



Response to the National Transport Commission Effective Enforcement

Submission Number Six

Submission on behalf of the
Victorian Transport Association

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3.0 SUMMARY



1.0 ABOUT THE VICTORIAN TRANSPORT ASSOCIATION (VTA)

1.1 Introduction

The Victorian Transport Association (VTA) has over 800 members and is dedicated to the service of members and supporters in all sectors of the transport and logistics industry.

With over 100 years' experience and a specific business focus, we possess the industry acumen, market knowledge and industry contacts that enable members to capitalise on the current commercial and regulatory environments.

Recognised as Australia's pre-eminent multimodal prime contractor and employer organisation in transport and logistics, the association works with all levels of government, the unions, statutory authorities and the industry to achieve mutually beneficial outcomes. The VTA is committed to enhancing the image of the industry while helping improving the commercial environment for our members to operate.

2.0 VTA'S RESPONSE TO THIS ISSUES PAPER

2.1 Introduction

The Victorian Transport Association (VTA) welcomes the opportunity to respond to this '*Effective Enforcement*' Issues Paper released in September 2019 by the National Transport Commission (NTC). The VTA will refer to this document as Submission Number Six.

The HVNL in its current form falls short of being truly national and is overly prescriptive and complicated. This review (the Review) of the HVNL will have a significant impact on the heavy vehicle industry. It will determine the shape, practices and operational standards within the industry that at times falls short of community expectations and struggles to project a positive culture.

Throughout this entire Review process, the VTA has been consistent with what the new Law needs to achieve for all stakeholders. The VTA and its members maintain that this Review must ensure that any changes to the law remain focused upon and are underpinned by three key pillars: improved efficiencies, improved productivity and improved safety outcomes.

It is vital that we confront past standards and legal structures whereby we build a new HVNL framework which addresses the current problems and short-comings and most importantly, ensures that we deliver a far more robust, purposeful and flexible framework in order to meet future industry challenges.

At the very outset, the VTA believes that this Issues Paper is too narrow in scope and that we have missed an important opportunity to fully explore the significant opportunities available through technology. Whilst the Issues Paper discusses data and technology in section 2 and is focused on compliance and enforcement, we believe that the discussion on IAP and EWDs is too restrictive and it would have been more advantageous to have explored broader issues.



The real issue is that we are not embracing what is currently occurring with technology in our industry. The NHVR, governments, government agencies and enforcement agencies are being left behind and they are not keeping up with the many technological advances. The world has dramatically changed since the commencement of the HVNL in 2014.

Many of the larger and professional organisations (of all sizes) are not waiting and are already adapting and implementing the significant technological advances. They recognise it is the way of the future but it also comes at a real cost to their businesses.

The VTA also advocates that major advances could be in relation to management of compliance, enforcement and assurance if all heavy vehicles were required to have GPS fitted to their vehicles. We recognise that this would require a significant amount of work, however, we also know that by implementing GPS and the associated technologies, they would provide the key platforms for operators to more efficiently and effectively meet their safety and compliance requirements.

At the same time, the VTA acknowledges that many of the small and single operators have not embraced the available technology. We must also ensure that there is greater awareness and education of all operators of the benefits which can be delivered.

The VTA understands that this presents major challenges to all involved in the transport and logistics industry. However, we must not be perturbed and ensure that the new Law is flexible and can accommodate the many on-going technological advances available to the industry.

2.2 Approach to the VTA Response

The VTA responded to the initial March 2019 Issues Paper, titled '*A risk-based approach to regulating heavy vehicles*' (referred to as number one submission) and made a concerted effort to include many of its key issues and topics within this submission.

Our responses are based upon the VTA's knowledge and thorough understanding of the transport and logistics across different sectors, jurisdictions, government bodies and agencies, as well as, the feedback from VTA members through its well-established VTA Secretariat structure.

Throughout this Review and in the five submissions already lodged, the VTA has argued that 'consistency' is essential for the new Law. The issue of effective enforcement is no exception. It has already proven to be one of the most challenging areas to achieve success. It has a long history of 'inconsistency' and traditional enforcement has been modelled on 'command and control'.

The VTA supports the four draft regulatory principles proposed in this Issues Paper. It states that the aspirations of the new Law (section 5) needs to set a high-level vision for regulating compliance, enforcement, technology and data in a future HVNL. The VTA advocates that the draft regulatory principles should be 'front and centre' in the formulation of the new Law.



The new Law must also be easier to comply with and ensure that there is better alignment and balance between offences and penalties. There must also be greater 'consistency' in the application of the new Law across jurisdictions.

As outlined in first draft regulatory principle of this Issues Paper, *'the future HVNL should have strong links between compliance and the goals of the new Law'*. The VTA also supports the need for changing behaviours by the regulated parties whereby they better understand their responsibilities and consequently drive and improve compliance.

The VTA maintains that the new Law must ensure it is more flexible, consistent and better harmonised across all jurisdictions. The new Law also needs to be better able to accommodate technological advances whereby the Law does not need to be re-written and is flexible and agile in order to embrace such advances.

2.3 Specific VTA responses to the questions.

2.3.1 *Which compliance obligations in the HVNL that do not link to safety and efficiency are most important for us to remedy as part of this review?*

The VTA agrees that compliance, enforcement, data and technology should play a critical role in achieving the primary goal of the Law and this is captured in figure 3 of the Issues Paper. The HVNL is difficult to comply with due its complexity and rigidity and as stated in several of the VTA's previous submissions, enforcement is often inefficient, inconsistent and not addressing the real issues.

The VTA has reflected on the question proposed and believes that compliance obligations in the HVNL do link to safety and efficiency in some way, whether directly or indirectly. It is really a question of determining which areas link better than others, as well as, there degree of relevance.

For the purpose of this question, the VTA believes that there are three areas which need to address. They include: inconsistencies in the interpretation of the Law; availability of effective information and education of the industry.

It is argued that compliance is about meeting standards and following the rules in the Law. In principle, this is not an issue, however, the VTA maintains that inconsistencies in the application and interpretation of the HVNL and its standards are major concerns for many organisations.

The VTA supports the concept of national consistency being a goal of this Review and it will go a long way in addressing many of the current issues. The VTA also acknowledges it will mean degrees of compromise by all jurisdictions in order to achieve such a goal.

The VTA believes that there will need to be a change of 'mind-sets' and a significant improvement in the spirit of goodwill between the jurisdictions. It also maintains that a fundamental 'root cause' of the inconsistencies results from the major derogations exercised by the respective jurisdictions. Enforcement is still largely modelled on



‘command and control’ mechanisms. This must be challenged and changed if we are to achieve better compliance by the operators.

The VTA advocates for real change. There must be a shared commitment from all enforcement agencies on a national basis. There also needs to be a strong commitment and the ‘political will’ to change at the highest level if we are to achieve more effective compliance and enforcement for the industry.

This position is witnessed in the operations of VTA members who have national operations and experience firsthand the disruption and the inefficiencies which have resulted from these derogations. It is continually experienced in areas, such as: vehicle maintenance and safety standards; mass management and compliance, as well as, the obligations associated with noise and emissions. Specific examples have been outlined in our previous submissions to the NTC.

By way of example, mass management parameters along with their enforcement remain a significant issue. It is further complicated by the number, as well as, the requirements of the accreditation systems which operators are required to meet. Many projects and transport and logistics contracts demand strict compliance, training and accreditation to their specific contract demands resulting quite often in significant duplication of safety systems for operators.

We cannot allow for the current level of derogations and inconsistencies to occur and severely impact the desired outcomes. The legislative model must be able to ensure that agreed mandatory operational standards can be applied and enforced and that all aspects of the new law can be effectively applied on a national and consistent basis.

There is currently a lack of accurate and effective information about instances of non-compliance which could and should be analysed to better assist a risk based approach for HVNL.

As a key starting point, we need to obtain and analyse this data. This would help provide an efficient and cost-effective way to approach and address the highest risks. We need to adopt a fresh approach and not repeat the past. We are not effectively capturing, analysing, sharing and acting upon this data and information. This issue is further discussed in 2.3.4.

VTA members have highlighted that the transport and logistics industry is characterised by very low margins, low barriers of entry and that it is already over regulated. This impacts the level of commitment by operators to the HVNL.

The industry is committed to productivity and safety. The VTA argues that in addition to the application of mandatory operational standards, the operators who invest in and implement additional productivity and safety measures should be rewarded with greater access to realistic incentives built into the new Law. These could include greater access to existing networks, recognition of their accredited safety management systems and



reduced registration related and operating charges. We need to simplify the requirements and reduce the red-tape and duplications.

Many VTA members (small, medium and large organisations) who are already committed to operating effective management systems highlighted the high costs of resourcing, implementing and maintaining such systems.

They have also made it clear that there is a significant lack of understanding and appreciation of these compliance requirements by the regulator, government agencies and statutory bodies.

There is also a serious need to raise the awareness, understanding and knowledge of the HVNL and to highlight the fact that it applies to all heavy vehicles greater than 4.5 tonnes. This HVNL awareness issue also involves small, medium and large organisations.

There is a major deficiency of the current law especially in relation to compliance and enforcement. Enforcement of the full HVNL must be made and applied to all heavy vehicles greater than 4.5 tonne with no limitation of distance to ensure every heavy vehicle driver and operator is accountable at all times.

Based upon our knowledge of the industry, the VTA believes that we are certainly not at the required and desired levels of compliance and this needs to be carefully considered in the Review.

As argued in other submissions, provision of resources and adequate funding for education and training must be provided with the implementation of the new Law.

2.3.2 How can the law better support a risk-based regulatory approach to enforcement? How can the law support consistency, predictability and proportionality in enforcement responses?

The VTA supports a risk based enforcement approach, however, as outlined in the previous question, there is currently a lack of accurate information and we simply do not effectively collect, use and exchange effective information.

As a key starting point, we need to obtain and analyse the data. This would help provide an efficient and cost-effective way to approach and address the highest risks. We need to adopt a fresh approach and not repeat the past.

In the first VTA submission, the VTA provided the following table which outlined the main issues and sections which needed to be carefully considered. They either need to be included, deleted or revised as part of this Review. The VTA maintains that these items still remain relevant in our response to this Issues Paper.



The following table summarises the review of all 768 pages of the HVNL and the issues raised by the VTA.

Existing Sections for Review	Description
Enforcement Powers	Risk based approach
Penalties	Delineate with objectivity
Fatigue Management	Include <100 km and down to 4.5T GVM
Suspension / Emissions	Mandate minimum standards
Maintenance Standards	Regulate minimum standards
Chain of Responsibility	Definition and education
Weight / Mass Parameters	Desensitize dimension.
Vehicle Combinations	Commit to broader acceptance
Vehicle life	Factor newer HV's into the law.
Additional Sections for Inclusion	Description
Technology and Standards	Currently little reference
Education of Industry	Little formal support
Centralised Database.	Held by the Regulator
National Harmonisation	Six major issues that could be harmonised
Contracts	Minimum standards
Accreditation	Take out the commercial value
Access	Broaden the access based upon accountability, compliance and geography.
Regional areas	Formalise and define the law in context with geographical areas.
National Road Capacity Plan	Commit to an ongoing awareness.
National Regulator	Better define the terms of reference for this very important instrument
Minimum Operating Standards	Clearly define where the minimum sits with operating standards

Table 1 List of VTA main issues and considerations to be include in the Review.



The penalty framework is not 'fit for purpose' and needs to be subject to significant scrutiny during this Review. The new Law needs to achieve greater alignment between the penalties and the nature and seriousness of the breaches. There also needs to be demonstrative outcomes and direct and indirect incentives for HVNL compliant operators doing the 'right thing'.

The VTA maintains that the actual areas currently regulated should be kept, and include: fatigue management; mass, dimension and loading; vehicle standards; national registration; safe people and practices.

It is time that a far more sophisticated and 'fit for purpose' approach is taken to fatigue management on a national basis. To achieve this objective, NVNL must have provision to accommodate and adopt current and future technologies which can effectively manage this area and ensure that it is applied to all heavy vehicle operators and drivers.

The VTA has argued strongly throughout this Review, that a far more flexible approach needs to be taken to fatigue management. It must be made clear that the VTA supports the need for established limits on actual driving hours, however, the current prescriptive rules need to be changed to ensure greater flexibility and to ensure a more rational approach.

2.3.3 Are all enforcement tools being used effectively? If not, why not? Could a different set of enforcement tools give us better compliance outcomes?

The Issues Paper highlights that under the HVNL, the NHVR has to work collaboratively with other enforcement agencies to make sure there is a nationally consistent enforcement approach (s659(2)(1) of the HVNL).

Given the on-going pattern of 'inconsistencies', the above mentioned collaboration is certainly not achieving the desired outcomes of the HVNL. The unacceptable levels of effectiveness has been continually substantiated throughout this Review. It is clear that the NHVR requires more powers to address enforcement from a national perspective and that it needs to be more outcomes focused.

For too long, the transport and logistics industry has been negatively impacted by the performance of the NHVR, levels of government, government bodies and agencies and of road managers. The VTA believes that there is a systemic 'lack of urgency' to drive and affect real change and this has held back the industry.

By way of example, we continue to discuss the importance of collecting data and using data sharing to improve efficiencies and taking advantage of technology. The VTA understands there are many complexities, however, we have this propensity to investigate, devise and develop projects but many do not materialise or are not implemented in a timely manner.



At many levels, the respective agencies and bodies appear to be too fearful to accept their responsibilities and accountabilities in driving the required changes. In the process, there is also a total lack of understanding and appreciation of the operational and commercial realities and of the consequential negative impacts upon organisations and the industry.

It is very clear that all enforcement tools are not being effectively used. This is a consequence of the current inconsistencies, rigidity and complexity of the HVNL. This is highlighted by a simple example involving the gaps when handling 'damage, defects and repairs'. The VTA recognises that it currently presents a major challenge for enforcement officers. We must address the 'inconsistency' factor across jurisdictions and better align the penalties to the severity of the safety breaches.

The above mentioned inconsistency factor also extends to the the knowledge base and understanding of the HVNL by the enforcement agencies. The VTA argues that all on road enforcement agency representatives should undergo a qualified education program of the HVNL and the enforcement requirements.

It is clearly acknowledged there are major differences in the motivations, structures and priorities relating to compliance and enforcement across jurisdictions. It is often the root cause of much anguish and frustration of operators, especially those conducting business activities in different states.

The feedback is very clear from VTA members. The new Law must be carefully restructured whereby the penalties are more balanced in approach and better aligned with the actual safety significance of the damage, defect or repair, especially in relation to major and minor defect notices.

The VTA argues that enforcement officers should not be addressing specific mechanical issues but these issues should be handled by the experts associated with the accredited workshops.

As expressed in the Issues paper, a data-driven, risk-based approach to enforcement would support a transition to back-office and audit-based enforcement. Enforcement agencies should not over regulate with 'on-road' enforcement but there should be greater emphasis placed upon on the accountability at the office of the recorder and operator.

The VTA believes that this is a better and a more appropriate and cost effective way to manage harms and risks. This approach is intelligence-driven rather than a 'command and control' mechanism.

**2.3.4 How can data and information be better used to support enforcement under the HVNL?
Who should own the data, who should be able to access it, and how should privacy and security concerns be managed**



During our consultation process with members, it was 'loud and clear' that VTA members strongly expressed that effective reform of the HVNL must also provide 'real time' and up to date information for operators via the respective compliance systems. The system need to be secure, integrated and fit for purpose. It requires a concerted effort by all regulators and government agencies to agree upon the national systems and processes.

Even in the life of the current HVNL dating back to 2012 with a 2014 implementation, the scope and scale of the technological changes could not be fully envisaged by the transport and logistics industry and regulators. We need to ensure that we use technology to reduce red tape and the cost of compliance to organisations. The Review provides the opportunity to ensure that technology, data collection and the transfer of effective information is treated as a priority of this law reform.

Significant advances of technology have been witnessed in relation to fatigue management and driver distraction and many other areas. The improvements in safety monitoring has been expedient in recent years and these advances are guaranteed to continue into the future. The VTA is not concerned about what technology is used as long as it is approved and meets the regulatory standards requirements. The VTA advocates for better use of technology in the new law.

In the introduction of the submission's introduction (section 2.1), it was proposed that this Review must remain focused upon and underpinned by three pillars: improved efficiencies, improved productivity and improved safety outcomes. Technology and data collection and transfer also remain vital.

The VTA also argues that by adopting, integrating and connecting the 'right' technologies, law makers and particularly the regulators and operators are in an excellent position to maximise current and future systems and tools to significantly reduce red tape and time-consuming administrative burdens which currently prevail.

Organisations want consistency, integration, interconnectivity, speed, accuracy and security at all levels of transmissions for their operations. The red tape must be reduced, as well as, the unacceptable duplication of processes and the need to create and invent 'work arounds' in order to run their businesses and deliver timely levels of service for their clients. The levels of frustration that prevail in relation to the current five sets of regulations of HVNL should not be under-estimated.

2.3.5 *Have we covered the issues relating to supporting compliance through effective enforcement, technology and data accurately and comprehensively? If not, what do we need to know?*

Overall, the VTA maintains that the key issues have been covered in this Issues Paper. The VTA acknowledges the importance of the Review. We must address the current situation in order to improve safety, productivity and efficiency.



The VTA maintains that significant education and training must be associated with roll out and implementation of the new Law is paramount. There must also be sufficient provision of funding made available to ensure effective implementation.

2.3.6 *What are some options for the future law to improve the current compliance and enforcement approach? How can the law best support enforcement strategies aligned to a risk-based approach to regulation?*

The VTA has reviewed section 5, 'Aspirations for a better law' of the Issues Paper. As stated in section 2.2 of this submission, the VTA supports the four draft regulatory principles.

The new HVNL should contain clear goals that are supported by compliance with the law. The VTA argues that there needs to be fewer offense and that these offences should have direct links to risk management.

The rules need to be clearer for operators to understand and follow. We need to rethink the bureaucratic practices that are increasingly being used. We must also ensure that the new Law results in reducing duplication throughout the auditing system.

In order to improve the approach to compliance and enforcement, we need to better clarify the responsibilities of the NHVR and various state agencies and road managers. As all ready stated, if more appropriate powers need to be granted, then they should be actioned.

The VTA understands that delicate issues associated with privacy, security and commercial confidences must be protected, however, we must not allow these issues stop advancing the collection, analysis and sharing of valuable data and information.

We need to work through the issues with a far greater sense of urgency in order to improve safety, productivity and efficiencies. Implementation of necessary security and identity issues can and should be addressed. We must act now in driving these important changes and not be restricted and delayed by bureaucratic paralysis.

3.0 SUMMARY

We welcome the opportunity to discuss this submission in more detail. The VTA believes that this Review provides an excellent opportunity to address the short comings and issues associated with the current HVNL. It also acknowledges the significant complexities involved in reviewing and changing the current HVNL and legislation.

The VTA and its members maintain that this Review must ensure that any changes to the HVNL remain focused upon three key pillars: improved efficiencies, improved productivity and improved safety outcomes.



The VTA supports a risk based enforcement approach and the need for a simpler and more 'fit for purpose' penalty framework. The new Law must also ensure that technological advances are better utilised in a secure and interconnected manner whereby more effective management of compliance, enforcement and assurance is achieved.

As stated in this submission, there also needs to be greater understanding and appreciation of the cost of compliance for businesses and this needs to be recognised and rewarded by worthwhile incentives. Given the significant changes required for the new Law, it is vital adequate funding is allocated to the education and training component of its implementation.

It is vital that we 'get it right' whereby we build a new HVNL framework that effectively addresses the current problems and short-comings and ensures that we deliver a far more robust, purposeful and flexible framework to meet future challenges of our industry.

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