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

**Subject:** Submission - A risk-based approach to regulating heavy vehicles

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Forbes Shire Council (Council) is pleased to provide this submission to the National Transport Commission in response to the issues paper *A risk-based approach to regulating heavy vehicles*.

Forbes is situated in the heart of the Lachlan Valley in the Central West of New South Wales, approximately 390km west of Sydney. The Forbes Local Government Area (LGA) covers 4,718km<sup>2</sup> and has a population of 9,759 people, with approximately 1,600 people living outside the Forbes urban area. The LGA includes the village areas of Bedgerabong, Wirrinya, Corinella, Garema, Warroo and Ootha - all village centres are located within an approximate 50km radius of Forbes, with the exception of Ootha, which is located 70km to the west. The main industries for employment in the LGA are agriculture, health care, retail, education and training, light industry and accommodation. Council is one of the biggest employers with staff numbers of 140 full time equivalent.

#### **General Comment:**

Council is pleased to note that the National Transport Commission is undertaking a review of the Heavy Vehicle National Law and its supporting regulations and welcomes the opportunity to provide commentary.

Council has particular involvement with the *Heavy Vehicle National Law (NSW)* in its capacity as owner of the Forbes Central West Livestock Exchange (CWLE). The CWLE is one of the largest, most active selling centres (saleyards) in the State, transacting \$330m per annum in livestock sales and supporting 150 jobs on sale days. In the 2017/18 financial year, 1,674,866 head of stock were loaded from the CWLE (73,599 cattle/calves, 1,584,998 sheep/lambs and 16,269 pigs). CWLE is the second largest sheep selling centre in Australia. The facility is located 12kms north of Forbes off the Newell Highway (Back Yamma Road); this highway is the main inland roadlink from Victoria to Queensland running parallel to the east coast about 400km inland and is also a major link to South Australia.

Council is one of the first selling centre owners to be issued with an Improvement Notice for breach of Chain of Responsibility (CoR) in relation to mass from stock transporters leaving CWLE. This is due to Council being considered the 'loading manager' under legislation within CoR.

As the owner of the CWLE, Council is responsible for the provision of infrastructure and employs staff to undertake functions related to the operation of the facility ie. administer the sale day transactions process, auction draw, maintain the facility and feed stock held overnight. Eight (8) stock and station agent companies operate from the facility. Collectively these companies have formed the Forbes Associated Agents which employs or contracts out elements of the wider saleyard functions, for example contract for delivery agent (responsible for taking the stock after the sale to delivery pens for collection and loading by the transport operator) and sale functions on behalf of all companies. Council issues licences to the stock and station agents to sell livestock from the facility.

Transport of stock to and from the facility, including the loading and unloading function, is not the responsibility of Council. This function is undertaken and controlled, independently of Council, by the Forbes Associated Agents, the individual stock and station agent companies and transport operators, on behalf of their individual livestock clients being sellers/buyers/vendors.

In practice, it is often the scenario that a transport operator's truck will come from a sale at a neighbouring facility such as Dubbo and 'top up' with livestock sold from CWLE. This can occur outside of core hours of operations at the CWLE, which means there is no one, be it staff of Council, stock agents or representatives of Forbes Associated Agents, present at the time of loading.

Council staff do not undertake or supervise loading/unloading functions at the facility under any circumstances.

### **Specific Comments:**

Council would like to make the following specific comments on the draft recommendations. These comments are primarily from the perspective of Council's experience of the Improvement Notice for breach of Chain of Responsibility at the Forbes Central West Livestock Exchange and the impact and consequences of applying this legislation to the transportation of livestock.

#### **Question 1: Have we covered the issues with the current HVNL accurately and comprehensively? If not, what do we need to know?**

*Council agrees with the Commission's summary of the problems.*

*The intent of HVNL is to improve road safety but unfortunately the law has not gone far enough as there are still breaches occurring. When the breaches were issued for the Forbes CWLE this essentially moved the enforcement responsibilities from NSW RMS Compliance to Forbes Shire Council, who has no enforcement powers. If a root cause analysis had been undertaken then the driving force behind the overloading behaviour would have been identified and achieved the objectives of the HVNL to improve road safety for the long term.*

#### **Question 2: What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions' regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law?**

*The concept of the HVNL is a great initial start in harmonising the State heavy vehicle laws to make the business more efficient and seamless for truck operators, however derogation in the law across the jurisdictions and inconsistencies in the implementation has resulted in the law not fully achieving its objectives and made the law burdensome and potentially unproductive (see example in Questions 5). Further engagement with all stakeholders will achieve better outcomes.*

#### **Question 3: Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved?**

Yes.

#### **Question 4: Does the object or scope of the HVNL need to change? If so, how?**

*Yes. Taking a risk management approach to testing the policy will highlight the practicalities of implementing the new policy. For example, it will enable for a number of scenarios to be tested against the new HVNL which will enable the law to be implemented as it was intended to make the road safer for all road users. One thing that this approach will highlight is that the time delays at roadside "safety stations" are impacting on the freight task efficiency and adding more cost to all parties in the chain of responsibility.*

#### **Question 5: Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and nonparticipating jurisdictions alike to be nationally agreeable?**

*Yes. As noted in the issue paper both Western Australia and the Northern Territory are not party to HVNL and every participating jurisdiction has derogated from HVNL. A practical example of this is the mass limits for Queensland, New South Wales and Victoria. A vehicle can start its journey in Queensland in*

compliance with the mass limit, when the vehicle enters NSW it is then non-compliant as it is over mass, then when the vehicle enters Victoria it again is in compliance with a mass limits. As a result of this national inconsistency Council has heard examples of transport operators originating in Queensland/Victoria under-loaded so that they are compliant when in NSW, therefore fundamentally reducing the productivity of the transport operation ie. less volume carried results in more vehicle movements in the network.

*The law must be applied with equity and consistency across jurisdictions. In the case of the livestock transport volumetric loading be harmonised across Australia.*

**Question 6: Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside?**

*Yes. As transport operators have the most influence and control on what they allow on their trucks then this is where the law should be targeted. In addition, this is the part of the chain where the non-compliance is established and enforcement enacted upon (eg. infringements issued). It is frustrating under the current law, that for some industries the responsibility of compliance is being applied to parties in the chain that do not have the influence to change the behaviour of others without implementing additional measures with no revenue to offset the enforcement of the HVNL.*

*For example, Council's breach of Chain of Responsibility at CWLE was for independently owned and operated vehicles being over mass. Council has no involvement with the loading function at the facility but under the legislation it is considered the loading manager and was therefore issued with Improvement Notice with a penalty of up to \$53,950 if not complied with.*

*Council has been told by one of the transport operators servicing the CWLE that its business has made a commercial decision to overload their vehicles as the cost of any infringement is less than the economic cost of a reduced load ie. 'it's cheaper to be fined than comply'. Under the current legislation, Council suffers the consequences of this non-complying commercial decision, due to being deemed the loading manager.*

**Question 7: How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want?**

*Some trucking operators in Australia are already using technology to manage its transport operations. Changes to HVNL should promote the transition from paper-based to electronic management to CoR eg. log books, on-board scales, fatigue recognition etc. This information can be automatically downloaded as it passed safety stations removing the need for the transport operators to stop for long periods of time. Triggers for breaches could then be automatically issued to transporters operators and/or enforcement agencies.*

**Question 8: What areas of the current law are particularly problematic because they are process or administration focused? Can you detail the impacts?**

- 1. Under the current law enforcement of non-conformance is being placed on public agencies that do not have the requisite access to comply with enforcement responsibilities. For example, CWLE Improvement Notice Action Plan issued by NSW Roads and Maritime Services/National Heavy Vehicle Regulator requires Council to:*

*"Report instances of non-compliance to relevant parties and engage with parties in relation to their response/remediation and, where necessary, sanction unremedied noncompliance. Report serious repeat non-compliance to RMS or the NHVR".*

*In order to comply Council would require access to multi-jurisdiction vehicle registration databases to identify the owner of the non-complying vehicle.*

**Question 9: How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia?**

*From Council's perspective, the diversity of industries subject to this prescriptive law is one of the most important issues to be addressed in the review. Council has undertaken extensive lobbying with NHVR and*

NSW RMS regarding the unique issues related to the transportation of livestock and selling centre owner's position/liability within the chain when they are not the operator of the selling centre.

## 1. Transportation of Livestock

### 1.1 Animal Welfare and Fatigue Management

Parties involved in transport of livestock refer to the Australian Animal Welfare Standards and Guidelines as best practice for the handling of livestock. The Land Transport Standards apply to all people responsible for the care and management of livestock that are transported throughout the entire process including agents, transport operators and people on farms, at depots, saleyards, feedlots and processing plants. The Land Transport Standards cover the process of land transport of livestock by road, rail and vehicle on-board a ship. From an animal welfare perspective, this process commences at the time that animals are first deprived of feed and water prior to loading to the time that livestock have access to water at the completion of the journey (destination) and includes mustering and assembly; handling and waiting periods prior to loading; loading, journey duration, travel conditions, spelling periods; and unloading and holding time. There is a chain of responsibility for the welfare of livestock and it begins with the owner or their agent and extends to the final receiver of the livestock.

Driver of livestock should be able to get exemption when needed for fatigue when they have an unavoidable delay that is going to put them over hours, where this in turn has an impact on animal welfare issue, in particular exceeding the Standard's maximum of 48 hours (sheep) being off feed and water. The Commonwealth Government Gazette of 9 February 2017 listed the Heavy Vehicle National Law National Livestock Welfare Work and Rest Exemption Notice 2017 (No. 1) (Statutory Instrument Series: Work and Rest Hours Exemption Notice). This notice exempts drivers of fatigue-regulated heavy vehicles carrying livestock from specified work time requirements if additional time is needed to respond to situations where the welfare of the livestock is or was at risk.

This notice expires on 9 February 2020. Council suggest this exemption be included in the revised legislation.

### 1.2 Livestock to be exempt from the definition of 'goods'

Livestock is not a static load and therefore should be exempt from the CoR as similar to other non-static load as referenced in the definition of 'goods' in the HVNL.

### 1.3 Volumetric loading

In regards to the transportation of livestock, Council calls for the introduction of a volumetric loading, in line with The Australian Animal Welfare Standards and Guidelines – Land Transport of Livestock (the Welfare Standards), to regulate the mass limits of livestock vehicles. The main issue of over-mass combinations occurs on the drive axles, the only way for the driver to rectify this before proceeding is to move cattle backward in the lead trailer. This action not only compromises driver safety, but compromises the welfare of livestock on the lead trailer. Additionally, for the welfare of young/small livestock (ie. calves) they are loaded in separate compartments to cattle so as to prevent crush injuries during the journey. Moving to a volumetric loading system for livestock transport will improve driver safety by removing the need to climb onto the trailer during the journey. This change will also improve animal welfare outcomes by reducing the time animals are on trucks and off feed and water, and will improve the efficiency of the livestock transport system without compromising the safety of animals or people.

## 2. Definition of "Loading Manager"

The CWLE Improvement Notice was issued on the premise that Council is a 'Loading Manager', as it is the owner of CWLE, regardless of the fact that Council does not and is not responsible for loading/unloading or management of these processes, which are conducted independently by the livestock agents and transport operators, on behalf of the livestock sellers/buyers.

NHVR and NSW RMS have stated that under the current legislation Council is deemed to be the 'Loading Manager' and therefore have committed every mass breach out of CWLE and may be prosecuted. Council was unsuccessful in its appeal to NHVR that it is not the Loading Manager.

Council suggests that the definition of the Loading Manager be changed from “the person who manages, or is responsible for the operation of the premise” to “the person who is managing the loading activity”.

**Question 10: In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require?**

*If Council is to enforce non-compliance of transport operators, which is the basis of the CWLE Improvement Notice, then the State road authorities (eg. NSW RMS) need to provide the identities of offenders and details of breaches, not just the registration number of the vehicle, when a breach is detected at a road authority's safety station. Through Council's interactions with NHVR and NSW RMS it is unclear what the definition of “serious repeat non-compliance” is. NSW RMS have verbally suggested a policy position as the “three strikes” rule and you are out, however who's out? The driver, the truck owner, the owner of the goods - all?*

*Council suggests enforcement agencies should not be devolved down to the level of Local Government, but instead there should be a national body for inspections and enforcement. This is a major flaw in the legislation where the enforcement transfer to another government authority with no powers to enforce.*

**Question 11: How can the new HVNL help to improve safety, productivity and regulatory efficiency?**

*The current law, in some circumstances, transfers enforcement from one government agency (NHVR and NSW RMS Compliance) to another government agency (Local Government) with less powers which does not make sense in achieving the outcomes of improved road safety, productivity, regulatory efficiency and asset preservation. There also seems to be exceptions to the CoR which do not make sense to improve safety, productivity and regulatory efficiency, for example the HVNL (NSW) definition of what is and is not considered ‘goods’ - freight is freight! Self-regulation with on-truck monitoring is the primary area where improvements, particularly to regulatory efficiency, can be gained. There are examples where this is being done in mobile speed cameras for speed and electronic log books. One of the biggest complaints noted from truck operators is not that they do not want to be checked but the time delay caused by stopping at safety stations.*

**Question 12: Do you agree with the six draft regulatory principles? If not, why? Are there other principles we should consider?**

*Yes, having a thorough review with all stakeholders will have a better outcome for a law to meet road safety, productivity, regulatory efficiency and asset preservation.*

In closing, Council is not opposed to a legislative approach to managing the safety and productivity of Australia's road network, however the law in its current form is not conducive to a vibrant and dynamic agricultural sector and therefore a prosperous regional Australia. Thank you for the opportunity to provide this submission and Council looks forward to reviewing the final report.

Yours faithfully



Steve Loane  
**GENERAL MANAGER**