

3 June 2019



Mr Peter Harris
Chair, Heavy Vehicle National Law Review Expert Panel
National Transport Commission
Level 3, 600 Bourke Street
Melbourne, VICTORIA, 3000

Dear Mr Harris

Re: Submission – A risk-based approach to regulating heavy vehicles

The National Farmers' Federation welcomes the opportunity to provide a submission on the National Transport Commission's issues paper 'A Risk-Based Approach to Regulating Heavy Vehicles'. We also look forward to engaging further with the Review, including providing input on the remaining seven issues papers on the Heavy Vehicle National Law (HVNL).

The NFF is the peak national body representing farmers and, more broadly, agriculture across Australia. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF. The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers. This includes road rules that support efficient domestic supply chains which, in turn, contribute to the international competitiveness of Australian agriculture.

As the peak industry body representing Australian agriculture, the NFF has a significant interest in the outcome of the HVNL Review. Agriculture is worth nearly \$60 billion annually to the Australian economy. Essential to the productivity of our industry is the ability of farmers to move machinery and freight on public roads in a safe, efficient and timely fashion.

For these reasons, the NFF welcomes a comprehensive review of the HVNL, including of its foundational principles.

The NFF notes the 12 questions the NTC issues paper asks and provides responses to questions 1, 3, 5 and 12 below.

1) Have the issues with the current HVNL been covered accurately and comprehensively?

The NFF generally agrees with the issues paper on the proper purpose of the HVNL. That purpose is to ensure that a heavy vehicle operates safely while delivering an efficient service. This consists of a safe driver, a safe vehicle and a safe route.

The HVNL should promote public safety, manage the impact of heavy vehicles on the environment and road infrastructure, and promote productivity and innovation.

The current HVNL does not entirely fulfil this purpose. A key problem with the current HVNL is the lack of consistency between application of the law in different states and territories. Having to abide by different regulations in different jurisdictions can impose a heavy burden on operators and businesses reliant on heavy vehicles, including farm businesses. It can increase administration costs, reduce transport efficiency and contribute to confusion regarding which rules apply and where they apply. These outcomes can reduce productivity and safety, which are contrary to the stated objectives of the HVNL.

The NFF understands the need for jurisdictions to adopt road laws they consider meet the needs of their particular populations and road conditions. We would encourage all jurisdictions, however, to recognise the efficiency and safety gains that would be achieved with nationally consistent heavy vehicle road rules.

The NFF also considers the balance between prescriptive and performance-based legislation could be better aligned. The current HVNL is predominantly prescriptive providing limited flexibility in terms of how the rules are applied. As the issues paper notes, the ability to innovate via new technologies and methods can be restricted when an overly prescriptive approach is taken. This in turn can limit the adoption of improvements to safety and productivity. For this reason, the NFF considers the prescriptive approach in the current HVNL is incompatible with the law's objectives.

While overly prescriptive approaches can be problematic, too little prescription, or guidance on how an operator can meet the obligation set out in the law, also can be problematic. Some prescription can provide certainty and clarity. Previous NFF work on implementation of new rules on the Chain of Responsibility made clear that prescription is sometimes desirable. Small operators – a category into which the majority of farmers fall – often find it easier and more efficient to be presented with a specific set of requirements with which they must comply. They simply want to know what measures they must put in place to ensure their operations are legal.

The alternative – being required to develop their own risk management systems which satisfy HVNL rules and standards – can be complicated and time-consuming for small-scale operators. It also introduces a lack of certainty as to whether their actions are legal.

The NFF supports an NHVL which caters to both approaches. This could be done by legislating performance-based standards which operators can meet in ways that best suit their specific circumstances, but also providing generic rules, or guidance documents, that provide clarity on what operators need to do to meet legislated standards.

The current HVNL could better recognise the diversity of heavy vehicles on our roads. The NFF considers that in order to encourage productivity and innovation, standards should reflect different types of operators and cater to their particular circumstances. For almost two years, the NFF worked closely with NHVR and relevant jurisdictions to develop a new National Class 1 Agricultural Vehicle and Combination Mass and Dimension Exemption Notice. The NFF argued that the combination of three factors – the low frequency of trips, the short average distance travelled, and the very rare occurrence of accidents (Franklin et. al.,

2018) – made the burden of acquiring a permit disproportionate to the risk. The new Class 1 Notice significantly reduces the number of agricultural vehicle movements requiring permits. This outcome will reduce the administrative burden on farmers, increase compliance with the law, and has maintained safety standards. This outcome, however, was only able to be achieved by recognising and factoring in the circumstances specific to these operators and vehicle movements.

This is one example of why legislative requirements in the HVNL should be tailored to the specific circumstances of different types of operators. The NFF would suggest that this become a foundational principle upon which the new HVNL should be built.

3) **Do you support the proposed risk management approach?**

The NFF supports the adoption of a risk management approach to developing the new HVNL. Laws and regulations should focus on achieving the principal reason for having the law and regulations – in this case, ensuring that a heavy vehicle operates safely while delivering an efficient service. A prescriptive approach that aims to legislate all possible scenarios is likely to result in rules that will not be relevant in many circumstances, resulting in unnecessary compliance costs, and potentially reduced efficiency and safety.

A 2018 study from James Cook University found that large agricultural vehicles are involved in only 56 accidents per year, and only 0.15 per cent of all accidents result in a death (Franklin et. al., 2018). These small numbers indicate a low risk. 66.8 per cent of people surveyed thought that agricultural vehicles caused either no risk above that of normal traffic, or ‘low to moderate risk’ (Franklin et. al., 2018). A risk-based approach to regulating heavy vehicles should logically, therefore, result in fewer restrictions being imposed on operators of agricultural vehicles, since they pose fewer risks than other heavy vehicles.

5) **Is national consistency a goal that we should strive for?**

The NFF considers national consistency should be a critical objective of the HVNL Review. Differences in regulations across states and territories, and even local government boundaries, are a significant weakness in the existing HVNL. These differences make long distance heavy vehicle journeys administratively complicated. They require that operators be familiar with different sets of regulations, and plan their journey accordingly.

12) **Do you agree with the six draft regulatory principles?**

Principle 1:

‘The future HVNL should be risk-based. The law should be developed by identifying, analysing, evaluating and establishing controls for material risks. The future HVNL should not attempt to control immaterial risks or have controls that aren’t clearly contributing to risk management. Controls should be specified in terms of suitable regulatory styles.’

The NFF agrees with Principle 1. As outlined in our response to Question 3, heavy agricultural vehicles do not pose any material risk beyond that of normal traffic. Burdensome regulations on heavy agricultural vehicles do not contribute to risk management.

Principle 2:

‘The future HVNL should have a clear and balanced object, and provide the scope, coverage and visibility needed to manage the risks specific to Australian heavy vehicle operations. The new law should consider good regulatory practice from participating and non-participating jurisdictions, other transport modes, and elsewhere so as to be nationally agreeable and set us on a path to improved consistency.’

The NFF would need further information on what constitutes a ‘balanced object’ before it could support this principle. The NFF would emphasise its support for the dual objective of the HVNL being to ensure heavy vehicles operate safely while delivering an efficient service. The NFF would also emphasise that ‘risks’ here should refer to both risks to safety and risks to an efficient service.

Principle 3:

‘The future HVNL should be responsive, flexible and able to readily accommodate changes to technology and business models while maintaining the right degree of oversight. Operators should be provided with flexibility to choose the most suitable compliance option, where options are appropriate. Obligations should be placed as far down the legislative hierarchy as is tolerable and should preference outcomes, in the form of harm minimisation, over inputs and processes.’

The NFF agrees with some parts of Principle 3 but would require further information before it could support obligations under the HVNL being ‘placed as far down the legislative hierarchy as is tolerable’.

Principle 4:

‘The future HVNL should recognise the diverse risk profile of the industry, operators and regulated parties and provide flexibility (in a harmonised manner) for those operating across vastly different domains and under different business models.’

The NFF agrees with Principle 4.

Principle 5:

‘The future HVNL should target the most significant risks associated with heavy vehicle operations. The new law should support sanctions and enforcement tools that reflect the severity of the risk, and enforcement decisions must be able to be reasonably challenged.’

The NFF agrees with Principle 5.

Principle 6:

‘The future HVNL should deliver better safety, productivity and regulatory efficient outcomes and lead to continual improvement across these key performance areas.’

The NFF agrees with Principle 6.

Please do not hesitate to contact Prudence Gordon, General Manager, Trade and Economics (pgordon@nff.org.au, or 0404670434) should you have any questions with regards to this submission.

Yours sincerely

TONY MAHAR
CEO