The RIS does not make clear the precise delineation between what constitutes matters properly dealt with in a 'code' and those in a 'standard'.

Regrettably, a close examination of the *Legislative Standards Act 1992* (Qld), referred to on page 54 of the consultation RIS, does not really help in determining when something should be a code of practice approved by Ministers and when something should be a standard.

In the extract from ALC's 2019 submission to the NTC process set out above, references are made to the National Construction Code (**the NCC**), something discussed at length in the NTC's 2019 paper *A risk-based approach to regulating heavy vehicles issues paper*¹⁸.

¹⁸ <u>https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/5715/5382/1099/Risk-</u>

based approach to regulating heavy vehicles Issues Paper1.pdf

It is presumed that the standards that would be developed would provide granular advice that smaller operators would rely on to provide advice on how they should comply with the HVN, in much the same way as the 'deemed to comply' provisions of the NCC operates.

If that is the case, ALC would support this development, subject to the observation that the standard making process employed reflects the process established for codes of practice (including the capacity for parliamentary disallowance), set out above.

This is to ensure there is no regulatory failure as a result of a proposed standard (which must be followed by law) being unworkable in practice.

Option 5.3: Establish remote areas zone

ALC has no views in relation to this area.

Option 5.4: Enabling data sharing with NHVR

ALC agrees that this option should be developed further when preparing the Decision RIS.

Technology and data

ALC has long taken the view that telematics should be made mandatory for heavy vehicles for the reasons set out on pages 34 – 36 of this submission and page 63 of the consultation RIS.

It follows that ALC considers that it is a completely missed opportunity that this consultation RIS does not purport to test net public benefit that mandatory recording of data would provide.

Such an analysis should form part of the decision RIS presented to the relevant body forming part of the new National Cabinet structure.

The TCA, which is now a part of Austroads and is the international sponsor of ISO 15638 should have the responsibility for any approval of equipment and data standards, as it, rather than the NHVR has the expertise to administer any relevant approval process.

For the policy reasons set out in the response to how fatigue should be managed discussed later in this submission, ALC agrees the Law should encourage documentation to be carried and produced electronically.

The ALC position is probably the most efficient way to give effect to recommendations 8.2 and 9.3 of the PC Report.

As the Commission says:

Governments should prioritise the use of data with the greatest potential to improve productivity in the transport sector. This includes sharing data to facilitate coordination between road users and infrastructure managers, to inform the provision and management of road infrastructure, decisions around permits and road access for heavy vehicles, and assist in the development and implementation of the Heavy Vehicle Road Reform agenda.¹⁹

ALC particularly notes recommendation 8.2, which reads:

Governments should prioritise the uses of data with the greatest potential to improve productivity in the transport sector. These include facilitating coordination between road users and infrastructure managers to:

inform the provision and management of road infrastructure

inform decisions around permits and road access for heavy vehicles

•assist in the development and implementation of the Heavy Vehicle Road Reform

¹⁹ PC Report:227

agenda.

The Australian Government should give priority to these uses of transport data when developing the National Freight Data Hub.²⁰

ALC has subsequently endorsed the development of a Single Freight Standard for a National Digital Framework, which could be used as the basis for the National Freight Data Hub.²¹

As the Framework document indicates:

ALC has a policy requiring heavy vehicles to be fitted with telematics devices for safety and other purposes since 2010. In 2018, the ALC Board subsequently endorsed a policy committing ALC and its membership to working towards the adoption of global data standards by all participants in the Australian Logistics Industry.

GS1 global data standards offer the ISO/IEC 19987 Electronic Product Code Information Services (EPCIS) standard and the associated ISO/IEC 19988 Core Business Vocabulary (CBV) that provides the framework for the interoperable sharing of information about the physical movement and the status of objects including products, materials, shipments etc as they travel the supply chain.

In addition, the ability for industry to physically capture data effectively and automatically about shipments and activities is essential to sharing information about them. Typically, either barcodes or Gen 2 UHF RFID tags should be used to link the physical object to the digital information about the 'what' the 'where' the 'when' and the 'why' dimensions so important in ensuring freight visibility. As technologies evolve, other mechanisms such as sensors or IoT devices could be used to automatically capture data.

The National Telematics Framework, which is administered by Transport Certification Australia (TCA) on behalf of government transport authorities, is aligned with ISO 15638 which establishes the Framework for Collaborative Telematics Applications for Regulated Commercial Freight Vehicles which will enable data to be used for safety, compliance and planning purposes. The possible combination of the data captured using these standards would appear to have the advantage of bringing together under one regime both heavy vehicle and freight movements, which would:

1. assist in the collection of statistics for purposes such as the ABS Transport Satellite Account, through the presentation of information in a uniform format;

2. provide a uniform data format that can be used for those wishing to enhance the visibility of freight in which they have an interest;

3. present information to road managers in a way that would facilitate decisions relating to access to routes by heavy vehicles;

4. assist compliance with legislation; and

5. facilitate planning by both industry and governments. ²²

²⁰ PC Report:33

²¹ <u>https://www.austlogistics.com.au/wp-content/uploads/2020/10/Single-Freight-Data-Standard-for-the-National-Digital-Framework_Final.pdf</u>

The opportunity should be taken to develop a regulatory regime that facilitates data to be collected and use to advance productivity and safety outcomes in a cost effective manner.

Assurance and Accreditation

Background

This area of the HVNL has been one of the more vexed.

The concept of third-party accreditation was at its height around 20 years ago, when the model law which preceded the HVNL was in force.

However, it really hasn't worked.

As indicated in the Medlock Report, accreditation and assurance schemes have a very small take-up rate.

The reason for that is that in reality the only real purpose for signing up to these schemes is to gain advantage of what are colloquial described as being 'statutory benefits', generally relating to concessions made with respect to mass and driving hours.

For that reason, the NHVAS has been characterised as being more a 'permissioning' scheme rather than an 'accreditation' scheme.

If an operator has no cause to gain advantage of statutory benefits, they have no financial incentive to join the NHVAS.

At the same time:

- as indicated in the consultation RIS, TruckSafe is operated by the Australian Transport Association;
- ALC also operates AMCAS, which assists parties in the chain of responsibility audit their compliance with the Master Code for heavy vehicle safety made under section 705 of the HVNL; and
- some larger transporters who subcontract work require audits performed to ensure they satisfy, amongst other things, HVNL compliance.

One of the bugbears that has been reported by industry is that operators seeking the advantage of statutory benefits (and thus must comply with NHVAS requirements), but also require either TruckSafe or AMCAS certification to satisfy customers' WHS requirements (or compliance with the bespoke requirements of larger operators) must undertake a multiplicity of audits, because of an absence of mutual recognition of audit results.

Even for smaller operators, a requirement to maintain an SMS has the tendency to encourage the development of safer operating practices.

Therefore, so as to maximise safety outcomes and to minimise it industry of costs, ALC believes the national operator standard discussed in the introduction of this submission be adopted.

In that way:

- smaller operators would have the advantage of having a relatively straightforward framework in which it can improve the safety of its operations as well as providing some form of documentation that can be used by regulators who may have cause to investigate the operations of the relevant entity; whilst
- the more sophisticated or specialised operators who require access to statutory benefits or seek to subcontract to larger operators or consignors can gain the advantages of accreditation through the maintenance of an audited SMS.

ALC believes the most cost efficient legislative design would be for the NHVR to be able to make a standard (or code of practice) setting out best practice requirements as to what should be covered by an SMS. This would include the requirements of the fatigue management system that may be implemented if a third safety assurance tier, as discussed on page 102 of the consultation RIS, is introduced.

This would act by default as the 'gold standard' as to how an SMS should be assessed and would more likely than not have the normative effect of encouraging schemes to accept audits assessing compliance with the HVNL undertaken for other purposes, reducing the compliance costs of operators.

On balance, ALC believes that if an audited SMS is required to:

- obtain 'statutory benefits'; or alternatively
- allow more sophisticated operators to operate on the basis of a risk management system underwritten by an audited SMS rather than compliance with more granular performance standards

the NHVR, or if not the Regulator some other government entity should run the accreditation.

During the recent review of the accreditation process conducted by the NHVR during 2019 it became clear that even if other accreditation schemes gained some form of statutory recognition, the NHVR would not provide NHVAS accreditation and so provide access to 'statutory benefits' until they consider compliance information possessed by regulators.

This somewhat defeats the purpose of having a number of accrediting bodies – and if that is the case the regulator should continue operating something like the NHVAS.

Indeed, rather than require regulators to invest in costs involved in oversighting numerous certification schemes, safety outcomes would be enhanced through the development of auditor quality.

ALC has found that the greatest weakness in the operation of current certification schemes is the poor quality of auditors, discussed in pages 32-33 of this submission.

If some form of third party certification is to remain part of the HVNL, the issue of auditor quality and the need to invest in auditor standards will need to be discussed in any Decision RIS that is put forward to Ministers as part of this review process.

Fatigue

ALC supports the concept of making standard hours less complex.

This is because the current system is notoriously complex and lacking in flexibility, so increasing compliance costs on operators as well as impacting on productivity,

A system something along the lines of that proposed in option 8.1(a) should be developed for the consideration of industry.

This is because if all the areas dealt with in this consultation RIS, the design of fatigue rules is the area that particularly should be 'stress tested' by industry before it is finalised (that is, Incorporated into the legislation as a *fait accompli*) so as to ensure what is proposed actually works in practice.

ALC also supports the revision to Tier 2 and 3 of the fatigue management framework.

The delineation of how the two tiers would work is consonant with how ALC envisages a revised HVNL would work:

- one system that can be followed a somewhat like a manual by less sophisticated operators; with
- a capacity built-in to permit more sophisticated operators to manage safety outcomes in a risk based manner.

It would also be consonant with recommendation 10.1 of the PC Report.

However, as suggested previously much work needs to be done to ensure that the auditors actually assessing the fatigue management component of an SMS have the qualifications and capacity to do make assessments that can be trusted by both regulator and operators.

Otherwise, no case has been made to widen the scope of fatigue requirements and in particular how widening the scope will provide a net public benefit.

Finally, ALC sees some scope in examining how record keeping can become simpler and risk based.

ALC anticipates that the use of electronic records would be mandated.

Both technology and business practices have now evolved to the stage where most, if not all, businesses maintain records in the electronic form for taxation and other purposes. It is no longer the case that requiring electronic records is the controversial issue that it was even as late as 2013, when the HVNL was originally developed.

After all, dealings with (for example) the Australian Taxation Office are being done electronically via apps such as MyGovID and an increasing number of documents are being digitised as a matter of course.

The requirement to keep electronic records would imposed only a marginal increase to administrative costs to road operators, if there is a cost at all.

Equally, to the extent that work diaries remain part of the Law, the use of electronic work diaries should be mandated within a specified period of time after the commencement of the revised HVNL.

As discussed previously, most contemporary telematics devices on the market incorporate as part of its functionality bundle an electronic work diary, and purchase and operational costs (as is the case in most areas of technology) has fallen over the time in which the HVNL has been in force.

It is no longer the case that requiring the use of technology poses a disproportionate cost on small operators relative to the net public benefit obtained by having accurate information available to both operators and regulators so as to prevent as far as practicable circumstances in which drivers operate heavy vehicles whilst fatigued.

Access

As ALC indicated in its second submission to NTC on the HVNL review dated 19 August 2019 with respect to access decisions:

ALC therefore suggests a system in which:

- Decision makers are required to have regard to the NHVR's Approved Guidelines for Granting Access,²³
- Road managers are required to continue publishing statement of reasons for the making of decisions;
- Time limits are placed on the amount of time road managers and third parties who must be consulted, with a failure to make a decision within time deemed to be consent;
- Decision makers are required to consider both the benefits and costs in giving consent²⁴;
- Access administrative review of decisions in the civil and administrative tribunal of the relevant jurisdiction is provided; and
- Road managers are permitted to delegate road power decisions to third parties possessing skills contained in a subordinate legislative instrument made by the Regulator.²⁵

It is to be hoped that moving into the future the issue of access will be less of an issue as it has been historically, given:

- The number of national notices made by the HVNL to facilitate vehicle movements is increasing;
- as discussed on pages 125-126 of the consultation RIS, reforms to how Over Size Over Mass vehicles and Special Performance Vehicles are being reformed; and

²³ Noting that the Restricted Access Vehicle Route Assessment Tool (RAVRAT), whilst useful, has its limitations: see Austroads Report AP-R559-18 *Local Road Access for High Productivity Freight Vehicles* (2018): pp.39-40

²⁴ As recommended in Deloitte Access Economics *Economic Benefits of Improved Regulation in the Australian Trucking Industry* (2019): 35:

https://www2.deloitte.com/au/en/pages/economics/articles/economic-benefit-improved-regulationaustralian-trucking-industry.html

²⁵ Page 8

 the NSW Government has in place the Road Classification Review and Transfer process that is examining the movement of 13,000 km of roads from local to State government responsibility.²⁶ It is hoped that this move will also facilitate consistent decision-making.

ALC also welcomes the publication of documents such as the Austroads *Framework and Tools for Road Freight Access Decisions* published in August 2020²⁷ and the HVNR *Approved Guidelines* referred to above.

That said, it remains the case that ALC members have consistently maintained that the current system is time consuming, with many applications delayed or rejected on the basis of road managers taking conservative 'asset protecting' positions when making decisions leading to significant compliance costs and productivity losses.

With respect to the consultation RIS options, ALC would support the development of a legislative proposal along the lines of option 9.1c, which is consonant with its view on electronic collection of data for regulatory purposes.

This would also facilitate the creation of an enhanced general access category, discussed as option 9.1e.

Australian Logistics Council

October 2020

²⁶ <u>https://www.rms.nsw.gov.au/about/news-events/news/ministerial/2020/200622-nsw-road-classification-review-and-transfer-consultation-open.html</u>

²⁷ <u>https://austroads.com.au/publications/freight/ap-r629-20</u>

APPENDIX 1 – Previous ALC submissions relating to HVNL reform

1. *Response to the Draft Heavy Vehicle National Law and Accompanying Regulatory Impact Statement* (2011)

https://austlogistics.com.au/wp-content/uploads/2011/05/ALC-Response-to-the-Draft-Heavy-Vehicle-National-Law-and-Regulatory-Impact-Statement-6-May-2011.pdf

2. ALC Submission on the Chain of Responsibility Taskforce Discussion Paper (2013)

https://austlogistics.com.au/wp-content/pdf/submissions/2013/ALC-Submission-on-the-Chain-of-Responsibility-Taskforce-Discussion-Paper.pdf

3. *ALC Submission Primary Duties for Chain of Responsibility Parties and Executive Officer Liability* (2015)

https://www.austlogistics.com.au/wp-content/uploads/2015/01/ALC-Submission-Primary-Duties-for-Chain-of-Responsibility-Parties-and-Executive-Officer-liability.pdf

4. Improving Heavy Vehicle Safety the Australian Way – A Position Paper Towards Developing National Operating Standards for Heavy Vehicles, for the Safety of all Australian Road Users (2018)

https://www.austlogistics.com.au/wp-content/uploads/2018/04/Improving-Heavy-Vehicle-Safety-the-Australian-Way.pdf

5. First ALC submission to NTC on its review of the HVNL (2019)

https://www.austlogistics.com.au/wp-content/uploads/2019/06/ALC-Submission-NTC-Review-into-the-HVNL.pdf

6. Second ALC submission to NTC on its review of the HVNL (2019)

https://www.austlogistics.com.au/wp-content/uploads/2019/09/ALC-Submission-NTC-HVNL-Review-Tranche-2.pdf

7. *Making a modern Heavy Vehicle National Law* – paper prepared for the Transport and Infrastructure Senior Officials' Committee (TISOC)

https://www.austlogistics.com.au/wp-content/uploads/2019/10/TISOC-Submission-Making-a-Modern-Heavy-Vehicle-National-Law.pdf

Making a Modern Heavy Vehicle National Law

Paper prepared for the Transport and Infrastructure Senior Officials' Committee (TISOC)

October 2019

Making a Modern Heavy Vehicle National Law

The Australian Logistics Council (**ALC**) welcomes the opportunity to help TISOC develop a contemporary Heavy Vehicle National Law (**HVNL**) that delivers enhanced safety and productivity outcomes for the freight logistics industry.

ALC is the peak national body representing major companies participating in the freight logistics industry. ALC's policy focus is on delivering enhanced supply chain efficiency and safety.

Freight does not stop at state borders, which means that ALC's members bring a national perspective to the review and design of legislation and regulation.

In many respects, the current HVNL reflects the compromises that were considered necessary to convince most (but not all) jurisdictions to sign up to the 2011 Intergovernmental Agreement on Heavy Vehicle Regulatory Reform.

However, the law clearly needs reform to be fit for purpose for the 2020's and beyond.

In particular, ALC submits that the modern HVNL should:

- Encourage and embrace the use of technology for safety and access purposes;
- Ensure operators have suitable safety management systems in place and have the capital necessary to ensure the safe operation of heavy vehicles; and
- Have the flexibility to recognise the differences in capabilities between larger and smaller operators to comply with complex legislation.

In this paper, ALC puts forward a number of ideas that it believes TISOC should endorse to ensure the HVNL achieves these ends.

A full list of recommendations may be found at the end of this paper.

One Country, One Rule Book Uniformly Enforced

ALC's long-standing position has been that there should be a single Heavy Vehicle National Law (HVNL) administered by a single national regulator.

There has been some significant progress towards this outcome. The National Heavy Vehicle Regulator (**NHVR**) has generally operated satisfactorily, and there are no calls from participating states for the return of jurisdictionally based regulation or legislation.

However, the continued reluctance of Western Australia and the Northern Territory to agree to the HVNL limits its effectiveness.

Further, some of the derogations from the law by participating jurisdictions are creating needless confusion and administrative burdens for logistics operators.

The question needs to be asked: why are these derogations there?

With regard to participating jurisdictions, ALC asks that the next Transport and Infrastructure Council (TIC) meeting request each jurisdiction to review each identified derogation²⁸ from the HVNL to determine whether they remain a cost effective way to deliver intended productivity or safety outcomes.

The preliminary findings of this review should then be provided to industry to allow comment, with any derogation found to be of no material benefit removed.

ALC remains of the view that that Western Australia and the Northern Territory should join the national scheme. Several of the recommendations contained in this paper suggest incorporating elements of Western Australia's present approach within the HVNL.

We believe that such changes will help make this law more acceptable to WA and the NT – and finally help deliver the single national law that was always envisaged.

A Single National Operating Standard

The *Analysis of Heavy Vehicle Safety Accreditation Schemes in Australia* undertaken for the National Heavy Vehicle NHVR (NHVR), commonly known as the Medlock report, found that based on the 2014 *Survey of Motor Vehicle Use* by the Australian Bureau of Statistics, 466,545 vehicles were rigid trucks whilst 96,226 vehicles were articulated vehicles.²⁹

Medlock also found there is limited take-up of accreditation schemes. As at October 2017, there were 212 members of TruckSafe and 6607 NHVAS accredited operators

Moreover, there are a number of concerns that have been expressed about 'accreditation' within the HVNL context, which have been well-aired as part of the review process. They include:

- The cost of accreditation;
- The fact that accreditation doesn't appear to reduce the level of enforcement activity on accredited operators;
- The poor quality of auditors; and
- A multiplicity of audits that must be undertaken, particularly for operators who are members of both the NHVAS, TruckSafe and/or ALC Master Code Auditing Service and who also work for prime contractors are having the same management systems audited. There is a wish for 'mutual recognition' of audits conducted, particularly in relation to management systems designed to manage risks to satisfy the HVNL Chain of Responsibility.

Finally, NHVAS was included into the HVNL well before the current Chain of Responsibility provisions were added.

²⁸ Derogations are identified on page 31 and Appendix B of the NTC *Risked Based Approach to Regulating Heavy Vehicles* Discussion Paper

²⁹ Medlock Report - <u>https://www.nhvr.gov.au/files/201812-0966-analysis-of-hv-safety-accreditation-schemes-in-aus.pdf</u> : 8

Accreditation is used for two purposes in the HVNL.

The first is to ensure safety outcomes.

The second is to gather information to permit access to road networks.

However, the low uptake of the current accreditation schemes suggests the market place has decided the schemes aren't fit for purpose.

Yet, there is plainly a need to ensure that the nation's heavy vehicle fleet is being operated by those capable of meeting an agreed set of standards. Recent figures also reveal that:

- During the 12 months to the end of June 2019, 183 people died from 162 fatal crashes involving heavy trucks. These included 95 deaths from 85 crashes involving articulated trucks, 94 deaths from 82 crashes involving heavy rigid trucks and 6 deaths from 5 crashes involving both a heavy rigid truck and an articulated truck; and
- Those fatal crashes involving heavy trucks increased by 2.5 per cent compared with the corresponding period one year earlier (from 158 to 162 crashes) and decreased by an average of 0.7 per cent per year over the three years to June 2019.³⁰

This constitutes far too many deaths.

ALC believes a practical solution is the development and implementation of a National Operating Standard with the following elements:

Creating a list of operators

The first requirement would be for an operator to identify the entity operating a heavy vehicle(s) and the place(s) heavy vehicles are garaged. This provides a list of operators and thus the size of the regulated cohort.

Making safety management systems mandatory

The second is to require operators to maintain an audited safety management system (SMS) meeting specified standards made by either the NHVR, or alternatively a specialist safety body.

Safety management systems are a well-known tool designed to manage workplace safety. These are used in a number of industries with significant safety risks, including the aviation, petroleum, chemical, railway and electricity sectors.

Moreover, an abstract from a paper published by Mooren et al in 2017 said that independent research into safety management features that distinguish between

³⁰ https://www.bitre.gov.au/publications/ongoing/fatal_heavy_vehicle_crashes_quarterly.aspx

lower insurance claimers and higher insurance claimers identified characteristics that show clear evidence of efficacy in safety management in trucking operations.³¹

ALC suggests the desirability of requiring heavy vehicle operators to maintain an SMS should be tested in any consultation regulatory impact statement (RIS) produced as part of the HVNL review.

The SMS would be required to meet specific standards.

The enabling legislation could be modelled on Section 9D of the *Passenger Transport Act 1990* (NSW), which establishes a requirement for accredited bus and coach operators to have a safety management system which complies with guidelines made for the purposes of the legislation. These guidelines specially detail what constitutes a compliant SMS.³²

For the purposes of the HVNL, one of the SMS standards should be a requirement that the SMS must require an operator to maintain a system complying with the registered industry code of practice made under Part 13.2 of the HVNL (commonly known as the Master Code).

This would provide both:

- the greatest source of assurance that an operator has in place systems that should lead to a business that is operating safety; and
- A common basis for the conduct of safety audits.

Ensuring an operator has the capital to maintain a heavy vehicle

The third important element is that the operator can prove to the satisfaction of the NHVR that a nominated amount of capital is available to the business.

Any financially troubled or under-capitalised business is tempted to cut corners. In the search for cost reductions, vehicle maintenance may be neglected, which in turn increases the chance of an accident related to mechanical problems.

Maintenance is classically one of the discretionary expenses cut by an operator to make ends meet. This is what motivated the inclusion of Part 11 of the Code of Practice made under the Victorian *Owner Driver and Forestry Contractors Act 2005,* which suggests hirers ensure an operator has the financial capacity to operate their business.

³¹ Mooren et al Comparison of Experience-Based and Evidence-Based Safety Risk Management Features for Heavy Vehicle Transport Operations (2017): 1

http://www.tars.unsw.edu.au/news/2017/Mooren 00045 FP.pdf

³² Found at: <u>https://www.rms.nsw.gov.au/documents/business-industry/buses/boas-safety-management-system-guidelines.pdf</u>

The community must have confidence that heavy operators have available the funds to undertake regular and appropriate vehicle maintenance.

ALC believes that provisions similar to Section 10 of the Passenger Transport (General) Regulation 2017 (NSW) should be developed and inserted into the HVNL. This is another area that should be tested in any consultation RIS.

That said, the different needs and abilities of an atomised industry such as the heavy vehicle sector may make a 'layered approach' desirable. This could be modelled on Part 48 of the *Civil Aviation Orders* and would mean:

- (a) Smaller operators may adopt a prescriptive approach as to what should be in a fatigue management scheme by following specific requirements; and
- (b) More sophisticated operators may design their own scheme capable of being certified as satisfying the requirements of safety regulations.

Mandatory collection of data

The fourth important element is to require the mandatory collection of data by heavy vehicles, through the use of equipment that is compatible with standards made under the National Telematics Framework.

The use of data will be discussed shortly.

Auditors

There have been some criticisms about both the quality of audits and auditors in the heavy vehicle safety context.

ALC submits that the HVNL should be amended so that only auditors possessing auditing qualifications determined by the NHVR are able to certify an SMS for HVNL purposes.

Auditors currently have qualifications that are at the Certificate IV level within the Australian Qualifications Framework.

The experience of many in the industry suggests that this threshold is too low.

To improve auditor quality, TISOC should recommend the next TIC meeting encourages the NHVR, in partnership with industry, to develop a course falling within the national Transport and Logistics Training Package³³ at Diploma (AQF Certificate V) level.

³³ https://training.gov.au/Training/Details/TLI?releaseId=66135e54-22b8-46d8-8799-ac2d9cdf73f3

This course would ensure auditors were capable of auditing the compliance of operators with the HVNL. Ultimately, the qualification should be formally recognised within the HVNL.

Finally, it would be appropriate for either the NHVR (or the body discussed below) to register auditors possessing the required qualifications.

Further, if there are reasonable grounds to believe that a registered auditor is guilty of either professional misconduct or professional negligence, they should be required to show cause why they should not be removed from the register.

An auditor who had registration removed would be permitted access to administrative review in the relevant civil and administrative tribunal of the participating jurisdiction in which the person is resident.

Who makes the relevant standards?

The NHVR could make the standards discussed above by way of legislative instrument.

However, it may equally be desirable to establish a specialist body to develop all forms of standards for the heavy vehicle industry, if not all the functions relating to the administration of the National Operating Standard. This would allow the NHVR to focus on access and enforcement decisions.

Similar models include that used by the Rail Industry Safety and Standards Board.

The Australian Securities and Investments Commission Act 2001 establishes:

- the Australian Accounting Standards Board³⁴ which is responsible for developing and issuing Accounting Standards applicable to Australian entities and the 'care and maintenance' of the body of standards (generally); and
- the Office of the Auditing and Assurance Standards Board³⁵ which have functions including the making auditing standards under section 336 of the *Corporations Act 2001*. It also provides guidance on auditing and assurance matters.

A specialist body, which could notionally be called the Heavy Vehicle Safety Standards Board could be established, for the purposes of:

- making the standards discussed earlier in this submission;
- maintaining the list of operators;
- acting as a registrar of heavy vehicle auditors;

³⁴ Established by Subdivision B of Division 1 of Part 12 of the Act

 $^{^{\}rm 35}$ Established by Subdivision C $\,$ of Division 1 of Part 12 of the Act $\,$

- making auditing standards; and
- accrediting relevant Registered Training Organisations (RTOs) (assuming that auditor education will be provided by RTOs)

There is no reason why the National Operating Standard (which would in a practical sense operate in the same way as the WA Heavy Vehicle Accreditation (WAHVA) scheme does) cannot commence operating at the time amendments to the HVNL flowing from this review commence operation.

Finally, as an interim measure, ALC supports the current work of the NHVR in attempting to develop a common auditing standard that can be used universally across the heavy vehicle to assess operator safety systems.

This work should be brought in-house and expedited.

Mandatory Collection of Data

ALC believes data is the 'new oil' for the freight transport industry. ALC has therefore traditionally supported any amendments to the HVNL that facilitate the use of data to discharge statutory obligations.

Historically, one of the perceived barriers to mandatory collection of data has been the cost of the /equipment required. However, there is little doubt that it has become eminently more affordable since the HVNL was first drafted.

ALC members advise that for \$1900-\$2000, a compliant unit can be obtained that provides:

- CoR compliance for mass, maintenance and fatigue modules;
- integrates with on board weighing systems (GPS IVU), electronic braking systems, transport/freight management systems, distraction monitoring services and cameras, a vehicle's CAN-BUS to access engine information; and
- applications to calculate Fuel Tax credits, location and speed monitoring services, trailer tracking and driver navigation services.

On this basis, it is no longer feasible to argue that compliance costs outweigh the benefits of mandatory recording of data, which include:

• allowing road owners to fully understand the volumes of heavy vehicle traffic on their network;

- providing NHVR with information on speed and fatigue, where there is cause to investigate;
- providing operators with data that can help them develop their business;
- giving road owners the best data to make decisions as to whether a particular vehicle should access a road; and
- providing data that can be used in a National Freight Data Hub, improving freight data collection, sharing and analysis practices to enable industry and government freight sector participants make better informed operational, planning and investment decisions.³⁶

However, there are legitimate issues relating to data ownership and privacy that require consideration. These will need to be developed as the consultation RIS/legislation drafting process gets underway.

Any data collection standards must comply with international norms. The NHVR should not be allowed to make bespoke standards, as is the case now.

As ALC recommended in its 2018 document *A Common Data Set for our Supply Chain:*

Due to the international nature of trade, the Australian Government should encourage the development of a multilateral agreement (either through the development of a joint ISO/IEC standard or refinement of model laws facilitating the use of electronic communications managed by the United Nations body UNCITRAL) to identify a common data set that could be developed for global trade.³⁷

The same document noted that the TCA Telematics Data Dictionary is aligned to ISO 15638, which establishes the Framework for Collaborative Telematics Applications for Regulated Commercial Vehicles (also known as the TARV).³⁸

ALC finally notes that data falling within this set is already being used for asset maintenance purposes.

In November 2018 the Transport and Infrastructure Council of COAG approved the commencement of new application available within telemetric equipment compatible

³⁶ See Transport and Infrastructure Council (2019) *National Freight and Supply Chain Strategy National Action Plan*: 22 - <u>https://www.freightaustralia.gov.au/sites/default/files/documents/national-action-plan-august-</u> 2019.pdf

³⁷ <u>http://www.austlogistics.com.au/wp-content/uploads/2018/10/A-Common-Data-Set-for-our-Supply-Chain.pdf</u>: 12

³⁸ Ibid

with standards recognised by the National Telematics Framework³⁹ called the Road Infrastructure Management application (RIM).

The RIM application aggregates and anonymises data from heavy vehicles, which can be then used by road managers make better investment decisions (such as road maintenance, upgrades, productivity and safety initiatives). State Governments will begin using the application in the near future.⁴⁰

In the HVNL context, if decision makers have access to data about heavy vehicle usage on routes, appropriate access decisions can be made in a more timely nature and on the basis of the best information possible. This could mean the current concept of mass management accreditation (for one thing) is unnecessary.

The time to use quality data to more effectively manage Australia's heavy vehicle fleet has arrived. As with the National Operating Standard, the amendments to facilitate the use of data should commence at the same time as other amendments to the HVNL arising from this review.

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³⁹ A digital business platform consisting of infrastructure and rules that support an open marketplace of telematics and related intelligent technology providers. For further information see: <u>https://www.tca.gov.au/ntf/national-telematics-framework</u>.

⁴⁰ https://tca.gov.au/documents/TCA_RIM_Flyer_eBook.pdf