



26 November 2020

SARTA Final Submission On The HVNL RIS

As the peak trucking industry body in South Australia, with membership across all sectors of the industry and from Owner Drivers through to large fleets, the South Australian Road Transport Association (SARTA) makes the following comments in relation to the HVNL RIS. These comments take into account the wide consultation undertaken by SARTA, through ongoing liaison with members, responses to our Friday Bulletin publication, responses from many hundreds of non-members to our Facebook discussion of the issues and from their direct calls and emails, as well as from the Regional Meetings in Port Lincoln, Berri and Mt Gambier as well as from our State Conferences.

SARTA is an active member of the Australian Trucking Association (ATA) and has engaged extensively in the ATA's consideration of the RIS. Accordingly SARTA fundamentally supports the ATA submissions on the RIS. The following comments are made in addition to the ATA submissions.

Delivery of The Key Aim of the HVNL Review is In Question

The Ministerial Council very clearly established the key aim of the HVNL Review to be the development of a new HVNL that is **Risk-Based and Safety and Productivity Focussed**.

SARTA applauds the NTC's effort and work in its pursuit of this aim and we recognise the substantially conflicting pressures and interests from and between the various jurisdiction themselves and between jurisdictions generally and the industry.

We have been very disappointed at the abject lack of extensive dialogue and discussion between the jurisdictions and the industry. The parallel processes and considerations of the JSOG and the Expert Panel Groups has been unhelpful in that it has limited and indeed worked against the free exchange of views and ideas between the two key groups; those who regulate and those who are regulated.

Whilst there were some limited and useful opportunities for exchange, through workshops arranged by the NTC, including sessions in Brisbane and Sydney, this was too limited to enable the full exchange of views and ideas in a comprehensive manner, largely limiting the discussion to some of the broad concepts and principles but with almost no real discussion of the critical myriad of details that will actually determine whether the Ministers' aim of a Risk-Based and Safety and Productivity focussed HVNL is achieved.

The HVNL Must Be Amended In Full, Not Piece-Meal Even If that Extends the Timeline

The industry has become aware that jurisdictions appear to be adopting a view and approach that is more process and timeline driven, rather than being focussed on the delivery of the outcome that Ministers so clearly said they wanted; an outcome which the industry not only wants but needs if the principles underlying that Ministerial Aim are to be implemented.

Jurisdictions are know to be indicating that they are focussing on what can be delivered, ie by the somewhat arbitrary deadline set by Ministers; a deadline which in and of itself has no significance whatsoever.

This would result in an ineffectual and half-baked amendment of the HVNL and it would put at risk the Ministers' agreed aim and indeed virtually guarantee failure. It would also effectively consign the balance of the necessary and desirable amendments of the HVNL to the go-slow basket, resulting in a loss of momentum in the reform of the HVNL and risk the HVNL never actually being fully and appropriately amended.

The Industry, including SARTA, signed up to the Review of the HVNL in the clear knowledge and expectation that the NTC and Jurisdictions would deliver what Ministers so clearly set as the brief. We have invested hugely in time and effort on the Review. Any suggestion that jurisdictions and through them Ministers, are winding back on their commitment to deliver a new HVNL that is Risk-Based and Safety and Productivity Focussed is utterly unacceptable and would be an outrage.

If, as we suspect, the issue for jurisdictions is that they are struggling to progress their elements of the HVNL Review in a timeline that will meet the Ministers' timeline, the only acceptable and effective response is for jurisdictions and the NTC to advise all Ministers that:

1. Very substantial progress has been made and significant levels of in-principle agreement have been reached between jurisdictions and between jurisdictions and industry;
2. It is essential that the HVNL be amended comprehensively so as to give the greatest effect to the new focus on a Risk-based safety and Productivity Focussed HVNL as was set by Ministers;
3. Industry and jurisdictions are in full agreement that it is more important to get this right, for the benefit of the country and the safety of the industry and all road users, than it is to meet the intended deadline, which has no real significance in and of itself; and
4. The timeline for the Review ought be extended by a further 18 months, noting the reality that the Queensland Parliamentary schedule is unlikely to accommodate the initially set timeline.

The Council of the ATA discussed this at length at its 18th November meeting and was in unanimous agreement with this view.

Specific comments on the RIS Content:

Option 4.1: Apply Primary Duty to Ensure Safety to additional Third Parties

AGREE: Should extend to ALL Parties who have some influence and control of Transport Activities and the safety of those activities. This must include third Party Service Providers AND include a non-exclusive list in the Act.

Option 4.3 Extend Primary Duty to Drivers

AGREE: Option 4.2 (the WHS Model) is not supported.

Option 4.4 Require confirmation of driver's Fitness For Duty and Competence.

NOT SUPPORTED: This raises the question of driver competence in relation to what exactly, the driving task and if so what exactly does that mean, as it varies from operation to operation. The Competence question is a matter for Government to get right when issuing HV licences, which should be based upon relevant and effective competency standards. Employers should only have responsibility for ensuring relevant specifics of the task in their operation are understood by the drivers through appropriate training, including on-the-job training.

Option 5.1 Establish Code of Practice Mechanism.

AGREE: BUT we oppose the WHS Model for developing Codes as its far too slow and NOT industry -driven. Should extend power to make Codes for NHVR approval to the NTC. No Parliamentary oversight and they should not be mandatory.

Option 5.2 Establish a Safety Standards Mechanism.

NOT SUPPORTED: Should put such provisions in the Regulations.

Option 5.3 Establish a Remote Area Zone.

AGREE: But the boundary suggested in the RIS should be amended as below:



Option 5.4 Regulating Data and Electronic Documents and enable data sharing with NHVR.

AGREE

Option 6.1 Providing for a Tech and Data Certifier Under the Act

AGREE

Option 6.2a Allowing all documents to be electronic

AGREE

Option 6.2b Allowing documents to be PRODUCED within a reasonable time

AGREE

Option 7.1a Voluntary Operator Enrolment

NOT SUPPORTED: CHEATS don't usually opt in so the value of this is questionable and clients would start demanding operators Enrol (so it would be Voluntary in name only) making it a de facto rating scheme.

Option 7.1b Mandatory Operator Enrolment

NOT SUPPORTED: Enrolment offers no benefit or return to operators that they are not or should not be entitled to ordinarily without the administrative enrolment process. The only beneficiary would be the NHVR, through information regarding who **apparently** is "in the

industry” as the NHVR says and yet the NHVR would not be well placed to optimise the use of this information in the pursuit of ensuring a safe and viable industry.

Option 7.1c Operator Licensing for All Operators

NOT SUPPORTED: The idealistic notion underpinning this concept would not genuinely be achievable as the NHVR is not well placed, nor is it an appropriate entity to assess and adjudicate whether an operator is “capable and responsible enough to conduct those operations” as proposed in the RIS. Refusing entry to an industry or enforcing banning from an industry, is an extraordinarily difficult thing to do fairly and legally. It is inevitable that the Licensing would be superficial and ineffective.

The NHVR has tools available, through Improvement Notices and Prohibition Notices currently and should continue to have these tools under the amended Act. The NHVR needs to make more and better use of these tools. Adoption of Operator Licensing, under the guise of controlling the “capability and responsibility” of operators would be unjustified, as it would add further administrative and cost burdens to the vast majority of operators who are capable and responsible, whilst providing them with no benefit because they still have to compete with those few who are not responsible and capable because the NHVR fails to act effectively to address that minority’s shortcomings. In short Operator Licensing would add burdens to the vast majority of the industry without delivering any better outcomes that at present. If the NHVR can’t tackle the trouble-makers now with Improvement and Prohibition Notices, they will fare no better with Operator Licensing.

Option 7.1d Operator Licensing for High Risk Operators

NOT SUPPORTED: For the same reasons as above and noting in addition that the notion of “higher Risk” operations including Dangerous Goods (DG) carriage, overlooks the reality that bicarbonate soda is a DG and along with numerous of innocuous items that happen to be classed as DGs under the international code, are part of a very high percentage of general carrier freight movements. Similarly, Restricted Access Vehicles (RAVs) are increasingly the norm and General Access issues are the exception. Furthermore General Access Heavy Rigid operations are currently more of a safety and compliance concern that are the Linehaul operations not because they are inherently unsafe, which that are not, but because of the abject failure of authorities to pay appropriate and effective attention to that sector of the fleet. This Option would be akin to requiring Operator Licensing but limiting it only to humans who breath. It simply makes no credible sense.

OPTION 7.2: Move to Performance Based Standards

NOT SUPPORTED:

OPTION 7.3: Enhanced single opt-in regulatory certification scheme

NOT SUPPORTED: We note that the NHVAS operated and managed by the NHVR has not yet been updated to meet the requirements of the 1 October 2018 Chain of Responsibility reforms, unlike the industry run TruckSafe Scheme.

OPTION 7.4: Multiple certification regimes and Allow 3rd Party Reliance on Operators’ Accreditation

AGREE: This would recognise and accept other schemes (such as TruckSafe) AND all schemes that meet the appropriate standards should attract the same regulatory benefits as the NHVAS currently attracts, as recommended by the Medlock Review.

AGREE: It is essential that 3rd Parties have an express legal right to rely upon an operator's formal accreditation as evidence they are safe and compliant and meeting their obligations. This would eradicate the hugely expensive and utterly redundant ineffective and overlapping duplication of Audits imposed by countless Prime Contractors and/or Clients which they currently impose simply for appearances that they are meeting their ill-understood obligations under the Chain of Responsibility. These clients generally are unaware that the HVNL only holds them accountable to the extent of their level of Influence and Control over their transport operators' transport activities. These clients are in fact currently increasing their own level of Influence and Control and hence their liability, unwittingly, generating massive costs and burdens for the operators without any safety gain and also without paying for that impact.

OPTION 8.1a: Simplify Rules for Counting Time

AGREE: and ensure they provide some appropriate flexibility, in particular eradicating the absurd technicality of inconsequential minor breaches of Short Rest Breaks. As police in SA say, "its NOT the minutes that are killing people, it's the HOURS".

Yet a high percentage of roadside enforcement activity is focussed on technical non-safety related minor breaches of rigid Short Rest Rules, costing drivers many hundreds of dollars for the difference between a perfect soft boiled egg and a hard boiled egg.

OPTION 8.1b: Simplified standard hour using a rest reference

AGREE: Strongly support that rest of at least 8 hr should "RESET the drivers 24 hr Clock".

OPTION 8.2: Revision to Tier 2 and 3 of fatigue management framework

AGREE: With the Tier 2 and Tier3: proposals in principle but the details need to be worked on further.

OPTION 8.3a: Apply fatigue requirements to high-risk category drivers

NOT SUPPORTED: The proposals to identify drivers who work more than 60hrs per week; OR over 10hr/24 MORE than once a week; OR between midnight and 5am MORE than once a week, would be unworkable and impractical both for the industry to manage and for the enforcement agencies. The notional parameters are arbitrary and not based in science. This would be an unnecessary and unjustifiable complication.

OPTION 8.3b: Widen the scope of regulated vehicles

AGREE: All Heavy Vehicles of 4.5t and above should be covered by the fatigue management laws and rules, regardless of the 'profession' of their owner or driver.

OPTION 8.3C: Combination of specific drivers and specific vehicles

NOT SUPPORTED

OPTION 8.4: Simplified record keeping arrangement

NOT SUPPORTED: For the same reason that many, if not most, operators and drivers would prefer a simpler set of flexible Work and rest rules that provide certainty that what they are doing is acceptable, at the very least a simple standard form would have to be published and endorsed by the NHVR. Otherwise the drivers and operators would be at the mercy of the myriad of various views and 'beliefs' of general duties police around the country.

OPTION 8.5: Mandate electronic records (Electronic Work Diaries : EWDs)

NOT SUPPORTED: This would be utterly unfair and unacceptable unless the new Work Rest rules allow flexibility so drivers are NOT fined when EWD shows minor technical and irrelevant breaches; eg 14min 50sec Rest for eg.

SARTA and most of the industry accept and would welcome the significant administrative benefits of EWDs but unless and until the legal inflexibility in the HVNL is removed, EWDs would be a burden that simply automatically generate millions in fines for utterly irrelevant non-safety related minor technical breaches.

It should also be noted that the more flexibility that is built into the HVNL and Regulations re Work and Rest limits and frequencies, the less likely it is that EWD providers will be able to accommodate all the variables on their programming.

Moreover, as actual fatigue-management technology emerges and becomes more standard within the industry the less relevant will be reliance on default rule-counting technology.

OPTION 8.6: National health assessment standard for drivers

AGREED

OPTION 8.7: Right to stop if a driver is deemed not fit for duty

AGREED but this should extend to any circumstances when a driver is fatigued, not be limited to a legislated threshold. To mitigate the problem of some drivers simply claiming they were fatigued in a manner that unreasonably disrupts safe and efficient transport operations, drivers ought to be required by their employer to explain why they were or claimed to be fatigued and stopped. Failure to deal effectively in the HVNL with this appropriate right to stop when fatigue could create industrial mayhem, without any safety gain.

Conversely, it would be unreasonable for an employer to prevent a driver who feels fatigued from stopping simply because they had not met some legislated trigger that deems them fatigued.

OPTION 8.8: Driver self-assessment and declaration of fitness to work

NOT SUPPORTED: This concept should be optional as part of a Safety System in Tier 3 and perhaps Tier 2 of revised fatigue rules and requirements.

OPTION 9.1a: Increase Mass from GML to CML

AGREE: This is the preferred and most justifiable option of the three 9.1 Options. There would be no gain with CML in regional area, as are already CML or HML accredited.

OPTION 9.1b: Mass to CML on enrolment with NHVR

NOT SUPPORTED: no benefits other than to NHVR in monitoring and checking rigs.

OPTION 9.1c: Mass to CML if on board mass installed

NOT SUPPORTED: There are significant issues with mass data systems and its NOT yet reliable.

OPTION 9.1d: Increase in allowable vehicle length

1. Option 1: All vehicles

NOT SUPPORTED

2. Option 2: Vehicles with safety features

NOT SUPPORTED: The sorts of conditions suggested may NOT be justifiable but could be used to drive costly and unjustifiable Fleet Upgrades and cause massive impacts on businesses as the current fleet is devalued and perhaps even made worthless; destroying the businesses financially.

3. Option 3: Increase in allowable vehicle length for some RAVs for additional sleeper cabin only.

AGREE: This is the preferred and reasonably justifiable position but should be for additional sleeper cabin or bonneted rigs.

OPTION 9.2a: Recognise precedent and expedite process for equivalent/lower risk applications

AGREE

OPTION 9.2b: Allow for opt-in road manager delegation

AGREE:

OPTION 9.2c: Geospatial map given authority in the law

AGREE: subject to appropriate control over the mapping providers, holding them accountable where they purport to provide official approved maps.

OPTION 9.2d: A risk-based approach to vehicle classes

1. Freight and passenger, OSOM

AGREED:

2. Existing authorisation category, exemption categories

NOT PREFERRED

OPTION 9.2e: Amendment to third party consent requirements

1. Remove third party consents

AGREE:

2. Capture third parties in access decision making

AGREE: but NOT the preferred option.

OPTION 9.2f: Amendments to access decision-making criteria –network management

AGREE: BUT if Road Managers are to be allowed to consider long-term network impacts the corollary MUST be that they must consider the freight task when assessing RAV access and thus compare the impact of say 1200 semi-trailer movements as against 800 B-Double movements and not simply compare a single semi with a single B-Double.

OPTION 9.3a: Statutory timeframe, deemed referral and refusal for nil response;

NOT SUPPORTED: Nil Response within the designated time should be a deemed APPROVAL and to mitigate against a plethora of Rejections within the designated time, the permissible reasons for rejection must be limited to a specified set of reasons, to which the NHVR can hold the Road Managers accountable.

1. standard timeframe of 28 days

NOT SUPPORTED: 28 days is too long for the great majority of access cases. 7 days is sufficient.

2. varying timeframes for risk

AGREE: for genuinely problematic risk cases but the Road Manager should have to justify their APPLICATION to the NHVR for a longer timeframe to the

OPTION 9.3b: External review of access decisions

1. Independent review panel

AGREE: BUT the specialist panel should:

- a) include individuals who understand;
- b) the panel should be able to review ALL refusals, not just deemed refusals;
- c) Over-ride Road Managers' decisions.

2. Referral to an existing tribunal or court

NOT SUPPORTED: as the Court/Tribunal would have no or limited understanding of the issues and the proceedings would just be about process issues.

OPTION 9.4: Move access decision-making process from primary legislation to regulations

AGREE:

OPTION 9.5a: National scheme – single tiered pilot

AGREE: This is the preferred Option but essential that the nationally uniform scheme established when a OSOM load requires a pilot AND what the pilot is authorised to do.

OPTION 9.5b: National scheme – dual-tiered pilot

AGREE: IF necessary to secure national uniformity.

OPTION 10.1: Streamlining the PBS approval process

AGREE:

OPTION 10.2: PBS technology standard

AGREE: BUT need to ensure wide and effective industry consultation, NOT just with big operators.

OPTION 10.3: Increased vehicle width if PBS Level 1 Performance Standards are met

AGREE:

OPTION 11.1: Standardised maintenance/ roadworthiness assessment

AGREE: and the NHVR should be able to review and overturn Defects.

OPTION 11.2: Risk-based inspection scheme

AGREE: BUT it will be essential that police agencies sign up to adoption of Risk-based inspections and defect issuing.

It is worth noting that the latest NHVR data presented to industry in SA shows over 90% of defects are NOT safety-related issues.