

31 May 2019

National Transport Commission  
Submission – A risk-based approach to regulating heavy vehicles  
Level 3, 600 Bourke Street  
Melbourne VIC 3000

**Attention: NTC Heavy Vehicle National Law Review**

The Australian Logistics Council (**ALC**) welcomes the opportunity to comment on the NTC Discussion paper *A Risk-Based Approach to Regulating Heavy Vehicles*.

By way of background, ALC is the peak national body representing the major and national companies participating in the freight logistics industry with a focus on national supply chain efficiency and safety.

**ALC Position**

The NTC Discussion Paper *A Risk-Based Approach to Regulating Heavy Vehicles* contains six draft regulatory principles.

None of them are objectionable. However, the more important thing is that any legislation prepared facilitates better safety and productivity outcomes – the devil is very much in the detail of any proposed substitute law.

ALC's consistent position is that there should be a single Heavy Vehicle National Law (HVNL) administered by a single regulator.

There has been some significant progress towards this outcome. The National Heavy Vehicle Regulator (NHVR) has generally operated satisfactorily and there are no calls from participating states for the return of jurisdictionally based regulation or legislation.

However, the continued reluctance of Western Australia and the Northern Territory to agree to the HVNL limits its effectiveness. Further, some of the derogations from the law by participating jurisdictions are creating needless confusion and administrative burdens for operators.

It is hoped that the legislative product emerging from this review will encourage WA and the NT to apply the HVNL and that the next Transport and Infrastructure Council (TIC) meeting request each jurisdiction to review each identified derogation from the HVNL to determine whether they remain a cost effective way to deliver intended productivity or safety outcomes.

The preliminary findings should then be provided to industry to allow comment, with any derogations found to be of no material benefit removed.

There is no objection for the HVNL to be drafted as a performance based piece of legislation, with many of the more specific provisions needed to manage risk contained in subordinate instruments.

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Because of the atomised nature of the heavy vehicle industry, a model of legislation similar to the Building Code of Australia approach would be advisable.

However, there must be a clear pathway to allow stakeholders to challenge (politically, where necessary) decisions made via the TISOC/TIC process (in the case of regulations) because of its opaqueness, or by the NHVR.

The NHVR has a rule making regime in place that requires the rule-maker to publish:

- a) a notice of making a rule (however described), which contains:
  - i. a statement for the reason of the rule;
  - ii. a draft of the rule for comment;
  - iii. a discussion regulatory impact statement; and
  - iv. an invitation for submissions;
- b) a notice of the making of a final rule, which sets out:
  - i. the reasons for making the rule as finally presented;
  - ii. a summary of responses from submission makers;
  - iii. any variations to the draft rule to be made; and
  - iv. implementation information; and
- c) a requirement for any rule (however described) to be tabled in a parliament of a participating jurisdiction, and to permit any such rule to be disallowed in a manner similar to Division 4 of Part 11 of the Health Practitioner Regulation National Law (Queensland).

In this way, any proposed standard can be properly be reviewed for quality and, where necessary, political action can be taken where there is a dispute about either the quality or need for a rule.

However, an absence of a transparent capacity to fully participate in the rule making process will mean that there will be limited industry support for moving subject matter out of the Law. In that case, the protection of parliamentary process will need to be retained.

With respect to the interrelationship between the HVNL and workplace health and safety (WHS) legislation, ALC remains of the view first expressed in 2015 that section 18 of the HVNL sufficiently creates the nexus between the HVNL and WHS legislation.

ALC members have advised that risk is now being treated in a holistic manner, with relevant systems designed to meet ISO 45001 *Occupational Health and Safety Management Systems – Requirements*, which will shortly be the standard in force in Australia.

Given that most duty holders identified in the Law would be a 'person conducting a business or undertaking' (PCBU) for the purposes of WHS law there may be scope to rely on the health and safety duties in WHS law to require a PCBU to ensure as far as is reasonably practicable the health and safety of workers and other persons, and leave within the scope of the primary duty contained in the HVNL the more heavy vehicle specific matters, such as the ensuring maintenance of a heavy vehicle or risk of damage to road infrastructure is prevented.

With respect to enforcement issues, whilst noting the independence the police assert over the manner they exercise the Law, ALC supports the continued transfer of inspectors from jurisdictions to the NHVR, as it believes it is more likely that consistent decision making will be made if inspectors are in an employer-employee relationship with the Regulator, working to one set of working instructions.

**ALC does not support the does not support the insertion of any further enforcement 'tools' into the HVNL until there is evidence the new provisions have proven insufficient.**

Finally, with respect to the use of data, ALC believes data is the 'new oil' for the freight transport industry. ALC supports any amendments to the HVNL that facilitate the use of data to discharge statutory obligations. Mechanisms for achieving this outcome are set out elsewhere in this submission.



## Introduction

The Heavy Vehicle National Law (**the Law**) and the National Heavy Vehicle Regulation (**the Regulator**) are the result of the *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform*.<sup>1</sup>

Conducting this review after five years of operation was a term of the Agreement. The current NTC discussion paper *A Risk-Based Approach to Regulating Heavy Vehicles* (**the Discussion Paper**) is one of eight papers to be prepared as part of the scheduled review.

NTC is responsible for conducting the Review.

The Discussion Paper broadly deals with the structure of the Law. Therefore, in this submission ALC will generally make comments on legislative structure. It will expand on other matters at greater length in its submissions on subsequent papers.

As the Discussion Paper says:

*The objective of the Heavy Vehicle National Law (HVNL) review is to deliver – from a first principles perspective – a modern, outcome-focussed law regulating the use of heavy vehicles that will:*

- *improve safety for all road users*
- *support increased economic productivity and innovation*
- *simplify the HVNL, its administration, and enforcement of the law*
- *support the use of new technologies and methods of operation, and*
- *provide flexible, outcome-focused compliance options.*<sup>2</sup>

ALC agrees that this should be the outcome of this Review

The Discussion Paper contains six draft regulatory principles. None of them are objectionable<sup>3</sup>. However, the most important thing is that any legislation prepared facilitates the safety and productivity outcomes set out above – the devil is very much in the detail of any proposed substitute law.

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<sup>1</sup> <https://www.coag.gov.au/content/intergovernmental-agreement-heavy-vehicle-regulatory-reform>

<sup>2</sup> DP:13. This constitutes the answer to question 1 and 4 posed in the Discussion Paper

<sup>3</sup> This constitutes the answer to question 2 posed in the Discussion Paper



## **The General ALC Position – One rule book, one regulator, one national economy.**

The consistent ALC position is that there should be a single National Law administered by a single regulator for one national economy.<sup>4</sup>

There has been some significant progress toward this outcome. The Regulator has generally operated satisfactorily and there are no calls for the return of jurisdictionally based regulation or legislation.

Nevertheless, there are some areas that still require attention.

They include:

- The continuation of jurisdictional derogations from the Law;
- The continued provision of enforcement services to the Regulator by jurisdictions;
- Limited capture and use of data;
- Route access;
- A need to improve operator standards; and
- A review of the more technical provisions of the Law, which do not provide either safety or productivity outcomes.
- A need to remove inconsistencies between jurisdictions when it comes to pilots and escorts for OSOM movements across Australia.

Some of these matters are discussed in this Discussion Paper and are dealt with in this submission.

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<sup>4</sup> This constitutes the answer to Question 6 posed in the Discussion Paper

## Jurisdictional derogations from the Law

As ALC said in its 2011 *Response to the Draft Heavy Vehicle National Law and Accompanying Regulatory Impact Statement*:

*ALC understood that the HVNL was to be an applied law– that is; jurisdictions should pick up the law as passed in the Queensland Parliament and apply it in their jurisdiction. ALC has a clear policy that heavy vehicle legislation should be a single applied law.*

*Although the term is not clearly identified, it was apparently accepted that there would be ‘productivity variations’.*

*However, every deviation from the national model reduces the productivity benefits of implementing a national law and that is a matter of concern to ALC. ALC also notes that the 2011 RIS uses the term ‘derogation’ as an alternative to ‘productivity variation’ in some circumstances.*

*It would be a concern for ALC if there is an expectation that a jurisdiction could not only allow for ‘productivity variations’ but also unilaterally insert its own provisions into the National Law.*

*There should be no jurisdictional derogations contained in the HVNL and the law passed by the Queensland Parliament should be adopted by all jurisdictions.<sup>5</sup>*

As noted on page 31 of the Discussion Paper, half of Australia (WA and NT) are not covered by the Law and that some of the derogations from the Law by participating jurisdictions have some material effect.

**It is hoped that the end legislative product emerging from this review will encourage WA and the NT to apply the Law.**

In the meantime, the Discussion Paper identifies the current jurisdictional derogations on page 31 and in Appendix B.

This Review process should actively consider whether these derogations provide the intended productivity or safety outcomes.

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<sup>5</sup> <http://www.austlogistics.com.au/wp-content/pdf/submissions/2011/ALC-Response-to-the-Draft-Heavy-Vehicle-National-Law-and-Regulatory-Impact-Statement-6-May-2011.pdf>: 5

ALC therefore recommends that the next Transport and Infrastructure Council meeting request each jurisdiction to review each identified derogation from the Law to determine whether they remain a cost effective way to deliver intended productivity or safety outcomes.

The preliminary findings should then be provided to industry to allow comment, with any derogations found to be of no material benefit removed.

## Legislative design<sup>6</sup>

### *Recognition of productivity is essential*

Page 47 of the Discussion Paper says:

*The object of the new law should:*

- *have a clear primary purpose of safety, complementing more general WHS laws*
- *promote the safe and efficient use of road infrastructure and assets by heavy vehicles, and*
- *encourage and facilitate operators to be innovative in their business.*

*The scope of the new law should complement the WHS regulation is facilitating management of all risks specific to the use of heavy vehicles, including non-occupational use, as well as heavy vehicle road access.*

**ALC reconfirms that any new law should also have as an objective improving productivity, given that it was one of the driving forces for the original introduction of the Law.<sup>7</sup>**

Having productivity as an object will also assist in the interpretation of legislation if judicial interpretation of the Law is necessary when considering the appropriateness of discretionary decisions made in relation to issues such as PBS design or vehicle applications, or road access consents.<sup>8</sup>

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<sup>6</sup> The discussion in this part of the submission constitutes the answer to question 6 and question 9 posed in the Discussion Paper

<sup>7</sup> And something previously recognised in page 13 of the Discussion Paper

<sup>8</sup> That is the schemes set out in Part 1.4 (PBS applications) and Division 2 of Part 4.7 of the Law respectively.



## *Interrelationship between the Law and Workplace Health and Safety (WHS) legislation*

The interrelationship between WHS and the HVNL can be confusing.

As ALC said in its 2015 submission *Primary Duties for Chain of Responsibility Parties and Executive Officer Liability*;

*ALC remains of the view that section 18 of the HVNL sufficiently creates the nexus between the HVNL and WHS legislation.*

*The current legislative design makes clear that parties owe their primary safety duty to WHS legislation, with the HVNL clearly dealing with additional safety issues (arising from fatigue, speed, and mass, dimension and loading shortfalls) specific to the heavy vehicle industry.*

*In that case, the addition into the HVNL of the general principles applicable to primary duties similar to those contained in the model WHS law is simply a redundancy.*

*Equally, whilst appropriate in the specific operating environment of the rail industry (in which accredited operators follow approved safety management systems) the shared responsibility and accountability principles contained in the Rail Safety National Law are not of particular assistance in the more atomised road transport industry. That said, ALC members are sophisticated companies that take their WHS responsibilities in a holistic manner.*

*They have noted that the proposed addition of general duties in the HVNL duplicates the extended safety duties of a person conducting a business or undertaking (PCBU) imposed under WHS law and that the safety of supply chains and networks is an important focus area of the Australian Work Health and Safety Strategy 2012-2022.*

*ALC has held the view that a specialist safety agency such as the NHVR should develop the safety standards that should be applied to heavy vehicles.*

*However, if regulators see the need to duplicate WHS law in safety legislation, perhaps the time has come to move responsibility for policy development to the workplace safety silo, with relevant legislation sitting in that framework (with anything particularly industry specific sitting in regulations made under primary WHS legislation).*

*That would mean:*

*» rights and obligations are contained in one legislative suite, which should add to overall coherence in approach;*

*» government enforcement priorities and practices would be predictable and consistent, as only one agency would have the responsibility for administering the relevant law; and*

*» companies can develop genuinely coherent WHS strategies that cover all facets of business, delivering cost and efficiency benefits. The HVNL would then focus exclusively on access and roadworthiness issues.<sup>9</sup>*

The interrelationship between safety obligations imposed by both the Law and WHS legislation has been reconfirmed as ALC has commenced developing safety products to encourage compliance with the Master Code.

ALC members have advised that risk is now being treated in a holistic manner, with relevant systems designed to meet ISO 45001 *Occupational Health and Safety Management Systems – Requirements*.

**Given that most duty holders identified in the Law would be a PCBU for the purposes of WHS law there may be scope to rely on the health and safety duties in WHS law<sup>10</sup> to require a PCBU to ensure as far as is reasonably practicable the health and safety of workers and other persons, and leave within the scope of the primary duty contained in the Law the more heavy vehicle specific such as the ensuring maintenance of a heavy vehicle or risk of damage to road infrastructure is protected.**

## Structure of the Law

Page 33 of the Discussion Paper says:

*The HVNL is 676 pages long and comprises 13 chapters. It is considerably different in scale and style from comparable laws.*

*Figure 13 provides a comparison of the size and regulatory styles used in the HVNL, Rail Safety National Law (RSNL) and model Work Health and Safety (WHS) Act.*

*By simple count of provisions in the primary legislation, the HVNL is more than twice the size of the RSNL and the model WHS Act.*

*The HVNL is also highly-prescriptive: almost two-thirds of the Act contains prescription. The HVNL has 10 prescriptive rules for each performance-based requirement, whereas the RSNL and model WHS Act are closely balanced between prescriptive and performance-based requirements.*

The model WHS laws specify, at a very high level, the obligations of a person conducting a business or undertaking (PCBU). The principal legislation otherwise deals with issues relating to consultation and enforcement.<sup>11</sup>

<sup>9</sup> <http://www.austlogistics.com.au/wp-content/uploads/2015/01/ALC-Submission-Primary-Duties-for-Chain-of-Responsibility-Parties-and-Executive-Officer-liability.pdf> : 9-10

<sup>10</sup> Set out in Divisions 1-3 of Part 2 of the Model WHS legislation

<sup>11</sup> <https://www.safeworkaustralia.gov.au/system/files/documents/1702/model-whs-act-21march2016.pdf>



However, the model WHS regulations run to some 429 pages plus 67 pages of schedules<sup>12</sup> which deal with increasing specificity as to how risks should be controlled in well over a dozen areas of dangerous work.<sup>13</sup>

Should a decision be made to only have high level duties in the principal legislation, as well as enforcement provisions<sup>14</sup> it would be possible to have more granular provisions contained in some form of subordinate instrument, however described (regulations, standard, guideline) by whichever repository of power to make the relevant subordinate instrument (either the Transport and Infrastructure Council (TIC) or the Regulator) to manage any identified risks.

This would facilitate the implementation of legislation that is more performance based.

As the Part 2.6.2 of the Discussion paper says:

*Performance-based regulation can reduce certainty about what acceptable compliance may look like and requires a higher degree of competence from regulators and regulated parties. Comprehensive guidance material from regulators can greatly assist regulated parties with compliance.*

*Performance-based regulation may be supported by rules-based 'deemed-to-satisfy' provisions, which provides assurances for regulated parties without compromising the capacity of others to be innovative and comply in a manner that better suits their needs. This is effectively a dual regulatory approach that is designed in a way so as not to risk internal inconsistency. An example is the National Construction Code of Australia.*

**Because of the atomised nature of the heavy vehicle industry, a model of legislation similar to the Building Code of Australia approach would be advisable.**

Such an approach would, for instance, facilitate:

- The efficient incorporation of standards, such as a requirement for a heavy vehicle to carry telematic equipment satisfying the standards contained in the telematic data dictionary maintained by Transport Certification Australia<sup>15</sup>, or the nature of a safety management system that an operator must maintain as part of national operator standard<sup>16</sup>; or
- An operator to be able to choose from a range of control measures the best way to manage fatigue risk in their business.

<sup>12</sup> Excluding what are called jurisdictional notes, given WHS legislation is a model law and not an applied law

<sup>13</sup> <https://www.safeworkaustralia.gov.au/system/files/documents/1902/model-whs-regulations-15-january-2019.pdf>

<sup>14</sup> Enforcement provisions would need to be included in primary legislation so the Parliaments of the 'human rights jurisdictions' of the ACT, Victoria and Queensland can positively tested provisions that may would require a decision to be made as to whether the provisions of a particular an enforcement provision is proportionate when compared to the human rights charter contained in the legislation of the relevant jurisdiction.

<sup>15</sup> Now a business unit of Austroads

<sup>16</sup> As proposed in the 2019 ALC election document *Freight: Delivering Opportunity in Australia*: <http://www.austlogistics.com.au/wp-content/uploads/2019/04/Election-Priorities-Documents-Final-compressed.pdf>: 14



However, there is a significant caveat in endorsing this approach.

*Clear need for industry consultation and a capacity to challenge any subordinate legislation that is introduced.*

Part 5.3.2 of the Discussion Paper says:

*A new law should be able to respond rapidly to changes in operations, technology and risk-management options.*

*Developing the structure of the new law will rely on consistency in deciding which instrument in the legislative hierarchy is appropriate to regulate particular matters, and how to move detail down the hierarchy of legislative instruments for maximum agility in the law. Matters that may change frequently are best dealt with by subordinate legislation (Department of Prime Minister and Cabinet, 2017, p. 33).*

*The desire for agility must be balanced against the oversight and authority needed to make changes to the legislative instruments. Changes to primary legislation and regulations require appropriate consultation with industry, ministerial agreement and follow a parliamentary process (primary legislation) or a ministerial process (supporting regulation). Other lower-order instruments may be approved, by delegation from ministers and the Parliament, to an administrative body such as the Transport and Infrastructure Senior Officials' Committee or by the NHVR. Consultation with affected parties remains crucial.*

As ALC said in its 2011 *Response to the Draft Heavy Vehicle National Law and Accompanying Regulatory Impact Statement*<sup>17</sup>:

*As part of its consideration of the Health Practitioner Regulation (Administration Arrangements) National Law Bill 2008 (the forerunner to the national health law), the Queensland Scrutiny of Legislation Committee said:*

*In The Constitutional Systems of the Australian States and Territories, Professor Gerard Carney provides a summary of concerns regarding the legislative scrutiny of national scheme legislation:*

*A risk of many Commonwealth and State cooperative schemes is 'executive federalism'; that is, the executive branches formulate and manage these schemes to the exclusion of the legislatures. While many schemes require legislative approval, the opportunity for adequate legislative scrutiny is often lacking, with considerable executive pressure to merely ratify the scheme without question.*

*Thereafter, in an extreme case, the power to amend the scheme may even rest entirely with a joint executive authority. Other instances of concern include, for example, where a government lacks the authority to respond to or the capacity to distance itself from the actions of a joint Commonwealth and State regulatory authority. Public scrutiny is*

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<sup>17</sup> pp.22-23

*also hampered when the details of such schemes are not made publicly available. For these reasons, a recurring criticism, at least since the Report of the Coombs Royal Commission in 1977, is the tendency of cooperative arrangements to undermine the principle of responsible government. A further concern is the availability of judicial review in respect of the decisions and actions of these joint authorities.*

*Certainly, political responsibility must still be taken by each government for both joining and remaining in the cooperative scheme. Some blurring of accountability is an inevitable disadvantage of cooperation – a disadvantage usually outweighed by the advantages of entering this scheme. But greater scrutiny is possible by an enhanced and investigative role for all Commonwealth, State and Territory legislatures.<sup>18</sup>*

There must be a clear pathway to allow stakeholders to challenge (politically, where necessary) decisions made via the TISOC/TIC process (in the case of regulations) because of its opaqueness, or by the Regulator.

The Regulator has a rule making regime in place modelled on the system used in the civil aviation system.

In the civil aviation system, the Civil Aviation Safety Authority (**CASA**) has developed a rule making system that has been developed to give effect to paragraph 9(2)(b) of the *Civil Aviation Act 1988*, which requires CASA to 'promote full and effective consultation and communication with all interested parties on civil aviation issues', and to section 16 of that Act which requires CASA to, where appropriate, consult with industrial and consumer bodies (as relevant) when exercising powers and functions.

For the purposes of rule-making under the Law, the Regulator publishes a notice of intention to make a rule that sets out the reason for change and the proposed draft rule, and then subsequently publishes a notice of final rule making which sets out the reasons for making the rule as finally presented, a summary of responses from submission makers, any variations to the draft rule to be made and implementation information.

**ALC believes the CASA/Regulator model of rule-making is worthy of emulation.**

**Where the Law permits subject matter to be made either by a regulation endorsed by TIC, or by the Regulator (Rule-makers), the Law must contain a provision that requires the rule-maker to publish:**

**(a) a notice of making a rule (however described), which contains:**

- (i) a statement for the reason of the rule;**
- (ii) a draft of the rule for comment;**
- (iii) a discussion regulatory impact statement; and**
- (iv) an invitation for submissions;**

<sup>18</sup> Queensland Parliament Scrutiny of Legislation Committee *Alert Digest* Issue 2/2008 (26 February 2008), pp.15-6.



- (b) a notice of the making of a final rule, which sets out:**
  - (i) the reasons for making the rule as finally presented;**
  - (ii) a summary of responses from submission makers;**
  - (iii) any variations to the draft rule to be made; and**
  - (iv) Implementation information; and**
- (c) a requirement for any rule (however described) to be tabled in a parliament of a participating jurisdiction, and to permit any such rule to be disallowed in a manner similar to Division 4 of Part 11 of the Health Practitioner Regulation National Law (Queensland).**

In this way, any proposed standard can be properly be reviewed for quality and, where necessary, political action can be taken where there is a dispute about either the quality or need for a rule.

It would also satisfy the expectations of COAG contained in *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (2014)<sup>19</sup> as well as ensuring that safety and productivity considerations are taken into account during the rule making process.

However, an absence of a transparent capacity to fully participate in the rule making process will mean that there will be limited industry support for moving subject matter out of the Law. In that case, the protection of parliamentary process will need to be retained.

## Enforcement<sup>20</sup>

Page 20 of the Discussion Paper says:

*Regulation of illegal-but-not-harmful behaviours may result in perceptions of officiousness, pedantry and 'revenue-raising'. This may lead to accusations of heavy-handed regulation of administrative matters and processes (such as correctly filling out forms) and regulated parties being penalised on technicalities that have little or no safety implications. Such symptoms are more likely to manifest if the law is poorly aligned to harms.*

Whilst noting the independence the police assert over the manner they exercise the Law, ALC supports the continued transfer of inspectors from jurisdictions to the Regulator as it believes it is more likely that consistent decision making will be made if inspectors are in an employer-employee relationship with the Regulator, working to one set of working instructions.

This should control many of the problems of perceived officiousness.

<sup>19</sup> <https://pmc.gov.au/resource-centre/regulation/best-practice-regulation-guide-ministerial-councils-and-national-standard-setting-bodies>

<sup>20</sup> This part of the submission constitutes the answer to question 10 of the Discussion Paper



The Law incorporated a whole set of enforcement powers drawn largely from WHS legislation, which commenced operation in 2018. ALC does not support the insertion of any further 'tools' until there is evidence the new provisions have proven insufficient.

## Paper based focus of the Law<sup>21</sup>

Page 34 of the Discussion Paper says:

### 4.2.2 The law has a paper focus

*An industry peak body commented that 'we live in a digital world and we're bound by analogue legislation' (McKay, 2018).*

*The HVNL has a paper focus in that it requires drivers to carry copies of documents, such as Performance Based Standards approvals, permits and accreditation certificates. Various applications of new technologies can provide more efficient and flexible alternatives for verifying authorisations that are not well accommodated by the law (International Transport Forum, 2017, p. 11).*

*The HVNL does not adequately support the uptake of advancing technologies such as fatigue monitoring devices and telematics. Potential advances in safety and productivity, through the use of technology for regulatory purposes, are held back by the need to amend prescriptive primary legislation.*

*For example, many drivers are required to maintain a paper work diary to record work and rest hours. Electronic work diaries (EWDs), which essentially mirror the requirements of the paper-based diary, are now supported by the law but the HVNL primary legislation required amendment to permit them. The process to bring EWDs into the HVNL took more than three years and, at the time of writing this issues paper, no EWDs were yet approved for use.*

*Further, telematics have been widely adopted commercially because operators have seen the business and safety benefits. Operators use telematics to increase the efficiency and safety of commercial operations by monitoring harsh braking, routing, drivers and the driving task. Some operators have developed their own systems; others have bought off-the-shelf-solutions to meet their commercial needs (NTC, 2018b).*

ALC believes that data is the 'new oil' for industry. In its 2019 election document *Freight: Delivering Opportunity for Australia*, ALC supported the development of a freight data hub that can be used by regulators, planners and industry participants for both regulatory and compliance purposes.<sup>22</sup>

ALC does not agree the Law should contain standards that are not internationally recognised.

As it recommended in its 2018 document *A Common Data Set for our Supply Chain*:

<sup>21</sup> This constitutes the answer to question 7 posed in the Discussion Paper

<sup>22</sup> <http://www.austlogistics.com.au/wp-content/uploads/2019/04/Election-Priorities-Documents-Final-compressed.pdf>: 25

*Due to the international nature of trade, the Australian Government should encourage the development of a multilateral agreement (either through the development of a joint ISO/IEC standard or refinement of model laws facilitating the use of electronic communications managed by the United Nations body UNCITRAL) to identify a common data set that could be developed for global trade.<sup>23</sup>*

The same document noted that the TCA Telematics Data Dictionary is aligned to ISO 15638, which establishes the Framework for Collaborative Telematics Applications for Regulated Commercial Vehicles (also known as the **TARV**).<sup>24</sup>

ALC accordingly recommends that the approach contained in its 2018 submission to the NSW Parliamentary Staysafe Committee into Heavy Vehicle Safety and Use of Technology to Improve Road Safety (at page 12), which says:

*ALC believes that heavy vehicles should carry telematics to discharge identified statutory requirements identified by an Australian law.*

*Such obligations could include (in the safety context) measuring speed and vehicle movements or work diary information, as well as information outside of the safety context that can be used for road charging purposes.*

*Collection of this information could then be used by agencies like RMS for compliance and enforcement purposes, increasing the likelihood of improved safety outcomes.*

*The design of the mandate should be consistent with, or be incorporated within, the National Telematics Framework.*

*This means any relevant equipment must comply with the Telematics Data Dictionary, if for no other reason than the cost that would be imposed on operators who purchase telematics for one statutory purpose then having to purchase other units complying with a different standard.*

*Therefore, to maximise heavy vehicle safety outcomes in NSW, ALC recommends the following:*

- 1. To improve safety outcomes, the HVNL should require heavy vehicles to carry telematics equipment.*
- 2. Relevant legislation (including the HVNL) should set out:*
  - a. what information should be recorded; and b. the circumstances where enforcement and other officers can access information*
- 3. The HVNL should be identified as the law regulating telematics in heavy vehicles.*
- 4. The HVNL should accordingly be amended to: a. allow the making of some form of legislative instrument that contains:*
  - i. something like the Data Dictionary currently maintained by TCA, that can be amended from time to time as recording requirements for either safety or other*

<sup>23</sup> <http://www.austlogistics.com.au/wp-content/uploads/2018/10/A-Common-Data-Set-for-our-Supply-Chain.pdf>: 12

<sup>24</sup> *Ibid*

*purposes are subsequently added by other Australian laws, so there is a common set of data definitions to facilitate the collection, exchange and use of data and information; and*

*ii. privacy standards that must be met by those eligible to access the personal and business information of a transport operator.*

*b. allow amendments to primary legislation so that:*

*i. road transport operators are required to use software or hardware applications certified by the vendor as satisfying data dictionary standards and to maintain data as required by an Australian law;*

*ii. an offence of falsely representing that a software or hardware application satisfies a particular statutory requirement could also be created against a vendor if trade practice laws relating to the making of false and misleading claims are considered insufficient; iii. if considered necessary, a capacity to prescribe an industry standard that must be met to maintain recorded data; and iv. offences are created to penalise activities such as tampering with either hardware or data.<sup>25</sup>*

Again, ALC is pleased to be given the opportunity to provide a submission to the National Transport Commission Review of the Heavy Vehicle National Law.

Should you wish to discuss this submission further, I can be contacted at [Kirk.Coningham@austlogistics.com.au](mailto:Kirk.Coningham@austlogistics.com.au) or on 0417 142 467.

Yours sincerely,



**Kirk Coningham OAM**

Chief Executive Officer

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<sup>25</sup> <http://www.austlogistics.com.au/wp-content/uploads/2018/03/Staysafe-Committee-Inquiry-into-Heavy-Vehicle-Safety-and-use-of-Technology-to-Improve-Road-Safety.pdf>