

20 November 2020

Via electronic submission:

www.hvnlreview.ntc.gov.au



RE: Submission – HVNL Consultation Regulation Impact Statement

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to comment on the Heavy Vehicle National Law (HVNL) Consultation Regulation Impact Statement (RIS).

As you may be aware, SAFC is the State's peak, multi-modal freight and logistics industry group that advises all levels of government on industry related issues. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

SAFC has participated at every stage of the HVNL Review over the last year and a half – evidence of how important we take this review to be for the safe and efficient future of the trucking industry in Australia. In general, SAFC is very pleased with the directions taken in the RIS.

We understand that the NTC will be receiving submissions from many jurisdictional governments within Australia, including those that are not currently part of the NHVL. In our opinion, achieving a unified national law is one of the prime potential benefits of the review. However, if the currently non-participant jurisdictions have no intention of enacting the law post-review and amendment, their views should not be allowed to affect the law for participating jurisdictions and industry members.

SAFC has structured its response to the RIS primarily around responding to the options raised. Our full response is below.

Should you wish to discuss any element of this submission further, please feel free to contact me on (08) 8447 0664 or via email knapp.evan@safreightcouncil.com.au.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Knapp', is written over a light blue circular watermark that contains the text 'SAFC'.

Evan Knapp
Executive Officer,
SA Freight Council.

Chapter 4 - Primary Duties and Responsibility

SAFC supports option 4.1b. With regards to the additional parties listed in option 4.1b:

- 'heavy vehicle repairers' should have 'and servicing providers' added at the end. There may be facilities that conduct servicing operations but do not undertake significant repair functions – it is important that these are captured in the primary duty.
- 'Freight Forwarders' – we suggest that these would already be captured under the category of 'consignors', thus adding a specific reference to them in the HVNL or regulations would be redundant.
- Likewise, 'Stevedores' would already be captured as 'Loaders and Unloaders' of freight, as well as potentially being captured under other categories.
- It is important that 'Safety Technology Service Providers' also includes those that provide Restricted Access Vehicle (RAV) approved route mapping solutions; or that these groups are captured in another way. RAV mapping solutions that indicate what routes are legal/safe to travel on should have a responsibility to ensure that information is accurate, given the safety risks of sending an RAV down a non-approved route. Where a driver follows an e-mapping solution and is discovered to be off approved routes, the liability should be with the mapping provider.

SAFC does not support creating a separate driving duty that replicates WHS law. There is no need to complicate this matter further – simply applying the primary duty to drivers (option 4.3) addresses the issue, without creating more complexity than is necessary. There is already interplay between WHS law and the HVNL, and the associated regulators – keeping these overlaps to a minimum, where both areas of responsibility and influence are clearly defined is highly preferable.

We agree with option 4.4 – clarifying that the primary duty applies to driver competency and fitness for duty is a practical means of ensuring that these measures are considered by trucking businesses (and drivers themselves, if option 4.3 is enacted as recommended by SAFC).

Chapter 5 – Regulatory Tools

SAFC endorses option 5.1 – establishing the power to develop, vary and revoke codes of practice. In our opinion, it is important that industry is given the option to drive safety outcomes itself by developing its own codes (for approval by the government and its agencies). As such, we also support the complimentary option 5.1b.

SAFC has concerns about option 5.2 – establishing a safety standard mechanism. Despite the RIS noting 'this is not an option to allow the unilateral development of safety standards by the NHVR or other agencies', this is a very broad power that would allow the NHVR to expand its area of responsibility with only ministerial signoff. SAFC is concerned that such a power could be used to, for example, mandate the use of IAP – something that we oppose.

SAFC has no issue with the establishment of a 'remote zone' that would allow potentially different regulatory responses to the different conditions faced in these areas. However, we note:

- There is likely to be considerable argument about the positioning of the line that designates the remote zone.
- **The main benefit of introducing a remote zone is the potential to attract non-participant jurisdictions to enact the HVNL.** If they indicate they still will not participate, the value and importance of this concept/element declines.
- We expect that introducing this concept into the law, and the development of associated regulations, plus the additional consultation requirements, will delay the finalisation of the new law considerably. Again, there is potentially value in going down this path if it will attract recalcitrant jurisdictions to sign up to the 'National' law.
- Given the broad nature of the types of regulatory differences that could be enacted between the two zones, industry will want significant consultation on these options before they are enacted.

On balance, SAFC supports option 5.4. The NHVR should be able to share data related to their purpose with police agencies, and vice versa. However it should be made expressly clear that the NHVR does not gain any other powers of a 'Law Enforcement Agency' that may be conferred by any other Act of Parliament in any jurisdiction. The intention to provide access to data should not result in a wholesale unintended increase in the NHVR's powers.

Chapter 6 – Technology and Data

At the outset of this response, it must be stated that SAFC does not support the mandatory application of IAP as a requirement for access. IAP is costly, generates reports in error, and is essentially used by road managers as an asset protection tool, not to enhance safety.

On balance, SAFC supports option 6.1, providing a method for integrating new technology into the HVNL. However, This must not be used to mandate costly technologies on industry with limited benefits for industry (as opposed to benefits for government). Where possible, this element should be used to add technological options for industry (like EWDs are optional) rather than mandating whole of industry technological systems that may have significant cost.

SAFC supports 6.2a. This is common sense in a world where most records are generated and stored electronically.

In our opinion, Option 6.2b will likely result in more documents being exempt from the 48hr rule than it applies to. If the intent is to allow drivers licences to be produced within 48hrs (which we have no issue with), it may be better to make this a specific provision for this document, rather than attempting to make a broader provision and then limiting it down by exempting the vast majority of other documentation types (Work diaries, notices etc) from the provision.

Chapter 7 – Assurance & Accreditation

SAFC categorically rejects options 7.1c and 7.1d – both of which involve operator licencing.

Operator licencing favours large trucking companies and integrated logistics providers that can easily complete this complex requirement over small operators and sole traders – the vast majority of the trucking industry. It adds complexity and cost, for benefit only to the regulators, not the regulated.

The NTC will likely receive submissions from associations that represent these largest of integrated logistics providers in favour of operator licencing – this is because they believe these requirements will force smaller trucking businesses out of the industry due to the enhanced administrative burden, and/or cause them to give up due to the same. This review of the NHVL is predicated on lowering the administrative burden for industry – particularly small operators. Operator licencing represents the antithesis of this goal.

It is absolutely unacceptable for basic trucking industry requirements – access to permits for example – to be ‘gated’ behind enrolment or operator licencing.

A significant problem with both the operator licencing and enrolment options is that they won’t capture the riskiest sector – ancillary/incidental operations, where trucks are used for construction or trade purposes for example. These groups won’t enrol voluntarily (as they don’t need to access the higher-level provisions of the law, like permits); or under the mandatory proposal (as they do not generally operate RAVs – B-doubles and larger).

It is clear from the development of these options that the regulator desires a greater level of data about the ownership and use of the trucking fleet in Australia. That is a conversation worth having – but these proposals as they currently stand are unworkable, costly and fail to meet the objects of the law.

It is possible that an operator enrolment option that covers all relevant trucks (over 4.5t – both hire & reward and ancillary use), has a low administrative burden (in terms of complexity and cost), and delivers genuine safety benefits can be developed – but it is none of the 4 options presented in the RIS.

Of the Assurance options (7.2 – 7.4), SAFC supports option 7.4. There is no need for NHVAS to be the sole regulator recognised scheme, particularly where the industry-based scheme Trucksafe is widely regarded as offering a higher level of safety assurance. Industry based schemes with equal or greater levels of assurance should offer equal levels of regulatory benefit.

Information provided to SAFC by trucking operators and associations comprehensively agrees that duplicative customer audits is a major issue in terms of both time and cost. 7.4 could address this issue.

Chapter 8 – Fatigue

SAFC understands that fatigue rules have been one of the major issues that have contributed to two jurisdictions refusing to implement the NHVL. Given that many of the benefits of the initial move to nationally consistent law were predicated on full adoption nationwide, we believe that two sets of options should be prepared:

- A. The set of options preferred by participant jurisdictions, their associations and trucking companies
- B. A set of options negotiated with the non-participant jurisdictions that would see the non-participant jurisdictions join the HVNL. Option A (above) should be the negotiation starting point; but it should be clear that there will be no special jurisdiction-by-jurisdiction rules. If they refuse to join, option A (above) should be enacted, and the non-participant jurisdictions should have no further influence on deliberations.

Between Options 8.1a and 8.1b, SAFC prefers the former. 8.1a is considerably less complex than both the current system and 8.1b – noting that reducing complexity to increase compliance was a common theme across many submissions in earlier consultations on fatigue.

SAFC endorses option 8.2 – this is precisely what we recommended in the first round of consultation on fatigue. A three tiered approach, allowing operators to choose the level of fatigue management that suits their size and operations is an excellent approach.

Within the option 8.3 sub options, option 8.3b with the 4.5t definition is the best solution in our opinion. This removes all distinction between the fatigue sections of the HVNL and all other sections – treating all heavy vehicles the same. It is simple, and offers the highest level of fatigue coverage – and is therefore the safest.

Option 8.4 removes the ability to conduct roadside driver fatigue record monitoring, which seems to introduce an unacceptable level of fatigue risk; and is therefore not supported.

The case for option 8.5 – mandating electronic fatigue records – has simply not been made. It introduces guaranteed additional costs, without demonstrating guaranteed benefits. There are also practical reasons why electronic work diaries have not been wholeheartedly embraced by industry – these need to be addressed. Lastly, EWDS have only just been accepted for use in Australia – they are not a mature technology. Other options should be available.

SAFC endorses the need for a national Health Assessment Standard (option 8.6). Given our longstanding support of harmonisation – even across modes where possible – we support sub-option B that mirrors the Rail Safety National Health Standard.

If fatigue related road trauma related to heavy vehicles is to decline further, a right to stop if deemed not fit for duty is critical. Option 8.7 has our support. With this option in place, 8.8 becomes redundant other than a means of protecting a trucking company from liability if a fatigue incident occurs. It seems to take away from the general duty – as such we do not support it.

Chapter 9 – Access

As of right general access

SAFC sees significant benefit in expanding as of right general access in Australia. As such we support option 9.1a, which increases mass from current GML limits to CML (a 5% increase in mass).

We do not endorse 9.1b, as it relies on enrolment as outlined in Chapter 7. Our issues with enrolment are outlined in that section above. We also disapprove of 9.1c, as it requires the installation of IAP-like telematics systems.

Of the Access length increase options (9.1d), after consultation with our members SAFC supports option 3 – additional space for a larger sleeper cabin only. There are significant safety improvement potential benefits from enhanced sleep from this option. We believe this additional length could also be practically and reasonably used for a bull bar, which would enhance safety particularly in remote locations. We anticipate too much opposition from road managers and road authorities to make other options work, and we note that option 9.1a which we endorse would already provide additional mass (but not volume).

Introducing a package as per the above would mean that 9.1e was not required.

Efficiency of the decision-making process for access

SAFC has focussed on this aspect in a number of our previous submissions on the HVNL review and to other consultations. It has been a particularly significant issue over the lifetime of the HVNL.

The RIS options generally follow SAFC's previous suggestions, therefore we have no issue in wholeheartedly supporting them. We consider 9.2 a) and b) to be common sense approaches with no appreciable negatives – 'low hanging fruit' in the access area.

Likewise, we approve of a 'single source of truth' GIS mapping solution as proposed in c); but **reject** the requirement for enrolment as per the above. There is no need to have enrolment as a basis for improved access to information – this is an artificial linkage.

Option 9.2e is a tricky one. While third party consents can not be allowed to halt the access approvals process indefinitely, it is also important that, for example, rail level crossing issues can be taken into account.

Further, SAFC strongly disapproves of any element in the law that deems non-reply as a refusal. There MUST be an incentive for third parties to properly act within the legislated timeframes. Thus, failure to respond should constitute deemed consent.

Thus SAFC supports Option 9.2e, option 2 – with a modification so that failure to respond in 28 days is deemed to be consent. This strikes a balance between the two parties, and incentivises active consideration of the request.

As a multimodal transport association, and with some trepidation, SAFC supports Option 9.2f. In some particularly congested areas of Australia, it is necessary to work to deliver mode shift from road to rail – for example in delivery of containers to eastern states container ports. This option allows for this to occur. However, it is important that the freight can still move, that the movement is efficient etc. There must be a high level of protections (including potentially external review) to ensure this power was not being used for other purposes.

Permit timeframes and procedures

With regards to the options in this section, SAFC rejects the concept of ‘deemed refusal’. **This imbeds the concept of ‘ignore it and it will go away’ into the Law**, an obviously negative outcome.

Rather, the opposite should occur, with a ‘Deemed Approval’ (by the NHVR) occurring if the Road Manager or Road authority does not respond within statutory timeframes. Under this scenario, the NHVR should have the ability to add any reasonable restrictions to the permit to ensure the safety of the freight movement.

Importantly, reversing the ‘deemed refusal’ concept incentivises road authorities to act in the manner intended by the law – to properly consider each permit request in a reasonable timeframe. It also allows the NHVR to establish reasonable safety restrictions in the case that another approval party fails to undertake its obligations.

The NTC will be aware from many submissions made within earlier consultations that in some instances approval timeframes have gone out of control. Deemed refusal does not solve this problem, but deemed approval, backed by the NHVR having the option to add safety restrictions does.

Review of Access decisions

SAFC endorses the need for a review process for access decisions, as proposed in option 9.3b. Administrative justice principles dictate that all administrative decisions should be reviewable by an independent third party.

On balance, both options presented are workable. An independent review panel would have more expertise – but would not be independent with the inclusion of a ‘council member’ (assuming this means a ‘representative of the road manager’ (council) that made the initial decision.

Chapter 11 – Roadworthiness

SAFC endorses option 11.1. All three elements of this option are beneficial for both safety and efficiency.

This option needs to include an element that requires police forces to use the heavy vehicle inspection manual. While specialist police officers ‘know their stuff’ and operate to a high standard,

general duties police (who are 'authorised officers' under the law) operate from a low knowledge base, and need the guidance of the manual to make correct decisions.

SAFC would approve of option 11.2, only if it was guaranteed that no other/additional jurisdictional inspection schemes would apply in addition. Without this guarantee, the risk of inspection 'double up' is too high.