

**EFFECTIVE ENFORCEMENT
HVNL REVIEW ISSUES PAPER
SOUTH AUSTRALIAN ROAD TRANSPORT ASSOCIATION SUBMISSION
31 OCTOBER 2019**

1. About the South Australian Road Transport Association (SARTA)

The South Australian Road Transport Association (SARTA) is the peak road transport body in SA and with hundreds of members and a far wider industry based operator network, with which we are continually engaging throughout the Review of the HVNL. SARTA is committed to safety, professionalism and viability.

2. What does “Effective Enforcement” Actually mean Or What SHOULD it Mean?

There is no point in discussing how to provide for Effective Enforcement in the new HVNL without first determining what “Effective Enforcement” actually means, or should mean.

There is no doubt that there is a spectrum of views on the answer, ranging from the anal literal enforcement of the black and white letter law, which far too many police officers adopt, often with relish, to the more pragmatic enforcement of the INTENT of the law based upon consideration of SAFETY CONSEQUENCES, which is increasingly being adopted by the NHVR Inspectors, and a very small percentage of better-informed police officers.

SARTA is uniquely placed to make these observations, as we are the only jurisdiction that has had significant experience with the NHVR’s risk-based and safety-focussed enforcement approach, which we have been able to contrast for several years with the literal approach of police. We have even had numerous embarrassing, for government, cases where NHVR Officers and SAPol Officers have been at odds on the roadside, in the audible presence of truck drivers, regarding the enforcement of the HVNL.

This is REAL and must not be dismissed as minor, irrelevant or isolated. This is a fundamental fact that must be resolved in the new NHVL if we are to achieve “Effective Enforcement”.

The former approach by police is the more common experience of the trucking industry, in all participating jurisdictions. The result has NOT been increased safety and compliance by and large, at least not from the enforcement activity. The only things that increased are frustration levels along with massive increases in operational costs from the litany of fines for technical non-safety-related breaches and from the inestimable lost opportunity costs to the economy arising from unnecessary down time of trucks, with zero safety gain.

This engenders and entrenches a counter-productive adversarial cops-and-robbers approach that is destined to fail to achieve what should be the over-arching objective of safe productivity.

There is also little doubt that **this outcome is not what the legislature and Ministers intended. What they wanted was HV law that ensures SAFETY, whilst facilitating the PRODUCTIVITY** that the HV industry must be able to provide to underpin and support a vibrant growing economy; as clearly intended in the Terms of Reference for the HVNL Review.

Finally there is again no doubt that the vast majority of the trucking industry, rigs and drivers are responsible, safe and compliant, with only occasional inadvertent minor breaches.

So why has it happened and how do we guard against its perpetuation under the new HVNL? We believe, based on long experience and observation, that the fundamental driver of the current and past emphasis on literal enforcement of the black and white letter law without real consideration of safety outcomes, is embedded deep in the psyche of the traditional approach and philosophy of police. They generally consider, and are taught, that it is not their role to question or interpret the law, which in their own defence they frequently are at pains to point out they do not write, but rather merely to apply the law as it is written; i.e. literally.

This is not an industry whinge. It is a dispassionate recognition of reality and it must be recognised and countered in the new HVNL, if we are to avoid perpetuation of the **current INEFFECTIVE Enforcement** regime, which is immeasurably counterproductive and harmful to the economy without offsetting safety justification.

If these propositions are accepted as true, as they should be given the preponderance of evidence from on-road audits and the mass of data now held by the NHVR, then:

The HVNL should be drafted so as to ensure Effective Enforcement i.e. that:

- 1. Is focussed on detecting and preventing UNSAFE HV outcomes;**
- 2. Is applied in a risk-based manner;**
- 3. Is primarily focussed on intelligence-lead targeted enforcement;**
- 4. Is supported by adequate on-road risk and safety-based enforcement by officers appropriately trained and qualified in relation to HV;**
- 5. Which recognises and accommodates the fact that accredited operators monitor and manage the safety issues, including for example ongoing vehicle maintenance and correction of faults;**
- 6. Which allows safe and timely repairs at the roadside rather than issuing unnecessary defects;**
- 7. Which limits application of penalties (including defects) to imminent significant safety risks;**
- 8. Which does NOT penalise drivers or operators in relation to administrative or operational errors/failures that are inconsequential for safety;**
- 9. Which is applied consistently by all officers from all agencies in accordance with the single source of directions and standards, namely NHVR's Directions;**
- 10. Which drives appropriate focus on enforcement THROUGHOUT THE CHAIN of Responsibility, and not exclusively on truck drivers and operators, including:**
 - a. the various levels within Third Party clients, from the Boards and Directors to their Inventory Managers; and**
 - b. third party HV maintenance service providers;**
- 11. Which imposes appropriate penalties commensurate with the risks associated with breaches;**
- 12. Which provides aggrieved parties with an effective appeal process for review of infringements/fines by an impartial entity that is completely separate from and independent of, the issuing agency; and**
- 13. Which provides for education and cooperative safety improvement in preference to enforcement, backed up by increasingly stringent measures including Improvement Notices and Prohibition Orders for the more serious and recalcitrant offenders.**

S. B. Shearer
Executive Officer, SARTA