



**HEAVY VEHICLE**  
INDUSTRY AUSTRALIA



**Response to  
HVNL Review:  
Regulatory Impact  
Statement  
November 2020**

Heavy Vehicle Industry Australia  
Represents and advances the interests of manufacturers  
and suppliers of heavy vehicles and their components,  
equipment and technology.



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## 1) Background

The Heavy Vehicle National Law (HVNL) has been in effect since 2014 in participating jurisdictions (all States except NT and WA).

The HVNL is the primary piece of legislation for on-road issues relating to heavy vehicles. It established the National Heavy Vehicle Regulator (NHVR) and outlines the Primary Duties as well as governing issues related to the Chain of Responsibility, Road Access, Fatigue, and the Performance Based Standards system to name a few.

The National Transport Commission (NTC) has been asked by the Transport and Infrastructure Council Ministers to lead a review of the HVNL and its supporting Regulations. Over the course of 2019 and 2020 the NTC has conducted some initial consultation with stakeholders

In June 2020 the NTC released the HVNL Review Consultation Regulatory Impact Statement for comment. The consultation review outlines possible impacts of various policy reform options and seeks stakeholder views on a range of issues.

This document is HVIA's response to the Consultation RIS.

HVIA's response consists of some general observations about the review of the HVNL followed by some specific responses to particular questions raised in the RIS.

## 2) About HVIA

Heavy Vehicle Industry Australia (HVIA) represents and advances the interests of the entire industry involved in the design, manufacture, importation, distribution, modification, sale service and repair of on-road vehicles with a gross vehicle mass or aggregate trailer mass over 3.5 tonnes as well as their components equipment and technology. The industry directly employs over 36,000 people and provides some of the world's most efficient, safe, innovative, and technologically advanced vehicles. HVIA seeks to work with government and industry stakeholders to promote an innovative and prosperous industry that supports a safe and productive heavy vehicle fleet operating for the benefit of all Australians.

## 3) General Comments

The Consultation RIS report identifies several short comings in the way that the current legislation is implemented including:

- Inconsistencies between jurisdictions
- The prescriptive and inflexible structure of the current law
- Insufficient use of risk-based approaches
- Cumbersome administrative and approval processes

Many of the inconsistencies are a result of horse-trading and compromises that were required to gain agreement from the individual jurisdictions, who were being asked to give up powers to a new, yet-to-be-established body.

This has been a key factor in making the legislation long, complex, and inefficient. The RIS identifies that 60% of the HVNL is prescriptive and adopts a 'one size fits all' approach. This is way out of step

with other like legislative instruments in particular the Rail Safety National Law (37%) and the Work Health and Safety Model Law (40%).

HVIA agrees with these observations and is also concerned that the current structure of the HVNL is primarily focussed on using on-road enforcement and prosecutions as the mechanism for enforcing the provisions of the law.

The HVNL needs place more emphasis on providing incentives for good behaviour rather than punishing bad behaviour after the event.

HVIA agrees with the broad conclusions of the RIS which is that the solution is to develop a risk-based and outcomes-focused legislative framework 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.

In parallel with the NTC review, the Productivity Commission has been undertaking a review of the governments transport reforms over the last decade. The passage of the HVNL and the establishment of the National Heavy Vehicle Regulator (NHVR) was a key part of Productivity Commission's review. The Productivity Commission produced a draft report in November 2019 to facilitate public consultation and provided the final report to Government in April and the Report was published in October 2020.

HVIA agrees with the Productivity Commission that most of the recent gains in safety and productivity in the heavy vehicle fleet are a direct result of investment in infrastructure and the use of safer vehicles.

As an organisation HVIA is particularly focussed on improving the safety and productivity of the heavy vehicle fleet and has identified a series of strategies that we believe need to form the core of any review of the HVNL. These include:

- Strengthening the Chain of Responsibility provisions to explicitly recognise that the responsibility of directors explicitly includes the selection and maintenance of their fleet and the implementation of systems to monitor and manage vehicle and driver behaviour.
- Providing incentives for participants in the chain of responsibility to adopt a "safe systems methodology" approach to managing their transport operations.
- Streamlining the administration of the law to reduce barriers to the uptake of safer and more productive vehicles. (particularly PBS vehicles)
- Improving access arrangements to remove barriers to the take up of innovative vehicles
- Revise concessional schemes to encourage the use of newer safer and more productive vehicles as a condition of participation in these schemes.

HVIA is also arguing that road cost recovery charges also need to provide incentives for improving the safety and productivity of the fleet. While this argument is mainly aimed at the Heavy Vehicle Road Reform project it is also worth considering pricing incentives in the context of the Review of the Heavy Vehicle National Law.

HVIA supports the suggested move to a more risk-based framework which provides incentives for decision makers to promote safer and more productive vehicles and practices.

HVIA is also in favour of an approach that focusses on performance based standards rather than prescriptive standards.

HVIA also recognises the large variety in sophistication of consumers and operators of transport services discussed in the RIS and the need for a variety of options which recognise the different levels of risks and expertise for different parties. HVIA agrees that this could be supported by “deemed to comply” provisions which allow smaller operators a simplified approach to ensuring compliance.

#### **4) Responses to Questions raised in the Report**

**HVIA’s response to Questions 3.1 and 3.2 have been incorporated in our general comments in section 3.**

**With respect to Questions 4.1 though 4.8.** relate to the primary duties and responsibilities.

HVIA is supportive of clarifying obligations under the COR provisions through codes of practice.

HVIA’s main concern with section 4 is with the proposal to potentially extend the chain to include manufacturers, repairers, and technology providers. The key question raised by the RIS is whether these parties are already sufficiently covered by existing consumer and other laws and whether there would be any advantage to including them in the COR chain.

HVIA believes that manufacturers, repairers, and technology providers are adequately covered by existing consumer law and including them in the chain provides no benefit. In addition, HVIA maintains that operators are the parties that decide what vehicles to purchase, what repairs are done and how technology is used to manage their fleet. Manufacturers, repairers, and technology providers may provide advice but ultimately owner/operators make these decisions and must take responsibility for them. For example,

- A diesel mechanic notices a structural problem with a drawbar which is outside the competence of the mechanic to repair. The issue is reported to the vehicle owner / driver and the vehicle operator acknowledges the problem but elects not to repair it.
- If a routine service identifies a significant problem which is reported to the owner/operator but the owner/operator decides that it is too expensive for repair immediately, and the work is then not performed.
- An operator refers a vehicle to a specialist repairer to undertake a particular task. The repairer undertakes the requested task but does not have the skills to detect faults in other aspects of the vehicle.

In relation to Chain of Responsibility, HVIA believes the current law is too focussed on after the event prosecution of speeding, fatigue and other breaches of the law and instead should focus on encouraging parties in the chain to implement safe systems in order to proactively manage the risks.

In particular HVIA, would like to see Chain of Responsibility provisions in the HVNL to explicitly recognise the selection and maintenance of the fleet and the implementation of systems to monitor and manage vehicle and driver behaviour.

**Questions 5.1 to 5.8 discuss issues around regulatory tools**

HVIA supports the expansion of codes of practice and deemed to comply provisions as mechanisms to simplify demonstration of compliance.

HVIA also supports streamlined mechanism for the NHVR to adopt or develop standards.

HVIA would like to see further exploration of the use of remote zones to facilitate a more effective risk-based approach.

Sharing of information between the NHVR, other Government Agencies, road managers and operators is worth examining further provided suitable controls are in place to prevent misuse of the information. The RIS does not provide sufficient information on what is being proposed to provide detailed feedback on this issue.

**Questions 6.1 to 6.12 cover issues related to data sharing.**

The RIS notes that the HVNL contains specific provision for the use of technologies, such as the Intelligent Access Program (IAP) and Electronic Work Diaries (EWDs) to demonstrate compliance. The RIS outlines that the current approach is too cumbersome to keep pace with changing technology.

The RIS goes on to suggest that the establishment of an overarching technology and data certifier may provide a mechanism for better managing the incorporation of new technology into the HVNL while maintaining data privacy.

HVIA has reservations in relation to this proposal. The establishment of Transport Certification Australia to oversee the IAP had been intended to address these issues but has not been particularly effective in fostering the uptake of new technology. However, if a decision is made to set up an overall framework TCA is probably better placed to do this work than any other agency.

HVIA's view more broadly is that the best approach is to encourage operators to adopt a data driven safe systems approach where they optimise the use of the available data to meet their safety obligations and to manage their vehicles and as efficiently as possible. As discussed previously HVIA favours proactive approaches to safety and compliance rather than after the event prosecutions. If we move to a safe systems approach rather than an enforcement approach auditing of systems is more important than providing roadside data.

Encouraging operators to build systems to ensure safety and compliance is better than focussing on enforcement data requirements.

It is not clear that the benefits of regulators collecting information to enable more efficient enforcement and regulation or to inform research and infrastructure planning and investment justifies placing legislative constraints on industries use of technology. In particular, it is not clear that developing unique Australian Standards is worthwhile. It is likely that emerging overseas standards would be supported by most manufacturers because most product is sourced from overseas

NHVR does not understand why NHVR needs a legislative basis to specify the data formats and data exchange mechanisms. It should be possible to do this administratively. If operators can receive compliance cost benefits from communicating with the NHVR using NHVR developed specifications, they are likely to comply voluntarily.

**Questions 7.1 to 7.10 deal with Assurance and Accreditation schemes.**

As discussed previously HVIA is in favour of operators adopting a comprehensive safe systems approach to the management of their fleets.

In HVIA's view, the current NHVAS is too narrow and does not reflect the full range of issues that need to be considered under the primary duty of care in the HVNL. This reflects the original use of the NHVAS to assist in the management of CML and HML vehicles. While mass, maintenance and fatigue are all important there are a range of other issues that need to be considered in discharging the primary duty.

HVIA would like to see accreditation systems embrace the safe systems approach advocated within the National Road Safety Strategy and in particular the focus on the safety of the vehicle and the safety of the driver.

HVIA supports a risk-based approach. However, the key safety risks that need to be managed are likely to vary from industry to industry which suggests that the best approach to accreditation may be a modular approach which allows operators to select modules related to their specific organisations primarily risks.

HVIA is supportive of using a performance standards approach to accreditation which will in turn foster the use of technology to demonstrate compliance. HVIA would like to see more use of data collected from vehicle systems and in vehicle driver monitoring to manage compliance.

HVIA believes that there needs to be clear link between the participation in accreditation schemes and reduction in compliance costs to provide incentives for participation by operators.

#### **Questions 8.1 to 8.8 are related to managing fatigue**

While HVIA supports the use of electronic work diaries to minimise compliance costs, HVIA is not convinced that the current approach of counting hours is the best way of managing fatigue.

While limits on driving hours are required, HVIA supports improved assessment of fitness to commence work and active monitoring of driver attention as more important approaches to managing driver fatigue.

#### **Questions 9.1 to 9.13 are related to managing access.**

HVIA supports the proposed objectives of improving certainty and consistency, building local government capacity, and promoting safer and more productive vehicles.

HVIA is generally supportive of increases to mass and length limits for General Access vehicles but believes the issue of increasing width limits is more complicated and requires further analysis due to the potential safety issues.

It is likely that increasing general access vehicle widths will raise safety issues in urban areas and many routes in these areas that are currently covered by general access requirements will need to have restrictive width signage added. The alternative to changing general access widths would be to gazette a network of 2.55 m wide network notices to provide access for these vehicles. This could in principle be done under the existing legislative provisions.

As a general principle HVIA believes that access to higher productivity schemes such as CML, HML, PBS or increased length arrangements should be limited to vehicles that have up to date safety features. This would be an important mechanism for encouraging the uptake of newer and safer vehicles. So for example, in relation to the enhanced trailer braking requirements introduced by ADR 38/05 in 2019, HVIA would argue that from say 5 years after these requirements became mandatory (2024) operators would only be able to access CML or HML requirements for vehicles compliant with

ADR 38/05. This approach could be applied to an “enhanced general access regime” if this was introduced.

HVIA supports expedited processes for access approvals, delegation of access decision making to the NHVR or State Road Authorities and capturing third parties in the access decision making process.

**Questions 10.1 to 10.5 are related to safer vehicles (with specific emphasis on PBS vehicles).**

HVIA is keen on streamlining the PBS approval process to reduce barriers to newer safer and more productive vehicles but believe that it is important that all new entrants to the scheme conform to the latest safety standards. HVIA agrees with the decision RIS that it is important that improvements to PBS address costs in terms of both dollars and response times.

HVIA agrees that reducing time frames for faster design applications is desirable and that improving the certainty of access for PBS vehicles is important.

However, the suggestions that self-certification should be introduced subject to auditing and the proposal to change the arrangements around transfer of approvals are more complicated.

Introducing a self-certification scheme needs to consider how liability for professional indemnity is managed and what systems need to be in place to ensure compliance with the PBS design.

Under the current arrangements PBS certifiers are engineers that carry professional indemnity insurance to manage the liability for certification of PBS vehicles. While larger trailer manufacturers employ professional engineers, many smaller trailer manufacturers do not and rely on consultants. It is important that any changes to the certification arrangements sort out what insurance is required and who will carry it. This may be important to manufacturers when they are considering whether to insource the certification.

In addition, the consideration of quality control issues requires further development. Specifications for the dimensions of PBS vehicles are often more precise than the requirements for identity plate approvals. As a result, the quality control systems that trailer manufacturers have in place to meet conformity of production requirements for the Department of Infrastructure may not be adequate to meet the requirements for PBS. It would be desirable to align the conformity of production and audit requirements for both schemes.

The issues around transfer of PBS approved vehicles is also more complex than the RIS suggests. The proposals as they stand are not workable and need a complete rethink.

To explain why they are not workable it is important to consider PBS approvals and permits separately.

With respect to PBS approvals it is important to acknowledge that many design approvals are not held by the vehicle owner. In many cases the design approval may be owned by the vehicle manufacturer or a PBS assessor. In these cases the design approval is not the property of the vehicle owner and cannot be transferred with the vehicle. If the RIS is suggesting that the Vehicle Approval (VA) should transfer with the vehicle it is important to understand that a single vehicle approval may contain many possible combinations of vehicle and the components may not be sold as a set. So for example a holder of a VA may decide to replace some parts of their fleet by selling off an old vehicle and buying a new vehicle to replace it (for example selling on old prime mover and buying a new one) The holder of the VA would then have the VA amended to allow the new combinations to be used but continue to operate their fleet under that VA. It would not therefore be appropriate to transfer the VA to the new owner of the prime mover that has been replaced. If the new owner

wanted to operate the vehicle in a PBS combination, they would need to source a suitable trailer which would require a new VA.

With respect to permits, PBS vehicles often operate under notices for most of their journey. Road managers have been attempting to increase the proportion of the network covered by PBS notices to minimise the need for Permits. If a route is covered by a PBS notice any vehicle that meets the requirements of the notice can use that route regardless of who owns it.

While some vehicles may use permits for their entire route, in many cases permits are only used for the "last mile" portion of a journey. Where the vehicle is used continuously for one task, the permits may be used repeatedly. However, where a PBS vehicle is used on multiple different projects the operator may need to apply for new "last mile" permits for each project. If a PBS vehicle changes hands it is unlikely that the last mile requirements for the new operator would be the same as the requirements for the new operator. So in the majority of cases transferring the permit with the vehicle is unlikely to provide significant benefits.

Also, where a permit was obtained for a whole route the permit holder may wish to continue to use that permit with other vehicles which again makes the transfer of the permit with the vehicle problematic.

The idea of using technology as an alternative to complying with a PBS standard does not make sense. Technology such as electronic stability control may assist a vehicle to meet a particular PBS standard such as rearward amplification but is not a substitute for meeting the standard. In any event the PBS standards already use deemed to comply provisions (eg for braking) which accept that if a particular braking technology is fitted it is assumed that the vehicle will meet the standard. This is not an alternative to the standard but a simplified mechanism for demonstrating compliance with the standard.

The increased width option discussed in the RIS is also too simplistic. Straight line tracking is not the only standard that would be affected by the increased width. So for example, low speed swept path, frontal swing, and tail swing are all likely to be effected by an increase in width.

**Questions 11.1 to 11.5 are related to roadworthiness.**

HVIA supports the simplification of the defects process and the use of risk based inspections but it is not clear why these policies would require changes to the legislation.