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HVNL Review Project Team
National Transport Commission
Level 3, 600 Bourke Street
Melbourne VIC 300

HVNL Review Issues Paper – Effective Enforcement

Thank you for the opportunity to provide comment on the Effective Enforcement Issues Paper as part of the Review of the Heavy Vehicle National Law (HVNL).

I understand the challenges involved in looking at future enforcement options are complex and that the current approaches are embedded in practices that have evolved and been in place for a very long time. They also often involve emotional, subjective and cultural responses and are sometimes guided by perceived political imperatives which just adds to the complexities involved in moving to deliver better outcomes.

The Law and current enforcement philosophy are both outdated and largely ineffective in improving safety outcomes

If we want to pursue better safety outcomes, I know we cannot continue to hide behind the perceived complexities nor accept that some want to continue to demonise the industry purely to justify or maintain their current roles or thinking. As I've said in responses to other HVNL Issues Papers, we need to tackle the "elephant in the room" and address the crippling problems being experienced with the current enforcement philosophy which is overly prescriptive and, in many cases, has little or no impact on improving safety outcomes.

I don't know how many forums I've been in over a long period of time, along with many industry colleagues where these points have been highlighted along with the flow on and serious consequences the current approach has on the industry. As an example, I've lost count of the number of excellent professional drivers we've lost because they have been fined, lost income and in turn could be in danger of losing their licence and thus livelihood to support their family – all because they made an administrative or minor error. This is part of the answer to your Questions 1 and 3, stop fining drivers and companies for minor and administrative errors, move the focus to high risk and major safety related defects.

Drivers often report they feel "hunted" when they are on the road in that they are subject to the whims of someone who might be having a bad day and/or doesn't understand the Law they are trying to enforce. This is then compounded by encountering a different interpretation 200 kilometres up the road. There is no doubt that in most cases using the HVNL, something can be

found that isn't exactly right on a heavy vehicle or in a work diary – but the question is whether this should be the focus of our future approach to enforcement – or should we move that focus and the limited resources to collectively challenging those in the high risk safety zone. Let's admit it that due to its complexity, that no-one fully understands the HVNL nor can we expect drivers or indeed enforcement people to apply it in a fair and equitable way. Unfortunately, it's a raffle and for those that understand, a bit like Rugby Union scrums in that it's easy to find a penalty for something and the interpretation changes from scrum to scrum and from game to game.

Finally, the Review Paper provided good examples in para 4.2 of the ridiculous way in which the current Law can be and in some cases is applied. One of the examples led to a \$1,156 fine for a driver for a series of alleged minor offences. The financial consequences for drivers of this type of approach are horrifying to say the least. The more frightening issue is that these are not rare occurrences but are reported to happen on a daily basis. Surely this isn't the way we want truck drivers treated?

The second example used re the bug deflector also defies belief but the reality is that some enforcement officials "believe" they are experts in specific areas and go to tremendous lengths to apply this perceived knowledge. The costs occurred by companies in these examples is again ridiculous and another clear example where the Law and enforcement philosophy are plainly wrong.

Good companies are unfairly targeted because we are "easy"

It was with a somewhat cynical eye and almost non-belief that I picked up the statement in para 2.1.2 in the Issues Paper that suggests current compliance obligations are sensible and in para 2.2.2 where it says regulators and enforcement bodies have recognised the shortfalls of the traditional compliance approach. I also note that earlier in para 1.2.2, it is suggested that enforcement and assurance work together to promote better behaviour.

Perhaps these statements are all alluding to where we might end up after the HVNL Review because my extensive experience says it's definitely not the case today.

Our people are also victims to the overly prescriptive approach in that they spend too much time crossing the t's and dotting the i's rather than pursuing real safety benefits. An example here is that they have been told by the enforcement authorities that they must check the work diaries against our telematics reports. This sees them worrying about a driver who might have written in 11:00am instead of 11:05am because they are very concerned that they will be in trouble under the Law if they don't pursue it. Guess what, those who don't invest in technology don't have this problem!

A few examples to highlight this point.

Ron Finemore Transport (RFT) and many other companies make a considerable investment in pursuing safety compliance and I know we mostly get it right. RFT has over 750 pieces of equipment on the road every day and does in excess of 57 million kilometres in a year. In 2018/19, we only received 76 defect notices, mostly minor, with nine (9) being deemed major. Three (3) of these were mandatory defects following accidents and we'd need to agree to disagree on the validity of some of the other six (6). We don't record the total number of interceptions we are subject to on a daily basis; however, I know it is many thousands each year. The point I'm making is what value are we collectively obtaining from targeting companies like RFT rather than collectively working to address the high-risk behaviours of a minority of operators in the industry? The costs to our business from these thousands of interceptions is immense let alone the cost to regulators. The unfortunate

answer to all this is that we are in the main an easy target and despite everything we do, we are mainly treated the same as those who make little or no investment in improved safety outcomes. (Note: I do know that there is some sophistication behind intercepts based on previous issues found but the overall point I make is that there is clearly a waste of the limited resources).

I was also deeply disappointed and very much dis-heartened when a recent road safety campaign in Victoria used an RFT vehicle as its target for the TV cameras, the Minister and the news grab it appeared they all wanted. The impression and perception from the news grab let alone the reputational damage this type of unjustified approach causes is immeasurable. The impact of the officer's words "it doesn't look crash hot" and the reporter's words of "weeding out dodgy truck operators" whilst our truck was on display do nothing to justify why we continue to bang our head against the wall. If this is what enforcement is about ([link here](#)), I have no chance of continuing to convince my people that our investment is worthwhile both in terms of improving safety and working with regulators to deliver better outcomes. This resulted in us getting a minor defect for a scrubbed tyre with seven days to have it fixed.

Targeting high risk vs low risk safety behaviour – simple answer to Question 2

For a long time now, and unfortunately with little positive result, the industry has strongly encouraged our regulators to prioritise their enforcement focus on high-risk operators and behaviour. I also see it as somewhat ironic that the trucking operators themselves have been the main proponents of the chain of responsibility (CoR) and in educating their customers about this concept (note: I accept the NHVR has made good progress in the education area in recent times). I stand to be corrected but I think we are still to publicly see a customer pursued in the Courts under the CoR Law despite it being around for a long time and noting its recent updating in 2018.

Regulators do have choices to use their resources to more effectively target high-risk operators and operations but this would require greater co-operation between agencies and more effective internal data management systems to identify and then pursue the correct targets.

Urban vs long distance enforcement needs are different – another option under Question 2

I note that para 2.2.2 starts the important discussion on the different needs of urban and long-distance road safety. I think the reliance on fatality data here is mis-leading in that urban speeds are always going to be much lower and impacts less severe – but this does not lessen the importance of urban enforcement given the higher age of the vehicle fleet and the varying nature of the tasks being performed. I believe urban enforcement needs to increase and the options to do so are not that difficult to implement – but governments also need to lead by example and their perceived failure to impose higher safety standards on their current massive infrastructure builds means they are not seen to be serious about leading improvements to safety in their own backyards.

Technology is moving faster than our Regulators, plus their approach has been wrong to date.

One of my dreams is that the future will see a collaborative approach to harnessing the power of technology we use in our trucks and businesses for the greater good (your Question 4). This would involve the sharing of data but will firstly require regulators to stop seeing technology as primarily a "gotcha" tool but rather working cooperatively with industry to share information that will deliver better safety outcomes. This would require a high deal of trust being developed which plainly does not exist today.

This is clearly a two-way street – regulators must be willing to share their information too, for example the difficulties we have with trying to get easy access to real time information on our drivers is ridiculous, surely the safety considerations should override any perceived privacy issues. I don't know how I'm meant to ensure our drivers are properly licensed each and every day if regulators refuse to keep me up to date with this information or indeed tell me when a sanction is imposed on a driver driving one of our trucks.

We use technology to deliver better outcomes across the board and can't wait or simply re-equip to fit in with a regulatory standard that comes out after the horse has bolted. The IAP was a great example of regulators thinking they knew best. Everyone knows it's been a monumental failure and the large investment made by some in our industry and governments has clearly delivered no real benefits to anyone, only massive additional costs and lost economic opportunity in the higher mass limits area.

Whilst the standard development process for EWD's might be a better option (I'm not convinced noting suppliers need to apply to the NHVR to have their devices approved), the fact we are still waiting for any provider to be approved speaks volumes to the fact that key regulators and enforcement officials still want to apply the old prescriptive rules to new technology. RFT won't be using EWD's until it is safe and flexible, from all perspectives, to do so.

Fatigue and distraction detection device technology is another example where the industry and suppliers are way ahead of regulators in recognising their huge potential safety benefits. Based on my extensive experience on how regulators have historically viewed these types of technological advances, the biggest fear I have is that they will find a way to diminish their benefit and usage rather than encourage it. Full marks to the NHVR for currently running a project looking at how industry is using them, let's hope this leads to sensible and encouraging Law making around this important technology.

Finally, I also worry about the push by some to mandate telematics equipment in trucks. I'm not sure what such a move would accomplish except delivering massive additional costs and another bureaucracy to try and manage and analyse the data. And let's be realistic, any moves to mandate technology in any sense will lead to a range of exemptions and provide more costs to the operators trying to do the right thing whilst providing another commercial advantage to those who don't.

Education and guidance material would help deliver better safety outcomes

I attend many regulatory forums where defect and other information is provided, often pointing to perceived compliance issues industry is having in specific areas. I note NatRoad has suggested that education should be a higher priority for regulatory authorities including widespread promotion of issues identified so industry can "learn" about the challenges being found and take proactive action as necessary. This would dramatically assist in improving on road interactions when coupled with using more warning notices rather than actual defect notices.

Conclusion

In closing I note the Danish principles at Appendix A. I know we all agree that delivering "simple and distinct" rules are the main objective. The challenge is to how we take everyone on that journey and deliver a better outcome rather than just a new one or more of the same.

I do believe most of the challenges here relate to a different culture being in place in the industry today to that which might have historically been perceived to be the case and the one that the Law and enforcement was built on. I also believe that great care needs to be taken in ensuring for obvious reasons, that NSW is closely aligned and committed to any proposed changes to the HVNL and its implementation on the road.

I'm happy to expand on these matters if appropriate.

Kind Regards

A handwritten signature in black ink, appearing to read 'Ron Finemore', with a stylized flourish at the end.

Ron Finemore AO
Executive Chairman