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Dr Gillian Miles
Chief Executive
National Transport Commission
Level 15/628 Bourke Street
Melbourne VIC 3000
Via NTC portal

GAS ENERGY AUSTRALIA RESPONSE TO HVNL REVIEW CONSULTATION REGULATION IMPACT STATEMENT PAPER

Dear Dr Miles

Gas Energy Australia (GEA) appreciates the opportunity to respond to the National Transport Commission (NTC) Heavy Vehicle National Law (HVNL) Review Consultation Regulation Impact Statement Paper 2020 (RIS Paper). GEA has made submissions on the following seven previous consultation papers that built up to the RIS Paper.

- A risk-based approach to regulating heavy vehicles March 2019
- Effective fatigue management May 2019
- Easy access to suitable routes June 2019
- Safe people and practices June 2019
- Vehicle standards and safety July 2019
- Effective enforcement September 2019
- Assurance models August 2019

This response will not go over old ground but focus on broader issues we consider require further consideration.

Let me open by stating that GEA supports the risk-based approach and data driven focus of the RIS Paper. However, there is little or no scope for operators to use their data for business improvement, such as driver coaching and training. Instead, the focus is on its use by regulators to assist prosecutions even though an operator may have already put in place mechanisms to address certain behaviours or operational issues. GEA considers the RIS Paper should be more focused on using data to support and incentivise transport operators towards zero incidents rather than policing and regulation.

GEA is also concerned that the benefits from data sharing offered are focused on regulatory compliance and are seemingly one way. With respect to the first concern, GEA suggests that because vehicles fitted with fatigue and safety technologies are safer, and as such pose a lower risk of accident, they should be given greater road access, including areas generally prohibited for vehicles carrying dangerous goods. With respect to the second concern, the focus of the RIS Paper is on providing data to regulators rather than providing consistent and reliable data to operators which they could use to improve their businesses.

GEA is also concerned that the RIS Paper's proposals would increase red tape and regulatory burden. In particular, option 4.1: *Add specified parties to the defined list of parties in the CoR* and option 4.2b: *Establish a separate driver duty, which replicate worker responsibilities under Work, Health and Safety (WHS) laws* could see the HVNL Review result in more red tape and duplicate prosecutions.

The option canvassed in the RIS Paper seeks to replicate WHS duties that already exist for workers and other parties under current WHS regulations. Current provisions of the WHS regulations, require workers to ensure they take reasonable care of their own and others' health and safety and also co-operate with any reasonable policies, procedures and instructions. These regulations also place requirements on other duty holders who include those

supplying and servicing vehicles as well as those designing, manufacturing and importing vehicles and other equipment.¹

At the same time, there is no mention in the RIS Paper of repealing WHS requirements for heavy vehicles and have them solely covered in the HVNL. Indeed, the RIS Paper notes that “These parties would still have safety-related obligations under WHS legislation, however authorised officers under the HVNL do not have power to enforce these obligations.” GEA believes that compliance with two rule sets (even though they may mirror each other) is a recipe for over regulation and enforcement and is a missed opportunity to cut red tape.

GEA does support the NHVR having the ability to exercise powers under the HVNL (Fatigue Management, Mass, Dimension and Loading, Registration and Vehicle Standards) during a state of emergency. Moreover, this must be flexibly defined in law as a state of emergency is defined by jurisdictions in different ways and may be declared under a number of different jurisdictions laws (such as health, natural disaster). Further, a number of powers already exist for the redirection of vehicles and GEA suggests the NHVR maintain a register of these state and territory powers along with the requesting mechanism that would apply to each jurisdiction. In addition, jurisdictions should include within their legislation the ability to accept requests from the NHVR as part of an incident management team.

In closing, GEA suggests that adding more “risk-based requirements” without removing overlapping prescriptive regulations would end up increasing the burden on industry and bind transport in red tape. The new rules must recognise risk controls already imposed by other legislation and remove redundant regulation as part of the reform process. GEA urges the HVNL to recognise existing schemes and not burden industry and consumers with more compliance costs.

Yours sincerely



John Griffiths
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¹ https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0020/21629/vehicles-as-a-workplace-national-guide.pdf