

20 November 2020

Consultation team
Heavy Vehicle National Law Review
National Transport Commission
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SUBMISSION: REGULATORY IMPACT STATEMENT

Cement Concrete and Aggregates Australia (CCAA) is the peak body for the Heavy Construction Materials Industry in Australia. Our members operate hard rock quarries, sand and gravel extraction sites, cement production and distribution facilities and concrete batching plants. The majority of material producers and suppliers form our membership, ranging from large global companies, to SMEs and family operated businesses.

Our sector is vital to the nation's \$200 Billion building and construction industries and underpins the development of Australia's physical infrastructure, generating approximately \$15 Billion in annual revenue and employing approximately 30,000 Australians directly and a further 80,000 indirectly. In Australia each year, the heavy construction materials industry produces approximately: 200 million tonnes of sand, stone and gravel (ie aggregates); 30 million cubic metres of pre-mixed concrete; and 10 million tonnes of cementitious material (eg cement, flyash).

Most of the material produced by the industry is transported via heavy vehicles (with a minor proportion transported by rail, and with some cement clinker transported by ship via ports) and in relatively short distances in urban and peri-urban areas (eg under 60km per delivery for aggregates and under 15km for pre-mixed concrete). There are about 100,000 average heavy vehicle movements in Australia per day (usually during daylight hours) relating to our industry. Our industry contributes up to 10% of total road freight by volume and operates a fleet of some 6,500 concrete agitators, 2,500 tippers and 1,200 cement tankers.

We welcome the opportunity to provide comment on the Consultation Regulatory Impact Statement on the Heavy Vehicle National Law. Our members have reviewed the document *HVNL2.0 A Better Law Scenario* and would like to offer the following comments.

OVERALL VIEW

Our industry believes significant improvements can be made in the regulation governing heavy vehicles. The management of heavy vehicle regulatory requirements is a major issue for our industry, and an area where significant productivity improvements can be yielded.

We support the conclusion reached by the NTC in the consultation in the HVNL's regulatory approach (and the way it regulates heavy vehicles) needs major improvements. The Law is overly prescriptive, inflexible and complex and does indeed adopt a "one-size-fits-all" approach despite the diversity of the heavy vehicle industry and the range of tasks within it. Significant improvements are needed in areas such as work and rest hours, supporting the use of technology, and PBS and access arrangements. We agree the review presents a great opportunity to deliver real change and reform, that supports safety and productivity which will benefit the industry and the broader community.

A VISION FOR A BETTER LAW

We support a better use of new technology, data and information and its use as key enablers for a risk-based approach to regulation.

We support standards to be made under the HVNL which would allow changes to be made more quickly to the Law.

There needs to be scope within the legislative framework to cater for innovations and technology which are still very embryonic or early stages of development. Given the rapid pace of technological change, there needs to be scope to allow this change to be utilised in areas such as fatigue management as quickly as possible.

We also support the allowing of Codes of Practice to be made under the HVNL to make obligations clearer and easier to follow. We believe that consideration should be given to Codes of Practice being made by Industry Bodies as well as the NHVR and government agencies.

DUTIES FOR BETTER SAFETY OUTCOMES

We agree that the future HVNL should place responsibilities for managing risks with those most able to do so and catering to an evolving supply chain.

In principal (as long as they are clear and carefully drafted) we support proposals to:

- Apply the primary duty to owners/operators (together with a hierarchy within the primary duty) and consideration as to how can the law/regulator ensure smaller operators meet their compliance obligations
- Apply the primary duty to parties who influence heavy vehicle safety, where reasonably practicable.
- Clarification that the primary duty covers driver competency and fitness for duty
- For drivers to have a duty under the HVN to take reasonable care for their own safety and the safety of others.

The new HVNL should also work seamlessly with the Chain of Responsibility (CoR) Legislation to ensure greater transparency is available along the whole supply chain to expose areas of higher risk. This is also key to deliver against the social licence from the community so that the shared responsibility concept applies to all, not just drivers and operators.

ROBUST ASSURANCE

We agree that the future HVNL should recognise the diversity of heavy vehicle operations and heavy vehicle operators, and that it provides for certainty and simplicity for those who want it and open the door to other operators who wish to use alternative and innovative ways to better manage risks.

In principal, we support operators being able to enrol to give the NHVR better visibility on who they regulate, build a risk profile of industry and better engage with operators, with a view that such a scheme would better support the applications for access permits and PBS vehicle certification.

We also would be open to schemes that allow for auditing protections for operators.

We would also support an enhanced certification scheme for operators where heavy vehicle operators could have access to alternative regulatory compliance schemes such as more sophisticated fatigue management options of increased mass allowances.

TECHNOLOGY, DATA AND INFORMATION

Our members strongly support a greater use of technology, data and information within the HVNL framework.

We support the new law allowing authorising documents to be produced electronically, whether by carrying an electronic document on a device, or via an online link (with provisions for operators still to be able to carry paper form documents if they prefer)

Similarly, we also support the law allowing for safe data sharing where it is valuable to do so.

Some consideration would need to be undertaken to ensure consistency in approach that that operators having some assurance that data will not be “used against them”.

BETTER FATIGUE MANAGEMENT

Whilst our industry agrees that fatigue and distraction are key factors in heavy vehicle and motor vehicle crashes and deaths, significant improvements can be made in how it is regulated.

Currently, work and rest requirements are not well matched to the task of heavy vehicle operators in our industry. Many operators in our sector operate during daytime hours, for short distances of less than 100km, and they are often engaged in a variety of tasks, operate intermittently, rarely work Sundays or Saturday afternoons. Also, concrete agitators (for example) have a “live” load hence making it sometimes difficult to turn the engine off, and they often travel to uncontrolled sites – such as construction sites in CBD areas or suburban sub-divisions. (In recent years, CCAA was able to obtain an NHVR Gazette Exemption Notice for Concrete Agitator Drivers in relation to how they took their Short Rest Break requirements which took account of the specific nature of the driving task and the practical requirements for the industry.)

The current framework creates unintended outcomes in that compliant activities can be unsafe and non-compliant activities can be safe. This leads to outcomes where drivers are feeling targeted for minor administrative mistakes and companies are devoting significant resources in looking back rather than forward in managing fatigue safety. The various measures of counting hours is far too detailed for the average operator to be across and compliant in the normal day to day function (eg night and long hours, work since last major rest, consecutive night rest per period, 24/48 hr rest per period). Operators may feel very alert and on-task, yet night hours may prevent them from

continuing to operate, only to have to recommence working at the end of the night hour period to make their destination - when they may not have had sufficient rest.

On the proposals in the Consultation Regulation Impact Statement:

- We support moving to the widespread adoption of electronic work diaries.
- We support efforts to improve fatigue management options, recognising the diverse range of tasks and the valuable role of fatigue and distraction detection technology.
- There should be an incentive to encourage take-up of fatigue and distraction technology to deliver safer outcomes.
- Simpler counting of time under the HVNL.
- Allowing the NHVR to approve schedules that are equivalent or lower risk than the general schedule.
- That the HVNL recognise the valuable role of fatigue and distraction detection technology, and that operators should not be unnecessarily constrained by prescriptive rules.

Heavy Vehicles Operating Solely on Sites

Our members have also raised an issue where the definition of a fatigue regulated vehicle has unintended consequences for vehicles on operator's sites (such as the quarrying industry) that are used as plant (ie road trucks converted to be used as watercarts) that will never be operated on a road.

Our members have been advised that under the current definition of fatigue regulated heavy vehicles, these vehicles are still required to comply with fatigue provision provided for under the HVNL despite the fact that they will never operate on a road.

As such, it would be important to confine the definition of a fatigue regulated vehicle so that examples such as the one mentioned do not happen.

SUITABLE ROUTES

We strongly agree that the future HVNL should support quick, transparent and simple decision-making, and prioritise productivity where it is safe and reasonable. Whilst improvements have been made, the decision-making process for access to suitable routes for our industry is prescriptive and inflexible. We accept that road managers do not necessarily always have a high degree of expertise with heavy vehicle classifications, and while the NHVR has a detailed understanding of the many heavy vehicle types, not all road managers have the same level of knowledge. This can complicate and protract their access decisions, causing lengthy delays. Road Managers are obviously keen to protect their assets – but often fail to understand that new configurations will have less impact on this asset. We also believe there are many opportunities for parties to lose sight of or delay a permit application under the prescribed process in the HVNL, and reasons for access refusal are broad and varied, and first and last mile issues are a major barrier to an efficient freight system for our sector, particularly in relation to access to quarry sites and premixed concrete plants at (usually in industrial zones in outer urban areas)

As such, we particularly support the following proposals in the Consultation RIS to be explored:

- More data sharing between operators and road managers.
- Operators being able to seek a process review of access decision-making with either the NHVR or the relevant jurisdiction-based administrative tribunal.
- Expedited decision-making based on risk and precedent.
- Allowing road managers to delegate decision-making.

Thank you again for the opportunity to make a submission to the *HVNL2.0* discussion paper. To discuss our submission, please contact Aaron Johnstone on 0439 955 020 or email aaron.johnstone@cca.com.au.

Yours sincerely



**KEN SLATTERY
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