

Bus Australia Network: Review Consultation Regulation Impact Statement

Submitted by:
Bus Industry Confederation

Bus Australia Network



November 20, 2020

Contents

<i>Bus Australia Network: Review Consultation Regulation Impact Statement</i>	1
<i>Contents</i>	2
<i>About the Bus Industry Confederation</i>	7
Our Moving People Objectives	7
The Bus Australia Network	7
<i>Review of the HVNL</i>	8
Background	8
Timeline	8
Purpose of this submission	9
General Comments	9
<i>Responses to the Review Consultation Regulation Impact Statement (RIS)</i>	10
ITEM 3 Context and Emerging Problems with the HVNL	10
3.1: Are you aware of any other problems with the effectiveness of the HVNL that are not discussed here or in the problem statements in each of the Chapters that follow relating to the key provisions of the HVNL? If so, please explain and detail any related policy options which you think should be considered as part of the RIS.....	10
3.2: Do you have any comments, concerns or additional information relating to the impacts of the policy options outlined in section 3.9.3 which have not been assessed in detail in the Consultation RIS?	10
ITEM 4 Primary Duties and Responsibility	11
4.1: Are there other costs or benefits that we should consider in the impact assessment?.....	11
4.2: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated with the options presented in this chapter?	11
4.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.	11
4.4: What are the advantages and disadvantages of establishing a WHS-style worker duty for drivers in the HVNL? What evidence can be shown to suggest this may incentivise safer driver behaviour?.....	12
4.5: Do you consider there are any benefits that would arise from the NHVR having the ability to prosecute against a separate driver duty that substantially replicates the duty of workers under s18 of the model WHS Laws in lieu of the relevant jurisdictional WHS authorities?	12
4.6: What are the advantages and disadvantages of specifying that the primary duty covers driver competency and fitness for work? Do you consider this will be sufficient to clarify obligations under the primary duty?	12
4.7: Do you have any evidence or examples of the additional parties that would be captured under the CoR under Option 4.1 (such as vehicle manufacturers, third party repairers, stevedores, freight	

Bus Industry Confederation

forwarders, those who prepare livestock for transport, brokers and agents) currently acting in ways that are impacting on the safety of heavy vehicle transport activities? 13

4.8: Would there be any advantages or disadvantages to expanding the defined list of parties in the CoR (as per Option 4.1b) relative to expanding the application of the primary duty to parties who influence the safety transport activities (as per Option 4.1)? 13

ITEM 5 Regulatory Tools 13

5.1: Are there other costs or benefits that we should consider in the impact assessment?..... 13

5.2: Are you aware of any information or data that may assist us in quantifying the nature and scope of any potential costs or quantifying the magnitude of any of the costs or benefits associated with the options presented in this chapter? Please note we are particularly interested in receiving submissions on the impacts shaded in grey in the impact tables. 13

5.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter. 14

5.4: What would be the implications of changing the process associated with industry developed codes of practice in line with sub-option 5.1b as outlined in this chapter? Would this be beneficial relative to maintain the current arrangements? 14

5.5: Are there any other implications or unintended consequences that may arise from the NHVR becoming a law enforcement agency under the HVNL? 15

5.6: Do you consider that establishing codes of practice or safety standard mechanisms in the HVNL is likely to enable a move toward a risk-based approach to compliance and enforcement? If so why or why or not?..... 15

5.7: How effective is preventative compliance action by the regulator in improving risk management practices of operators beyond what is possible through the regulator running education campaigns? 15

5.8: Are there any unintended consequences associated with any of these options i.e. establishing codes of practice or safety standard mechanisms in the HVNL? 16

ITEM 6 Technology and Data..... 16

6.1: Is there value in an over-arching data framework and, if so, to what levels of data assurance requirements should it apply?..... 16

6.2: In relation to option 6.1, is TCA, the NHVR or another entity, best placed to take on the technology and data assurance role?..... 16

6.3: In relation to option 6.1, do the chapter 7 data handling privacy provisions provide enough clarity? Should they be expanded to cover more, wound back or be removed from the law?..... 16

6.4: In relation to option 6.1, what specific technologies would industry be expected to bring forward under this option and what would the implications be for safety and productivity?..... 16

6.5: In relation to option 6.2a, what documents would operators and drivers prefer to carry electronically? What is the current cost of carrying these documents in paper form? What do you estimate the cost to be to carry them electronically? 17

Bus Industry Confederation

6.6: In relation to option 6.2a, what do NHVR authorised officers and police require in order to access electronic information at the roadside?..... 17

6.7: In relation to option 6.2a, to what extent do industry already have the necessary equipment and systems to be able to produce electronic documentation?..... 17

6.8: In relation to option 6.2b, would operators and drivers exercise the ability to produce documents after a roadside inspection, or would this impose an additional burden? 17

6.9: In relation to option 6.2b, which documents would be appropriate to be produced in a specified period and which are required at the roadside for safety reasons? 18

6.10: Are there other costs or benefits that we should consider in the impact assessment?..... 18

6.11: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter? 18

6.12: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.: Fully developing a new assurance scheme could take a long time, even if writing it into law is relatively simple. What can we use from what we have, and how can we transition to the desired end-state?..... 18

ITEM 7: Assurance and Accreditation 18

7.1: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated with the options presented in this chapter? 18

7.2: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter..... 18

7.3. Is there additional information that the NHVR could obtain through mandatory operator enrolment or operator licensing that would enable it to better target compliance and enforcement efforts? Please outline the data that could be obtained and how it would assist with targeting compliance and enforcement activities. 19

7.4: Are there any preventative risk management actions, or safety related obligations that the NHVR could mandate to improve operator risk management (beyond NHVR education campaigns)? Could these be applied to all operators, irrespective of the context in which they operate?..... 19

7.5: Would operator licensing, with an associated ability to withdraw or cancel a licence be an effective regulatory instrument for driving compliance? Would it be more effective than relying solely on current penalties in the HVNL? 19

7.6: Would flexibility around the method for compliance through the introduction of performance-based standards which replace some prescriptive requirements within the HVNL (see section 7.2.3), be of value to industry? Would this increased flexibility introduce uncertainty about compliance for operators, the regulator or other enforcement agencies? What measures could be taken to lessen any uncertainty about compliance?..... 20

7.7: Under option 7.2 it is likely that the NHVAS AFM module would be discontinued. What costs or operational inefficiencies might result from this change?..... 20

Bus Industry Confederation

7.8: Under option 7.3 the NHVAS would be enhanced so that it better links to obligations under the primary duty and is explicitly framed around risk management roles. This is likely to require additional or revamped modules to be developed. What additional matters should be covered in the modules? 20

7.9: Options 7.3 and 7.4 remove the need for duplicative customer audits of suppliers. How significant is this problem? 21

7.10: Option 7.4 would allow multiple certification schemes to be accredited by the NHVR. What, if any, benefits do you think there would be from allowing multiple schemes to be recognised? 21

ITEM 8: Fatigue 21

8.1: Are you aware of any evidence on the significance of driver health and fitness for duty as a contributing factor to the risk of heavy vehicle crashes? 21

8.2: Do you consider this chapter accurately describes the key risks and problems associated with the management of fatigue under the HVNL? 22

8.3: Do you consider it would be beneficial to widen the scope of drivers/vehicles that are subject to the fatigue provisions? 22

8.4: Do you think that a driver self-assessment and declaration of fitness to work would be effective in encouraging drivers to self-identify when they are not fit for work? 22

8.5: Are there other costs or benefits that we should consider in the impact assessment relating to the options presented?..... 23

8.6: Are you aware of or do you have any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter? 23

8.7: Are there any unintended consequences that have not been identified with any of the policy options considered? If so, please explain..... 23

8.8: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter. 24

ITEM 9: Access..... 24

9.1: Is it reasonable to increase mass and dimension limits for general access? Under option 9.1, which sub-option would be the preferred way to increase mass and dimension limits? 24

9.2: Under sub-options 9.1a to 9.1c, how much would an increase to CML reduce to need to apply for permits?..... 24

9.3: Under sub-option 9.1c, would the benefits of CML outweigh the costs of OBM for operators? Would the data provided by OBM systems provide regulators and road managers with the right information to make investment and planning decisions? 25

9.4: Under sub-option 9.2a, what would be the costs and benefits of a precedent approach for operators and road managers? 25

9.5: Would road managers exercise the delegation power proposed in option 9.2b? Why or why not? 25

9.6: Would operators benefit and use a geospatial map as proposed in option 9.2c? What would be the costs for road managers to input the data and keep it updated? 26

Bus Industry Confederation

9.7: Under option 9.2d, which option would make it easier to adopt a risk-based approach to vehicle classification? 26

9.8: Under option 9.3a, which option would provide more transparent, quick and cost-effective decisions? 26

9.9: Under option 9.3b, which option would provide the right level of review? Would operators and road managers spend time and money seeking an external review? 27

9.10: Would the structure proposed in option 9.4 be responsive to future changes? 27

9.11: Would a single or dual-tiered pilot approach be preferred under option 9.5? 27

9.12: Are there other costs or benefits that we should consider in the impact assessment? 27

9.13: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter? 27

9.14: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter. 28

ITEM 10 Safer Vehicle Design 28

10.1: Are there any other costs or benefits that we should consider in the impact assessment? 28

10.2: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter? 29

10.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter. 29

10.4: In relation to option 10.1, do you have any comments on specific sub-elements of the option or the optimal composition of this option? 29

10.5: In relation to option 10.3, do you have any comments on how and whether the increased vehicle width option could be linked to meeting newer safety standards (e.g. side-underrun, blind spot sensors, electronic stability control and anti-lock brake systems)? 30

ITEM 11 Roadworthiness 30

11.1: Are there any other costs or benefits that we should consider in the impact assessment? 30

11.2: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter? 30

11.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter. 31

11.4: Do you have any new evidence on the effectiveness or otherwise of existing jurisdictional approaches to random and periodic vehicle inspections? 31

11.5: Are there any unintended consequences associated with any of the options identified? 31

About the Bus Industry Confederation

The Bus Industry Confederation (BIC) is an organisation uniting bus and coach operators, bus and coach chassis suppliers and manufacturers, bus and coach body manufacturers and associated suppliers and professional services. Its vision is to enhance the sustainability and liveability of Australia's cities and regions by *moving people* using bus and coach transportation. We aim to do this by representing the collective interests of our Members and to assist them in promoting the safety, efficiency and effectiveness of bus and coach transport in Australia.

Our Moving People Objectives

Encourage investment in public transport infrastructure and services.

1. Promote policies and actions that are environmentally responsible.
2. Promote the development of a viable and improved bus and coach industry in Australia.
3. Foster and promote a viable Australian bus manufacturing industry.
4. Protect the business interests of operators, manufacturers and suppliers.
5. Promote public understanding of the contribution made by the bus and coach industry to Australia's economy, society and environment.
6. Ensure the accessibility and mobility needs of Australians are met, regardless of where they live or their circumstances.
7. Promote the use of public transport as a viable alternative to the car.
8. Coordinate and make more effective existing Federal, State and Local Government policies and programs that relate to passenger transport.
9. Ensure that buses and coaches operate safely and effectively.

The Bus Australia Network

The *Bus Australia Network* (BAN) consists of the bus associations of New South Wales, Victoria, Queensland, Tasmania, South Australia and Western Australia and the federal representative body, the *Bus Industry Confederation* (BIC).

The BIC and State Association members carry more than 1.5 billion urban public transport passengers per year and makes up 5 per cent of the total urban passenger task. The coach sector of the bus industry, comprising long distance, tourist and charter operators moves more than 1.5 million domestic travellers and makes up 8 per cent of the total non-urban passenger task. The school bus is the second most popular mode for travel to school after the car with about one quarter of all school children traveling to school by bus.

The Bus Industry, which includes bus operators, bus manufacturers and parts and service suppliers, employs more than 62,000 people nationally. The BAN promotes the efficient and sustainable growth of public transport in Australia as well as the benefits of bus and coach transport.

Generally, the bus and coach industry is divided between the contracted sector (bus operators who have a contract with a relevant State or Territory Government to provide regular passenger or school bus services) and the non-contracted sector which undertakes long distance, tourist and charter services, and also non-government contract school bus services, often for private schools. In most states and territories bus and

Bus Industry Confederation

coach operators must be accredited to undertake public passenger services, irrespective of the type of bus service being provided.

There is some overlap between the two sectors of the industry. For example, some contracted bus operators also undertake charter work. The industry also includes new types of bus transport; for example, “On-Demand” bus services are currently being trialled in NSW and are included in some new contracts; and in Victoria, the industry is taking a lead with such services through the introduction of a demand responsive transport booking platform.

There is also a significant variation in the size of operators within each sector. The contracted sector can involve metropolitan operators with more than 1,000 buses through to rural operators with one school bus. Likewise, in the long distance, tourist and charter sector, there are operators with vehicle numbers ranging from one to several hundred.

Therefore, in addition to a significant difference between a truck and a bus, there are also differences within the bus and coach sector that require consideration when reviewing the HVNL.

Review of the HVNL

Background

In November 2018, Ministers (TIC) asked the National Transport Commission (NTC) to lead the review of the Heavy Vehicle National Law (HVNL) and its supporting regulations. This was in recognition that the current law, which has been in place since 2014, may not be as effective as possible.

The HVNL Review has focussed on identifying and assessing options for reforming the HVNL with the aim of developing performance-based and outcomes-focused HVNL that will:

- improve safety for all road users
- support increased economic productivity and innovation
- simplify administration and enforcement of the law
- support the use of new technologies and methods of operation, and
- provide flexible, outcome-focused compliance options.

Timeline

The review of the HVNL commenced in November 2018 with the NTC consulting with a range of regulators, heavy vehicle drivers, large and small operators, peak industry bodies, technology providers, and the wider community to get a clear and accurate picture of problems with the HVNL.

> Between March and September 2019, the NTC released seven issues papers seeking written submissions which were in turn, provided by the Bus Australia Network:

- Risk-based regulation
- Fatigue
- Access
- Safe Vehicles
- Safe People
- Assurance models and enforcement.

Bus Industry Confederation

- > HVNL Review Consultation Regulation Impact Statement (RIS) was released on 25 June 2020 with submissions required by 25 October 2020. This is phase 2 of the HVNL review and aims to test a set of policy options via the RIS, which includes over 40 reform options to improve the HVNL.

Submissions to be sent to hvnreview@ntc.gov.au.

- > The NTC intends to finalise options in a decision RIS and present to Ministers (TIC) in May 2021.

Purpose of this submission

The purpose of this submission is to provide responses to Phase 2 of the review of the HVNL as set out in the RIS. Phase 2 aims to test a set of policy options, including over 40 reform options, to improve the HVNL.

Queries or feedback relating to this submission can be directed to Mr Michael Apps, Executive Director- Bus Industry Confederation, P: 02 6247 5990 E: enquiries@bic.asn.au.

General Comments

1. The HVNL should recognise that one size does not fit all when it comes to HV law – different sectors have different needs. HVNL needs to recognise the difference between truck and bus and the task undertaken including technical issues with vehicles and contracted operations – including specific recognition of existing national minimum safety standards for accreditation for buses and coaches.
2. The HVNL needs to have a stronger performance and risk-based approach, that provides operational flexibility, is less prescriptive and offers performance based /alternative compliance approaches for operators to meet the law. This should include incentives to do so and recognise good compliance performance. This should include greater acceptance of technology as a compliance tool. The HVNL should not prescribe the technology, only the compliance performance outcome, and establish an appropriate alternative compliance enforcement regime that allows on road enforcement resources to be better targeted and for good operators to get on with the job.
3. The HVNL maintenance group is unnecessary. The law should be allowed to work and not be under constant scrutiny and review (generally by jurisdictions). Where there are issues raised or problems, due to things like idiosyncratic industry operational needs or state differences, this would be better dealt with through the NHVR and specific regulations. The HVNL maintenance group is a contributing factor to promulgating state-by-state HV laws and undermining national uniformity.
4. The HVNL should be considered, when it comes to buses, in the context of the future passenger task and future impacts on the task such as population growth, congestion, automation and the efficient functioning, for example, of cities and the transport network, and not in isolation of these broader societal outcomes.
5. The HVNL should become more focussed on the use of technology to manage legal access by different productive vehicles using the road network – the current arrangements are inadequate in managing and monitoring access.
6. A PBS system for buses is required. The current PBS system is not suitable for buses, limits productivity for buses, and adds costs because it is based on “old school paradigms” about infrastructure, safety, environment rather than an approach that focusses on productivity and positive societal outcomes that passenger transport can deliver.
7. Existing exemptions to the HVNL should be retained and only reviewed in the context of adoption nationally as part of the HVNL review. Plus, there needs to be an audit of all current exemptions to ensure that all are correctly captured.

Responses to the Review Consultation Regulation Impact Statement (RIS) for Heavy Vehicle National Law

ITEM 3 Context and Emerging Problems with the HVNL

This section responds to questions to stakeholders in the RIS relating to *Item 3 - Context and emerging problems with the HVNL*.

3.1: Are you aware of any other problems with the effectiveness of the HVNL that are not discussed here or in the problem statements in each of the Chapters that follow relating to the key provisions of the HVNL? If so, please explain and detail any related policy options which you think should be considered as part of the RIS.

The HVNL currently covers both road freight transport and passenger transport. The HVNL RIS is clearly written to address issues, primarily within the truck and freight industry. The bus and coach industry is rarely mentioned in the RIS outside of the Fatigue chapter (Chapter 8).

Existing state-based legislation that pertains to bus and coach operators, drivers and suppliers via legislation around Australia, supports many of the overriding principles that the authors of the RIS believe should apply to the revised HVNL, for example:

- a law that targets the most significant risks associated with heavy vehicle operations – existing state-based bus operator laws include specific requirements and control for driver health monitoring, drug and alcohol consumption, runaway buses, etc.
- encouraging operators to take the burden of risk management – existing state-based bus operator laws are risk management-based requiring operators to develop safety management systems and drug and alcohol programs specific to their operations.

The HVNL needs to recognise this extensive regulation that already applies to bus and coach operators in different states around Australia. It is important that the new HVNL be broad enough to recognise such legislation, or it runs the risk of imposing different but comparable regulations on an already heavily regulated sector.

3.2: Do you have any comments, concerns or additional information relating to the impacts of the policy options outlined in section 3.9.3 which have not been assessed in detail in the Consultation RIS?

The BAN understands the reasons for excluding from the scope of the RIS issues such as environmental standards and ADRs, however we believe that a blanket exclusion of mutual recognition in terms of existing bus accreditation and regulation, is short-sighted. As outlined in the answer provided to Item 3.1, many of the principles identified in the RIS for the new HVNL are already present in legislation that pertains to a specific sector of the heavy vehicle industry, namely the bus and coach sector. Recognition of bus operator accreditation schemes in the new HVNL would greatly reduce the level of legal duplication and red tape faced by this sector.

However, if this is not possible and the HVNL is unable to recognise such schemes, it is vital that the Law be framed in a “principles based” manner that is broad enough to enable a bus operator’s compliance with specific bus-related regulations to result in compliance with the HVNL.

ITEM 4 Primary Duties and Responsibility

This section responds to questions to stakeholders in the RIS relating to *Item 4 – Primary duties and responsibility*.

4.1: Are there other costs or benefits that we should consider in the impact assessment?

Prior to any changes being made to the HVNL, the impacts of imposing any new requirements, particularly any additional general duties of safety on bus or coach drivers, to ensure that there is no duplication of requirements or the need for such industry participants to meet different requirements in respect of the same risks. A comprehensive set of requirements already exist in the bus and coach industry on such participants, particularly safety requirements under state law – for example, bus safety laws.

4.2: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated with the options presented in this chapter?

In terms of Option 4.4 (RIS) – “Amending the primary duty in the HVNL to clarify driver competency and driver fitness for work”, these two specific obligations are already part of the legislative framework for bus drivers in most Australian states. For example, in order to drive a bus, drivers require specific accreditation in addition to a heavy vehicle licence. As a condition of obtaining bus driver accreditation, drivers must pass a medical examination for a commercial driver and undertake a training course (additional to a driving test) to ensure competency in the duties of a bus driver. Applicants are often required to provide a national criminal history check for the transport authority to determine if they are a fit and proper person.

Given that these obligations have been present within the bus industry for some time, it is likely that the relevant state transport authorities (e.g. Transport for NSW and Transport Safety Victoria) would have data on the costs associated with introducing such obligations to the broader heavy vehicle industry.

However, if the HVNL were to impose additional or separate requirements then the cost is projected to be extensive.

4.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

The HVNL needs to be able to recognise the existing and extensive regulation requirements applying to the bus and coach industry around Australia. At present, the HVNL and the RIS are very truck and freight centric. There are already specific duties in regard to safety for a whole range of bus and coach industry participants, including but not limited to bus operators and drivers (e.g. the Bus Safety Act (Vic) and the Passenger Transport Act (NSW)). This is in addition to the more general duties located in workplace health and safety law.

Prior to any changes to the HVNL that may impact on the bus and coach sector, the current safety duties found in state-based transport safety legislation need to be examined in order to avoid duplicating existing requirements or introducing new requirements for the same subject matter.

Bus Industry Confederation

4.4: What are the advantages and disadvantages of establishing a WHS-style worker duty for drivers in the HVNL? What evidence can be shown to suggest this may incentivise safer driver behaviour?

The BAN believes that there would be little benefit to developing a general WHS style duty of care for drivers in the HVNL. We consider that such a broad duty would mean little to drivers and would certainly not influence driver behaviour.

For that reason, the BAN prefers limited but specific duties for drivers, such as duties relating to competence and fitness for duty, on the proviso that such duties do not compromise or override the specific obligations of this type that apply in bus safety legislation in all Australian states and territories (refer Q6 below).

4.5: Do you consider there are any benefits that would arise from the NHVR having the ability to prosecute against a separate driver duty that substantially replicates the duty of workers under s18 of the model WHS Laws in lieu of the relevant jurisdictional WHS authorities?

As per our response to Item 4.4, we do not see any benefits in a broad and general WHS-style duty for drivers under the HVNL.

4.6: What are the advantages and disadvantages of specifying that the primary duty covers driver competency and fitness for work? Do you consider this will be sufficient to clarify obligations under the primary duty?

Unlike vague and general safety obligations, the BAN believes that specific enforceable safety duties e.g. for driver competency and fitness for work are more likely to succeed. As mentioned above, such specific obligations for bus drivers have been in force for many years. These are found in the bus safety legislation in most states.

The examples provided in the RIS (p.39) for “driver behaviours that might be affected by a driver safety duty” are all specifically covered in the bus safety legislation. Using NSW as an example, the following issues are regulated under the state Passenger Transport (General) Regulation 2017:

Safety Issue	PT Regulation (NSW)	Duty
Driver Competency:	Clause 43	Bus drivers must undertake prescribed training course
Safe Load Management	Clause 94	Bus driver must not overload bus
Fitness for duty:	Clause 47	Driver must undertake medical assessment and advise TfNSW of any change in their physical or mental condition that would affect their fitness to drive.
Drive safely according to road conditions	Clause 40	Driver must move and drive vehicles carefully

The BAN considers that *specific duties for drivers* are clearer and therefore more effective for heavy vehicle drivers, however the BAN is concerned that any new duties created in the revised HVNL do not conflict with similar laws already enacted for passenger transport drivers in all states.

Bus Industry Confederation

4.7: Do you have any evidence or examples of the additional parties that would be captured under the CoR under Option 4.1 (such as vehicle manufacturers, third party repairers, stevedores, freight forwarders, those who prepare livestock for transport, brokers and agents) currently acting in ways that are impacting on the safety of heavy vehicle transport activities?

The HVNL and, particularly the Chain of Responsibility provisions, have been drafted with the freight/trucking sector in mind. Parties such as prime contractors, consignors, consignees, packers, loading managers, loaders and unloaders, have little relevance in the bus sector context. Likewise, new parties identified in the RIS such as stevedores, freight forwarders, brokers and agents, have little relevance.

Beyond bus operators and drivers, state governments as purchasers of passenger transport services, could be considered a party in CoR. Similarly, charter customers such as teachers, event organisers, and others who book charter services could be considered as the consignor (or the sender in our industry is the person who makes the booking).

While manufacturers and third-party repairers are of relevance to the sector, the BAN believes there is little merit in specifically identifying such parties in the HVNL. Such parties are already liable for any damage/injury caused by their action/inaction/negligence via civil liability and consumer law. Such matters are also the subject of specific contractual arrangements between the bus operator and the manufacturer/repairer. Furthermore, manufacturers and third-party repairers are required to comply with the ADR's and existing codes.

4.8: Would there be any advantages or disadvantages to expanding the defined list of parties in the CoR (as per Option 4.1b) relative to expanding the application of the primary duty to parties who influence the safety transport activities (as per Option 4.1)?

If parties with liability are to be expanded in the HVNL (beyond drivers), the BAN considers that a more general coverage, such as that advocated in Option 4.1 (RIS) is preferred to specifically defining each party as per Option 4.1b (RIS).

As mentioned in answers provided to Item 4.7, parties such as stevedores, freight forwarders, freight brokers, have little relevance in the bus context, and including such bodies in the HVNL would only make the law less relevant and comprehensible to bus operators and drivers than it is at the present time. A more general concept such as "parties who influence heavy vehicle transport activities" would therefore be preferred.

ITEM 5 Regulatory Tools

This section responds to questions to stakeholders in the RIS relating to *Item 5 - Regulatory Tools*.

5.1: Are there other costs or benefits that we should consider in the impact assessment?

No.

5.2: Are you aware of any information or data that may assist us in quantifying the nature and scope of any potential costs or quantifying the magnitude of any of the costs or benefits associated with the options presented in this chapter? Please note we are particularly interested in receiving submissions on the impacts shaded in grey in the impact tables.

As previously outlined, the bus and coach sector of the industry is subject to extensive regulation and reporting requirements by state transport agencies such as Transport for NSW and Transport Safety Victoria. Such data includes:

Bus Industry Confederation

- **the bus incident database** (which captures a wide range of incidents whether or not these result in an accident)
- **drug and alcohol test results** (including positive confirmatory drug and alcohol tests and any refusals to test)
- **detailed reports and data on all serious incidents** (e.g. fatalities and bus fires)
- **bus operator accreditation audits and operator non-compliances.** In NSW, these audits are undertaken every three years by an independent auditor. In Victoria, Transport Safety Victoria's field audits occur typically every one and a half to two years, and since late 2016 have been weighted in frequency by safety performance. In Tasmania, operator accreditation audits are undertaken every three years by approved transport accreditation auditors
- **bus defects** - imposed as part of the twice-yearly heavy vehicle inspections that must be undertaken by buses and coaches in NSW, and once a year in Victoria, with an additional quarterly mechanical inspection. In Tasmania, buses are inspected every twelve months for vehicles less than 16 years of age and twice yearly for vehicles that are greater than 15 years of age
- **vehicle movements tracking** from the Public Transport Information and Priority System (PTIPS) which is a computer-based system that brings together information from the tracking of buses in NSW.

This type of data is available from Transport for NSW, Transport Safety Victoria and Public Transport Victoria, and related agencies in other states. In respect of defects, information is available from VicRoads and Transport Safety Victoria, but also Road Safety Inspections Pty Ltd, which is a private inspection body operated by the Victorian bus industry.

5.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

The truck and freight industry does not have a requirement for mandatory annual roadworthy inspections in all states. In addition, trucks generally have internally sourced inspections, whereas buses and coaches have external independent inspections. The data suggests that this probably contributes to higher accident and fatality rates for the truck and freight industry.

As a result, the BAN considers that significant improvements in safety could be achieved by independent annual roadworthiness inspections, as witnessed by the significant safety gains in the bus and coach industry since inspections began. We believe that a standard Code of Practice should be developed outlining the process for independent annual roadworthy inspections. This requirement should apply to all heavy vehicles.

5.4: What would be the implications of changing the process associated with industry developed codes of practice in line with sub-option 5.1b as outlined in this chapter? Would this be beneficial relative to maintain the current arrangements?

The BAN supports the process outlined in sub-option 5b whereby industry developed code of practices could be received by the NHVR for formal consultation and Ministerial sign-off.

Such a process could potentially allow industry to "mould" the obligations in the HVNL, which are generally truck and freight focussed, into the context of the bus and coach operations which are not broadly understood outside the sector.

Bus Industry Confederation

5.5: Are there any other implications or unintended consequences that may arise from the NHVR becoming a law enforcement agency under the HVNL?

The BAN is supportive of NHVR becoming a law enforcement agency in order to improve the data flowing to it from the states and territories, however its powers need to be constrained to purposes related to the administration of the HVNL.

If the NHVR has greater access to data, it will need to ensure that it appropriately manages the risks of obtaining and managing such data, including the risk of unauthorised access to privileged or restricted information, data leaks, misuse of information by agency personnel, privacy concerns, and improper or illegal access to such data.

5.6: Do you consider that establishing codes of practice or safety standard mechanisms in the HVNL is likely to enable a move toward a risk-based approach to compliance and enforcement? If so why or why or not?

The BAN agrees that establishing codes of practice or safety standard mechanisms in the HVNL will help enable a move toward a risk-based approach to compliance and enforcement.

As outlined in Item 4, the risks and obligations currently outlined in the HVNL do not accurately reflect those in the bus and coach industry. For example, the responsible parties in the chain of responsibility under the HVNL, such as consigners and consignees, packers, loading managers, loaders and unloaders, are irrelevant to the bus and coach industry where the operator (who is also the employer) transports passengers from Point A to Point B. There are generally no consigners and consignees, packers, loading managers, loaders and unloaders, etc. involved in the task. Similarly, the heavy vehicle operating task outlined in the Law which involves loading, unloading, restraining a load, etc is not relevant to buses and coaches where the operating task is to carry passengers.

Many of the hazards and safety factors in transporting passengers are quite different from the freight task. For example, the personal health of drivers, drug effected passengers and violence and abuse, are not currently dealt with in the HVNL. For this reason, for many years state-based passenger transport regulatory requirements have existed outside the scope of the HVNL.

A move to industry standards and codes of practice would allow the HVNL to more accurately reflect the risks found in one sector of the heavy vehicle industry, which may be absent in others.

The BIC already has an extensive list of industry codes or *Advisories* on a range of safety, technical and operational issues. These can be downloaded from the BIC website: www.ozebus.com.au. It should be noted that the process used to develop these *Advisories* includes review and or active input, from both state and national regulators.

5.7: How effective is preventative compliance action by the regulator in improving risk management practices of operators beyond what is possible through the regulator running education campaigns?

The BAN considers that preventative compliance action by the regulator can improve the risk management practices of operators. This is something that has been happening for many years in the bus and coach sector. For example, bus and coach operators are required to have management information systems and vehicle maintenance management systems, and such requirements are independently audited on a regular basis. This has given rise to an excellent safety record within the bus and coach industry, compared to other heavy vehicle sectors.

Bus Industry Confederation

Similarly, as outlined in Item 5.3, the BAN is supportive, as a preventative compliance strategy, of introducing mandatory annual roadworthy inspections (which have been in place in the bus and coach sector for many years), to the truck and freight sector in all States.

5.8: Are there any unintended consequences associated with any of these options i.e. establishing codes of practice or safety standard mechanisms in the HVNL?

As has been outlined in our responses throughout the RIS, the bus and coach industry is heavily regulated at the state level, outside the HVNL.

If Codes and Standards are to be developed as part of the HVNL, it is imperative that the NHVR consults both with the BAN and with the state government agencies that administer transport laws. Furthermore, existing BAN codes and advisories need to be considered as part of any such process. This will help to minimise the risks of duplicating requirements or overregulating a particular risk.

ITEM 6 Technology and Data

This section responds to questions to stakeholders in the RIS relating to *Item 6 – Technology and data*.

6.1: Is there value in an over-arching data framework and, if so, to what levels of data assurance requirements should it apply?

The BAN believes that there is value in an over-arching data framework. We consider that data needs to be assured to the extent that its collection, use and disclosure is consistent with the Australian privacy principles, otherwise, assurance will be needed to the level required by the entity that is considering the data for its purposes, i.e., a court dealing with a prosecution of an offender.

6.2: In relation to option 6.1, is TCA, the NHVR or another entity, best placed to take on the technology and data assurance role?

This role in the bus and coach industry is filled by the operator. Operators have various legislatively based safety obligations, however currently it is up to the operator as to how they decide to demonstrate compliance with those requirements. It may include technology options, but it is the operator who is responsible.

Without more information, any proposal to have an entity taking the role of the operator in this space would escalate compliance costs, for little benefit to the bus and coach industry.

6.3: In relation to option 6.1, do the chapter 7 data handling privacy provisions provide enough clarity? Should they be expanded to cover more, wound back or be removed from the law?

The BAN believes that the detailed privacy provisions will suffice.

6.4: In relation to option 6.1, what specific technologies would industry be expected to bring forward under this option and what would the implications be for safety and productivity?

There is a range of existing technology which could also be accommodated. In some jurisdictions, for example, coaches are required to be fitted with Vehicle Monitoring Devices (VMDs), with employers required to maintain detailed VMD records. These records are far broader than Work Diaries and record:

- lengths of time the vehicle is moving and stationary during a journey
- speeds at which the vehicle is driven
- distance the vehicle travels between stops

Bus Industry Confederation

- time, date and place of starting and finishing a journey
- driver's details and the vehicle's identification.

Despite this level of detail, drivers of coaches with VMDs fitted must still maintain Work Diaries. It is important that specific technologies are not prescribed in the HVNL, rather the legislation should simply define the outcomes to be achieved by the technology. This would leave it to individual operators to determine the technology needed to comply with the prescribed outcomes.

6.5: In relation to option 6.2a, what documents would operators and drivers prefer to carry electronically? What is the current cost of carrying these documents in paper form? What do you estimate the cost to be to carry them electronically?

Subject to an appropriate transition period, all documents should be electronic as far as possible. Notwithstanding that principle, most electronic records in the bus and coach sector are produced and stored at the depot/office (see Item 8). For this reason, Option 6.2b (RIS) - where records are provided at a later date - are more likely to be utilised by the bus and coach sector than Option 6.2a (RIS) which relies on immediate electronic records to be present.

6.6: In relation to option 6.2a, what do NHVR authorised officers and police require in order to access electronic information at the roadside?

NHVR authorised officers and police would need the appropriate legislative authority, and the technology to read any electronic information available at the roadside.

6.7: In relation to option 6.2a, to what extent do industry already have the necessary equipment and systems to be able to produce electronic documentation?

In the bus and coach industry, only a minority of operators would have the necessary equipment to produce electronic records during roadside inspections. Rather, most electronic records in the bus and coach sector are produced and stored at the depot/office (see Item 8). For this reason, Option 6.2b (RIS) - where records are provided at a later date - is more likely to be utilised by the bus and coach sector than Option 6.2a (RIS) which relies on immediate electronic records to be available from the driver.

6.8: In relation to option 6.2b, would operators and drivers exercise the ability to produce documents after a roadside inspection, or would this impose an additional burden?

We would expect that the regulator would be asking an operator to provide documentation, that would not normally be carried by a driver, within the prescribed time. For example, in some jurisdictions, coaches are required to be fitted with Vehicle Monitoring Devices (VMDs), with employers required to maintain detailed VMD records. These records are far broader than Work Diaries and record:

- The lengths of time the vehicle is moving and stationary during a journey
- The speeds at which the vehicle is driven
- The distance the vehicle travels between stops
- The time, date and place of starting and finishing a journey
- The driver's details and the vehicle's identification.

Despite this level of detail, drivers of coaches with VMD's fitted must still maintain Work Diaries. These are the type of records that could be submitted in place of the driver carrying a Work Diary.

Similarly, Bus operators undertaking "regular passenger services" (i.e. regular route and school services) in some states are required as a condition of their accreditation to develop and maintain (for periods of up to

Bus Industry Confederation

5 years) detailed records of all drivers' shifts and rosters. These records go further than the Work Diary records kept by drivers under the HVNL. Such records could potentially be substituted for bus and coach drivers completing Work Diaries.

The important point for the HVNL is that such electronic documentation should be an alternative to (rather than a substitution for) the provision of written documentation.

6.9: In relation to option 6.2b, which documents would be appropriate to be produced in a specified period and which are required at the roadside for safety reasons?

All required regulatory compliance documents for bus and coach are normally stored at the depot/office. This would include timetable and roster information, and Vehicle Monitoring Device information that could be produced as an alternative to work diary records for example.

6.10: Are there other costs or benefits that we should consider in the impact assessment?

The bus and coach industry is already a highly regulated part of the heavy vehicle sector, and some of the options canvassed may impose additional costs or duplication with little additional benefit.

6.11: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter?

We are not aware of such data, however Transport Safety Victoria, Transport for NSW and other state-based transport agencies (who administer bus and coach safety) may be able to provide data in regard to the costs and safety benefits of the proposed options.

6.12: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.: Fully developing a new assurance scheme could take a long time, even if writing it into law is relatively simple. What can we use from what we have, and how can we transition to the desired end-state?

No.

ITEM 7: Assurance and Accreditation

This section responds to questions to stakeholders in the RIS relating to *Item 8 - Fatigue*.

7.1: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated with the options presented in this chapter?

The BAN is not aware of any data that would assist the NHVR to quantify the costs or benefits of the various options outlined in Chapter 7 of the RIS. However, both NSW and Victoria have existing bus safety accreditation schemes and the state transport agencies responsible for administering these schemes may be able to provide data on the costs and safety benefits of proposed options.

7.2: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

The BAN considers that the RIS generally outlines reform options for the National Heavy Vehicle Accreditation Scheme (NHVAS). However, in terms of Option 7.4 (RIS), it is essential that the NHVAS does

Bus Industry Confederation

not become a “closed shop”, open only to “truck-based” accreditation schemes such as TruckSafe and the Western Australian Heavy Vehicle Accreditation Scheme (WAHVAS).

Rather, state and sector-based accreditation schemes, such as bus operator accreditation schemes, that meet the required performance-based standards, should be able to be accredited by the NHVR.

7.3. Is there additional information that the NHVR could obtain through mandatory operator enrolment or operator licensing that would enable it to better target compliance and enforcement efforts? Please outline the data that could be obtained and how it would assist with targeting compliance and enforcement activities.

The bus and coach industry is arguably the most heavily regulated sector in the heavy vehicle industry, with detailed records kept on operators and their vehicles by all state transport regulators. By way of example, the regulator in some states keeps detailed data on safety incidents by category, injury, operator size, location, etc. In NSW, data is available on independent accreditation audit results and heavy vehicle compliance which includes notices issued, compliance rates, defect fault types and mechanical maintenance issues.

There is therefore unlikely to be additional information that the NHVR could obtain through mandatory operator enrolment or licensing that is not already available via the state regulators. This also reinforces the argument against mandatory operator accreditation which already occurs for bus and coach operators via state-based bus operator accreditation schemes. The only exception here would be if these state bus accreditation schemes were recognised as NHVAS compliant.

7.4: Are there any preventative risk management actions, or safety related obligations that the NHVR could mandate to improve operator risk management (beyond NHVR education campaigns)? Could these be applied to all operators, irrespective of the context in which they operate?

As outlined above, the bus and coach industry is already a heavily regulated sector and a range of risk management-type requirements currently exist in state legislation. These include (but are not limited to) driver fitness for work, vehicle maintenance, driver competence and training, incident and emergency management and other safety management requirements. These may provide a template if the NHVR is seeking to improve operator risk management.

The BAN considers that assurance schemes of this type must be voluntary (Option 7.1 of RIS) and should not be applied to operators, particularly small operators, irrespective of their operational context. This is particularly important in the bus and coach sector which already has mandatory state-based bus operator accreditation schemes. The only exception here would be if these state bus accreditation schemes were recognised as NHVAS compliant.

7.5: Would operator licensing, with an associated ability to withdraw or cancel a licence be an effective regulatory instrument for driving compliance? Would it be more effective than relying solely on current penalties in the HVNL?

The BAN generally supports the introduction of performance-based standards to replace some prescriptive requirements within the HVNL (as per 7.3.2 in the RIS). However, if an assurance scheme is introduced, it should be fully voluntary.

Government licensing should be an absolute last resort. The HVNL should not add another layer of regulation to that already in place for the bus industry under state regimes such as those in Victoria and NSW.

HVNL should not multi-layer assurance but rather should act to harmonise assurance between state regulators.

Bus Industry Confederation

7.6: Would flexibility around the method for compliance through the introduction of performance-based standards which replace some prescriptive requirements within the HVNL (see section 7.2.3), be of value to industry? Would this increased flexibility introduce uncertainty about compliance for operators, the regulator or other enforcement agencies? What measures could be taken to lessen any uncertainty about compliance?

The BAN supports the introduction of performance-based standards to replace some prescriptive requirements within the HVNL. The HVNL needs to have a stronger performance and risk-based approach, that provides operational flexibility, is less prescriptive and offers performance based/alternative compliance approaches for operators to meet the law. This needs to include incentives for operators and to recognise good performance via an alternative compliance enforcement regime. This would allow on-road enforcement resources to be better targeted and complying operators to get on with the job.

Equally however, the HVNL needs to recognise that one size does not fit all, and that different sectors of industry have different needs. For example, some small rural bus operators with minimal resources to develop a systems-based approach, are more likely to prefer prescriptive heavy vehicle legislation that is easy to understand and implement; their attitude is: “tell me what I need to do to comply, and I will meet that requirement”.

In summary, the new HVNL needs to promote a performance-based approach to compliance for larger or more sophisticated businesses, while retaining the option of prescriptive legislation for smaller and less complex businesses.

7.7: Under option 7.2 it is likely that the NHVAS AFM module would be discontinued. What costs or operational inefficiencies might result from this change?

AFM accreditation is currently utilised by a small number of bus operators in the rail replacement area, where NightRide buses replace trains from midnight to 5am.

The industry may also utilise AFM for certain coach charters. For example, a week-long school band trip which departs 8.00 am Saturday morning and arrives at the accommodation by 16.30 pm in a regional city, with departures from the accommodation around 9.30 am for a lunch time concert, returning by 15.30 pm except for two nights with evening concerts. In this scenario, the driver has most of each day off, however because they do not arrive at their accommodation until 23:00 pm on the two nights of the concert, they are prevented from the return trip on the Saturday morning. While not fatigued, the driver can only comply with this scenario via AFM.

This AFM accreditation is expensive and largely duplicates accreditation requirements in bus-specific accreditation schemes.

Provided that NightRide and other buses which operate unusual hours (such as the scenario above) can operate under an appropriate work and rest hours regime, the BAN would be in favour of discontinuing AFM accreditation.

7.8: Under option 7.3 the NHVAS would be enhanced so that it better links to obligations under the primary duty and is explicitly framed around risk management roles. This is likely to require additional or revamped modules to be developed. What additional matters should be covered in the modules?

As outlined in Item 7.4, the bus operator accreditation schemes in states like NSW and Victoria could provide a sound basis for the minimum standards of a future NHVAS. Those schemes include (but are not limited to) modules on driver fitness for work, vehicle maintenance, driver competence and training, incident and emergency management, drug and alcohol, and safety management.

Bus Industry Confederation

However, the BAN strongly supports the option outlined in 7.3.3 (RIS) whereby the NHVAS would consist simply of a minimum set of performance-based standards, and that, rather than accrediting operators (as at present under the NHVAS), the NHVR would simply be responsible for accrediting certification schemes that meet these broad standards. NHVR accreditation should be open to state bus accreditation schemes which meet, and in many cases exceed, standards under the NHVAS.

It is imperative that the situation be avoided where a new performance-based NHVAS duplicates, rather than recognises, existing bus accreditation and performance-based regimes.

7.9: Options 7.3 and 7.4 remove the need for duplicative customer audits of suppliers. How significant is this problem?

Customer-based audits of operators have not been an issue in the bus and coach industry. The approach has, rather, been a “top down” approach with a range of safety requirements imposed and enforced by state regulators.

This has changed slightly with the advent (and publicity) of Chain of Responsibility legislation. In recent times, customers, including government agencies, have asked operators for evidence of compliance with safety obligations under CoR, even when operators hold state-based safety accreditation. This has also resulted in bus operators needing to audit fellow operators they use as sub-contractors even though these operators hold state-based accreditation.

It can be difficult for operators to explain how their state-based safety systems reference national CoR responsibilities. Hence, any national performance-based scheme that recognises these state accreditation schemes would be welcomed by the industry.

7.10: Option 7.4 would allow multiple certification schemes to be accredited by the NHVR. What, if any, benefits do you think there would be from allowing multiple schemes to be recognised?

As outlined above, the bus industry supports the NHVR accreditation of state-based bus accreditation schemes. Bus operators are sometimes forced into NHVAS accreditation because the national regulator does not recognise broader and more stringent state performance-based schemes. This has been the case in regard to fatigue where operators are required to be accredited and audited under both state and national accreditation schemes.

The recognition of multiple schemes by the NHVR would therefore lead to reduced time, costs and red tape for Australian bus operators.

ITEM 8: Fatigue

This section responds to questions to stakeholders in the RIS relating to *Item 8 - Fatigue*.

8.1: Are you aware of any evidence on the significance of driver health and fitness for duty as a contributing factor to the risk of heavy vehicle crashes?

The bus and coach sector is one of the most highly regulated in the heavy vehicle industry. Generally, this regulation occurs via state-based transport legislation rather than HVNL. As part of their regulatory functions, transport agencies in many jurisdictions require incident reporting by bus and coach operators, including driver medical conditions and “driver incapacity” that result in vehicle accidents. These agencies (for example Transport for NSW or Transport Safety Victoria) would be able to provide evidence on the significance of driver health and fitness for duty as a contributing factor to the risk of bus and coach accidents.

Bus Industry Confederation

8.2: Do you consider this chapter accurately describes the key risks and problems associated with the management of fatigue under the HVNL?

Yes, however the focus of the chapter is truck and freight-centric. Further consultation with the bus and coach industry is required to identify the specific issues with fatigue relevant to our sector, particularly with the low take-up of BFM and AFM by bus operators.

8.3: Do you consider it would be beneficial to widen the scope of drivers/vehicles that are subject to the fatigue provisions?

The BAN would be opposed to the extension of vehicles (i.e. buses under 4.5 tonnes) that are subject to fatigue regulations on the basis that this is likely to increase the regulatory impost for little safety benefit and would simply capture a wider range of vehicles with low-risk fatigue options. As such, the BAN is not in favour of options 8.3(b) and (c) in the RIS Paper.

The BAN is more supportive of targeting fatigue compliance to higher-risk drivers, specifically those who work more than 60 hours a week; or who regularly work more than 10 hours in a 24 hour period, or during midnight to 5am.

Our support for this Option 8.3a (RIS) is on the same basis as our lack of support for 8.3(b) and (c); namely, that it focuses fatigue management by operators and fatigue enforcement by regulators on those parties who present a higher potential risk than the majority of operators/drivers with a low fatigue risk.

8.4: Do you think that a driver self-assessment and declaration of fitness to work would be effective in encouraging drivers to self-identify when they are not fit for work?

The BAN considers that a declaration of fitness by drivers (Option 8.8 of RIS) would have very little safety benefit. In some jurisdictions, bus and coach drivers are already required to report changes in their medical condition to either their employer or the state transport regulator. There is anecdotal evidence that some drivers do not report such changes.

Similarly, drivers are highly unlikely to self-identify under the HVNL and risk losing work. We consider that such an option would simply add to the fatigue paperwork needing to be managed by operators, which is already considerable.

Equally however, the BAN believes that driver medical assessments are an important part of the heavy vehicle safety equation and would support the introduction of assessments into the overall fatigue mix. The bus and coach industry already has regular medical assessments linked to bus driver authorisation in some states.

It is important that any health assessment process introduced by the NHVR be compatible with the current bus driver medical assessment standards i.e. Ausroads/NTC Assessing Fitness to Drive for Commercial and Private Vehicle Drivers. For example, bus driver accreditation in NSW has a life of three years and requires passing a formal medical assessment for accreditation renewal. If the driver is over 65 years of age or has a special medical condition (e.g. diabetes) an annual medical assessment and clearance by a medical specialist is required. In that respect, reducing the age of annual medical assessments to 50 years (Option 8.6 of RIS), in place of the current 65 years, would add another layer of bureaucracy and complexity to the current requirements.

Bus Industry Confederation

8.5: Are there other costs or benefits that we should consider in the impact assessment relating to the options presented?

As pointed out in the RIS (8.2.1) the current fatigue regulations do not account for the operating environments of different heavy vehicle sectors. This is certainly the case in relation to the bus and coach industry. Many bus drivers throughout Australia work timetabled shifts and in accordance with rosters. These rosters are generally generated by computer programs that consider the current fatigue standards.

Roster and shift records are also maintained by the bus company, making the need for the driver to carry a Work Diary largely redundant. We would therefore support the recommendation to move away from on-road enforcement via Work Diaries to an audit type approach directed at higher risk operators.

The basic flaw in the current HVNL is the inability of the law or the regulator to utilise the electronic recording systems used by bus and coach operators and other industry sectors. The look or shape of these systems is largely irrelevant, provided that the electronic systems:

- record driver's work and rest times
- are maintained in a systematic manner for a relevant time period; and
- can be provided to the NHVR or police on request.

The HVNL needs to be drafted to accommodate technological change and better ways of managing fatigue. This means a law that sets fatigue management goals and parameters, with more flexibility on how work and rest hours are recorded.

Equally, however, the BAN opposes the mandating of electronic records (8.4.3). Many smaller operators, particularly in rural and regional Australia, lack the resources and sophistication to implement electronic systems. It is important that manual records be legally retained for such operators, whether this be written rosters and schedules or Work Diaries.

8.6: Are you aware of or do you have any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter?

No.

8.7: Are there any unintended consequences that have not been identified with any of the policy options considered? If so, please explain.

The BAN is alarmed that the NTC is considering a reduction in the maximum driving time to 4 hours from the current 5 hours 15 minutes (Option 8.1(a) of RIS) supposedly to make counting time simpler. Bus drivers throughout Australia work timetabled shifts and in accordance with rosters. Many of these shifts extend beyond 4 hours, making the 4-hour limit outlined in the RIS paper unworkable.

A change to work and rest hours which impacts the efficiency of driver shifts and rosters could have a significant financial impact on the industry. Most timetabled regular passenger services are subsidised by state governments and this type of change to minimum driving hours would increase the funding required to provide bus services.

Any changes in driving hours and rest breaks would require an extended consultation and implementation period as the current rules are deeply imbedded in operator practices as well as industrial agreements. As outlined above, there would be additional costs passed on to state transport authorities.

We are in favour of more flexible work and rest requirements under the HVNL which is one of the general principles outlined in the RIS (8.1), however the proposed 4 hour limit seems to do the opposite by imposing more impractical and prescriptive time restrictions. The industry would prefer 6-hour blocks for

Bus Industry Confederation

new fatigue regulations since calculating 2 x 6 hours to arrive at the 12 hour maximum is much easier for drivers and operators to calculate than 3 x 4 hours.

8.8: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

The BAN considers the general principles and directions outlined in Chapter 8 of the RIS to be sensible and sound. In summary, we consider these to be:

- simplifying the current prescriptive rules around counting time
- focusing fatigue compliance on higher-risk operations
- allowing more flexibility for operators with risk management systems
- embracing technology and mechanisms other than Work Diaries for compliance purposes
- including health assessments as a tool in combatting driver fatigue.

However, the BAN is concerned at some of the particular measures suggested to achieve these ends; specifically, a reduction in maximum driving times and an introduction of driver health monitoring rules which would conflict with current driver health monitoring laws in the bus sector.

ITEM 9: Access

This section responds to questions to stakeholders in the RIS relating to *Item 9 – Access*.

9.1: Is it reasonable to increase mass and dimension limits for general access? Under option 9.1, which sub-option would be the preferred way to increase mass and dimension limits?

The options outlined in the RIS Options 9.1 a, b and c propose to increase mass limits for general access vehicles to those currently operating under concessional mass limits (CML). This proposal is largely irrelevant for the bus and coach industry since CML does not apply to buses.

In view of the limited application of CML to the bus sector, the BAN would prefer Option 9.1 d (RIS), i.e. an increase in general access length. General access buses are those under 12.5 metres in length. Currently, buses between 12.5 and 14.5 metres in length (Controlled Access Buses) are classified as Class 2 Restricted Access Heavy Vehicles. We would therefore recommend that in line with the increase in general access length from 19 to 20 metres for other vehicles, buses and coaches should have general access up to 14.5 metres or, as a minimum, 13.5 metres in length, with restrictions where there are legitimate safety issues.

Contemporary 14.5 metre buses often have additional safety features such as steerable tags, with swept paths which make them as manoeuvrable as a 12.5 metre general access bus.

9.2: Under sub-options 9.1a to 9.1c, how much would an increase to CML reduce to need to apply for permits?

As outlined above, CML does not apply to buses. Providing General Access to buses between 12.5 and 14.5m in length (Option 9.1d of RIS) will almost eliminate the need for bus operators to apply for CAB permits.

Bus Industry Confederation

9.3: Under sub-option 9.1c, would the benefits of CML outweigh the costs of OBM for operators? Would the data provided by OBM systems provide regulators and road managers with the right information to make investment and planning decisions?

The BAN is not supportive of linking increases in mass to on-board mass (OBM) systems. We believe that access for buses and coaches dependent on the purchase of “intelligent” systems is based on an “old school” paradigm supposedly focused on road infrastructure, rather than an approach focussed on productivity and the positive societal outcomes that passenger transport can deliver.

The costs of purchasing and installing OBM systems on buses and coaches is likely to outweigh the benefit of any increase in mass. For example, this would create operational issues if an operator was at their respective limit and there are still passengers on the side of the road.

9.4: Under sub-option 9.2a, what would be the costs and benefits of a precedent approach for operators and road managers?

For the bus industry, the recognition of precedent to facilitate access for equivalent vehicles would be of huge benefit and would lead to considerable cost savings. We are currently in a highly unproductive situation where operators of the same type of vehicle must obtain separate permits to access a particular road for a limited period. That is one operator may obtain a permit to access a road and then instead of that road being included in the *Approved Routes* list, the next operator with the same bus type, has to apply for a separate permit.

If a permit allows road access to a vehicle of a certain type, all vehicles of that type should also be permitted to use the road and the *Approved Routes* list needs to be updated accordingly.

Many routes have been safely operated by over dimensional buses for many years. Therefore, precedent now exists for vehicles of this type being granted more general access.

The bus and coach industry understand that in the process of seeking consent from a road manager, the NHVR has to request for the road manager to consider the route to be included as a route approved under the gazette notice. It appears that this is not happening as intended in NSW, as operator permits for controlled access buses to use specified routes have been approved without consideration to include these in the list of approved routes covered by the gazette notice.

Notices should be perpetual for vehicles that come within the size, mass and type of vehicle identified in the Notice, unless specific circumstances change, e.g. weather damage to a road or bridge. As such, we strongly support Option 9.2a (RIS).

9.5: Would road managers exercise the delegation power proposed in option 9.2b? Why or why not?

The BAN strongly supports the delegation of access decision-making powers from road managers to agencies such as the NHVR. Decision-making seems to take less time when agencies are used to dealing with access applications and takes more time when they are unfamiliar with the process.

Many local governments lack the expertise and resources to make timely and objective decisions on access, often resulting in delays. Some road managers do not know their network well nor understand the heavy vehicle access process, i.e. that the denial of a Higher Productivity Vehicle may result in more lower productivity vehicles on council roads.

A number of Councils do not have the necessary resources to efficiently assess and decide on access. They also may not understand the positive economic and social impacts that are attached to access for buses and coaches. Rather, buses and coaches are lumped into the freight/truck category.

Bus Industry Confederation

At this early “proposal” stage, it is unclear whether road managers will delegate their decision-making powers if permitted at law to do so. Despite the savings in time and resources that would result from councils delegating responsibility, access decisions by road managers can be politically motivated. Some local governments err on the side of extreme conservatism when it comes to access and may be unlikely to delegate if they are beholden to residents who may be opposed to heavy vehicles operating in their local area.

9.6: Would operators benefit and use a geospatial map as proposed in option 9.2c? What would be the costs for road managers to input the data and keep it updated?

The BAN strongly supports the proposal of a geo-spatial map as proposed in Option 9.2c (RIS). In that context, it should be noted that, in NSW, a digital Controlled Access Bus network map (along the lines suggested in the RIS) was recently developed by Transport for NSW. This network map displays approved routes and denied routes for CABs operating under the National Class 3 Controlled Access Bus Exemption Notice 2019.

Whilst the map currently includes state roads, the local roads available to CABs have recently been included. This map has been of great benefit to the industry and could be used as a potential model for the geospatial map proposed in Option 9.2c (RIS).

9.7: Under option 9.2d, which option would make it easier to adopt a risk-based approach to vehicle classification?

The BAN would prefer option 1 over option 2 and believes there is merit in separating high volume and frequency freight and passenger vehicles from more unusual and infrequent types of vehicle. However, we believe there is further merit in separating freight and passenger vehicles into separate classes.

Currently, buses between 12.5 and 14.5 metres in length (Controlled Access Buses) are classified as Class 2 Heavy Vehicles. Strong consideration needs to be given to putting these vehicles into their own class. Buses perform very differently on the roads to other Class 2 vehicles because of the way they are designed. Contemporary buses and coaches pose a significantly reduced risk to public safety. Bus and coach engineering has changed considerably over time. Buses and coaches are better built, and the weight that they can carry safely has increased. They have better turning circles (with some having a steerable tag axle), excellent visibility of other road users, stop efficiently, and pose no greater overtaking risk than many light vehicle combinations such as a car towing a caravan or trailer.

Many road managers do not understand the positive economic and social impacts of access for buses and coaches, such as access and mobility for the elderly or persons with a disability, or the role played by larger capacity buses in transporting students on local streets for sports transfers, excursions and camps. Without their own class, buses and coaches are simply lumped in with freight/trucks, with none of these attendant benefits considered.

9.8: Under option 9.3a, which option would provide more transparent, quick and cost-effective decisions?

The BAN would prefer option 2 because it directs the decision-making of the road manager to vehicle type, with passenger vehicles requiring a 7-day turnaround period (in place of the current 28 days). The automatic referral to the road authority of “nil” responses from road managers is also supported. Prior to the HVNL many access decisions were taken by the state road authorities and this tended to be a more efficient and transparent process than that currently in place.

Bus Industry Confederation

9.9: Under option 9.3b, which option would provide the right level of review? Would operators and road managers spend time and money seeking an external review?

Option 1 provides a much better level of review given that the panel includes personnel with bus and coach experience. This is because an existing tribunal or court, unlike a specialist panel, may lack the expert knowledge to make a fair and reasoned judgement on access decisions. Moreover, appeals to a court or tribunal can be costly and time-consuming, with little hope of expedited decision-making.

Bus and coach operators are far more likely to spend the time and money seeking an external review by a specialist panel than from a court or tribunal. However, the BAN believes that to prevent further costs and delays, the decision of the panel should be binding on the road manager.

Greater access for over dimensional buses would drastically reduce the need for reviews. However, a mechanism needs to be available for bus operators (and road managers) to seek a review where considered necessary. It is also important that any review panel have the necessary experience and understanding of bus operations.

9.10: Would the structure proposed in option 9.4 be responsive to future changes?

The BAN supports the framework for access-decision-making moving from the HVNL itself, to regulations or standards under that Law. Such a move would create agility and flexibility in terms of decision-making, with changes to the requirements able to respond to new realities “on the ground”. It is important that any new structure avoids the lengthy processes and delays that often accompany amendments to the law.

9.11: Would a single or dual-tiered pilot approach be preferred under option 9.5?

Not applicable. The bus and coach industry is not involved in pilot and escort arrangements.

9.12: Are there other costs or benefits that we should consider in the impact assessment?

While buses and coaches share many of the costs outlined in the RIS (operational inefficiencies, administrative costs, etc.), there are economic and social impacts of access for buses and coaches that do not apply to other heavy vehicles.

Bus and coach services provide a significant positive benefit to their local community, safely and efficiently transporting people with a disability, the elderly, school students and others unable to transport themselves, within and beyond their communities. Too often such distinctions are lost in the heavy vehicle access debate, with buses and coaches simply lumped into the freight/truck category.

Access decision-making under the HVNL needs to more carefully consider what ‘community needs’ actually mean for bus and coach access. ‘Local amenity’ should be better defined to include the benefits that access for buses and coaches bring to the community.

For buses and coaches, the HVNL needs to be considered in the context of the future passenger task and impacts on this task such as population growth, congestion and the efficient functioning of cities and the transport network. Currently, access decisions for buses and coaches are made in isolation to these broader societal benefits.

9.13: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter?

BIC does not currently have access to data that may assist in this regard.

Bus Industry Confederation

9.14: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

The BAN generally supports the proposals outlined in the RIS to improve heavy vehicle access within Australia. Our views can be summarised in the following 5 access principles.

1. The road network needs to be clearly linked to vehicle classifications including, specifically, buses and coaches, with the opportunity for innovation to allow enhanced access outcomes.
2. Access approvals should be managed by the NHVR with input, where required, from state and territory jurisdictions who have the necessary data and expertise to make considered and impartial decisions. The role of local government/councils, as “road managers” should be minimised.
3. If road managers retain access rights, they should be required to respond to an applicant with an actual decision within 7 days, otherwise the NHVR should approve the access request. If the road manager response is based on a ‘poor’ excuse for refusal, the NHVR or another authority should be able to quickly review the decision and, where appropriate, override it. If a road manager’s decision is appealed to an independent panel, the decision of the panel should be binding on the road manager.
4. Road network access should prima facie be given. This prima facie approval should only be delayed where road managers can justify exclusions based on:
 - a. Accidents
 - b. Special infrastructure (bridges, etc.) or
 - c. Dimensions (swept path).

A program should be implemented to clearly define and resolve these issues (rather than allowing access restrictions to remain in place as a ‘roadblock’). This should also highlight that the bus and coach task is different from that of trucks.

5. An agreed national approach for a digital mapping system and the data that will underpin the system should be developed, with the jurisdictions given an agreed timeframe to upgrade their systems and include roads approved for each vehicle type.

There is another real-world policy issue in terms of access for buses. Passengers today are much heavier than in the past. This means that buses built to carry 65 kg per persons may well be overloaded with today’s heavier passengers. Currently regulators see this as the operator’s problem. There needs to be an updating of the per passenger load by regulators, combined with use of the passenger capacity calculations (or old 703 Form) formerly used by Roads and Maritime Services, so that buses are operated within their design limits plus operators can use this methodology to support the number of passengers carried.

ITEM 10 Safer Vehicle Design

This section responds to questions to stakeholders in the RIS relating to *Item 10 - Safer vehicle design*.

10.1: Are there any other costs or benefits that we should consider in the impact assessment?

A cost for industry that is not covered by the RIS is the major regulatory inconsistencies in bus and coach standards between jurisdictions. For example, there are fundamental differences between states in terms of allowable rear overhang (refer Item 10.3), mass limits and standards for critical bus design systems such as passenger door safety, rollaway protection, fire mitigation and school lights. All these add costs for manufacturers and operators with businesses in more than one state.

Bus Industry Confederation

10.2: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter?

No

10.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

Changes to the PBS scheme generally will not promote safe design in buses. The main reason being that the current PBS is largely truck-focused and not totally relevant to bus and coach operations. The PBS also does not reflect or assess real productivity improvements for passenger vehicles. For example, under the PBS, 2.55 m wide buses or coaches can, and have, been approved which offer less seating capacity than the current equivalent ADR-compliant buses. In contrast, higher productivity 14.5 m (2.5-metre wide) buses that cannot meet the current truck-based PBS performance criteria, are being registered and operated successfully as Controlled Access Buses in all states.

Buses typically perform well in all aspects of the PBS criterion except for:

- low speed swept path
- frontal swing and
- tail swing.

Some of the reasons for this are the need for buses to comply with the Disability Discrimination Act (front door width to accommodate wheelchair ramps, hence long front overhangs), and variations in Rear Overhang requirements from state to state; for example:

- Queensland: 4.7 metres or 70% wheelbase
- NSW: 4.9 metres or 70% wheelbase
- Victoria: 4.3 metres or 60% wheelbase.

The steerable tag for 13.5 and 14.5 metre buses are particularly affected by tail swing, yet these buses perform extremely well on the road.

From the above, work is needed to develop bus and coach-specific PBS standards.

The PBS process needs to consider the real productivity gains for a PBS bus or coach. The sole intent of any bus or coach is to carry passengers, and productivity needs to be measured primarily in terms of seated passenger capacity as well as, for urban buses, standing capacity.

Another option to reduce complexity for the BAN would be to consider general access for OD buses. In the context of operating within the urban environment, the main concern with this proposal for road managers would likely be the low speed swept path for OD buses. But given that the swept path for a 14.5 m bus is almost identical to that of a 19 metre semi-trailer and that these semi-trailers have general access, 14.5 m buses should be granted the same.

The BAN has effectively had a 25-plus year trial of OD buses operating on a range of routes, with no incidents of any significance.

10.4: In relation to option 10.1, do you have any comments on specific sub-elements of the option or the optimal composition of this option?

For the reasons outlined in Item 10.3, streamlining the current PBS approval process will have negligible impact on safe design for buses and coaches. The focus, outlined in Option 10.2 (RIS), on specific vehicle

Bus Industry Confederation

technologies rather than vehicle types would have more benefit for the industry, provided technology standards were applied more broadly than freight, and included bus and coach-specific design technology.

10.5: In relation to option 10.3, do you have any comments on how and whether the increased vehicle width option could be linked to meeting newer safety standards (e.g. side-underrun, blind spot sensors, electronic stability control and anti-lock brake systems)?

In terms of bus and coach design, there is a common misconception by regulators that the width of a bus or coach body is linked to the technology and safety available on the vehicle. This is incorrect. In Australia, ADR compliant buses and coaches have traditionally been provided to market with the latest safety and emissions technology available at the time of manufacture. This has partly been due to chassis and bus builders opting to promote safety within this people moving market, but also because the major purchases of buses are by large government and private operators and these customers specify the highest safety and emissions standards.

Bus and coach safety features have generally introduced into the market a decade or more ahead of legislation (for example, ABS was commonly fitted to buses from the early 1980's, and Electronic Braking System (EBS) with disc brakes was available from around the year 2000).

In short, current 2.5-metre wide buses and coaches currently adopt world best practice in terms of safety and technology systems. This includes compliance to ADR 58/00 and 68/00 which both set specific safety criterion that are higher than EU equivalents. Therefore, the BAN does not believe there is a link between increased vehicle width and newer safety standards.

It should also be noted that 2.5 m and 2.55 m buses are built on the same chassis (i.e. chassis suppliers only build one chassis width), and hence there is no difference in available safety features.

ITEM 11 Roadworthiness

This section responds to questions to stakeholders in the RIS relating to *Item 11-Roadworthiness*.

11.1: Are there any other costs or benefits that we should consider in the impact assessment?

No.

11.2: Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter?

The BAN considers that the move to a standardised National Heavy Vehicle Inspection Manual (NHVIM) for all Australian vehicle inspection agencies has been a logical and effective move. As outlined in the RIS, the varied interpretation and implementation of the NHVIM has, however, been an ongoing problem for industry. Currently, action by staff at Heavy Vehicle Inspection Stations remains arbitrary, inconsistent and frustrating for bus and coach operators.

By way of example, a Major Defect was recently issued to a BAN member for "*Brake system air leaks - left side axle 1 area with brakes applied*". This defect was issued based on the sound of the brake and not as per the measurement test included in clause 2.7(d) of the NHVIM i.e. "*With the brake system fully charged, the engine stopped and the service brake applied, the air brake pressure drops more than 20kPa (3psi) per minute.*"

The Major Defect was issued despite the vehicle passing the brake test and there being no imminent and serious safety risk. A Minor Defect with an appropriate time for repairs would have been far more appropriate in this situation.

Bus Industry Confederation

On requesting a review from the inspection agency, the BAN member was advised that “it was considered reasonable that the Inspector at the time determined the fault to be of an Immanent safety risk” and, in terms of the inspection procedure outlined in the NHVIM, “in the Senior Manager’s experience, in listening to the air leak... he is quite confident the air leak would be significantly worse than 3psi per minute...” This is despite the inspection procedure mandated in the NHVIM.

A consistent national approach to vehicle inspections is therefore urgently needed to mandate:

- adherence to the tests outlined in the NHVIM (rather than the subjective opinions of individual inspectors)
- the specific issues which fit into each category of defect.

11.3: Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

Yes. Currently, safety systems based on state technical standards, such as those for bus door safety and school light systems, are not being checked under the NHVIM and this needs to be addressed.

11.4: Do you have any new evidence on the effectiveness or otherwise of existing jurisdictional approaches to random and periodic vehicle inspections?

Inspection requirements for bus and coach operators vary considerably between states, ranging from no mandatory inspections to mandatory twice-yearly inspections (NSW). In NSW, these frequent bus inspections were part of suite of safety measures introduced following a fatal bus collision in 1989. In that sense, the inspection frequency is risk-based and generally supported by the industry in NSW.

Notwithstanding the above, it appears inconsistent and arbitrary that buses can require inspection twice a year in one jurisdiction, irrespective of the age of the vehicle and other considerations, yet require no mandated inspections in other states. A nationally consistent inspection regime based on a common definition of risk, and one that applied across all jurisdictions (Option 11.2 of RIS) would therefore be supported by the BAN.

More important that the frequency of inspections for the industry, however, would be universal inspection rules based on the NHVIM and mandated by law (Option 11.1 of RIS). This would prevent the considerable time and costs imposed on the industry by the current arbitrary and inconsistent inspection procedures applied in different Heavy Vehicle Inspection Stations.

11.5: Are there any unintended consequences associated with any of the options identified?

Possible duplication and inconsistency with current effective bus and coach inspection processes.

We also have reservations over risk-based assessments since buses and coaches are likely to be held to a higher safety standard than other vehicles due to the number of on-board passengers. We would prefer a system of uniform inspections in in all states.