



NT ROAD TRANSPORT ASSOCIATION

Submission to the National Transport
Commission

Issues Paper: A risk-based approach to regulating heavy
vehicles

RESPONSE

Northern Territory Road Transport Association (**NTRTA**) has prepared the following Response to the National Transport Commission (**NTC**) Issues Paper: A risk-based approach to regulating heavy vehicles (**Issues Paper 1**) as part of NTC's review of the Heavy Vehicle National Law (**HVNL**).

NTRTA is the peak industry association representing the interests of all sectors of the Road Transport Industry throughout the Northern Territory. NTRTA's primary objective is to ensure the Industry remains safe, viable and professional now and into the future.

Whilst continuing to engage with the National Heavy Vehicle Regulator (**NHVR**) the Northern Territory Government has actively chosen not to adopt the HVNL until it can be clearly demonstrated that the laws are workable in remote Australia and the benefits can be proven.

The NTRTA has had input into, and in principle supports the majority of the Australian Trucking Association (**ATA**) response submission. It is not NTRTA's intention to replicate relevant points made in other response submissions by industry representative associations including the Victorian Transport Association (**VTA**), Natroads and the ATA. References to such responses will be made when appropriate.

INTRODUCTION

NTRTA has chosen to take a consultative approach with the National Heavy Vehicle Regulator (**NHVR**) about the HVNL. This has necessitated some considerable time and resources being devoted in the pursuit of improvements to better suit the needs of remote Australia, particularly road train routes. NTRTA members who do not cross borders are relatively disengaged from the process, except to reinforce the benefits of maintaining the status quo.

On the other hand, NT-based transport operators crossing into and out of NHVR jurisdictions have been significantly impacted by the heavily prescriptive and unwieldy nature of the HVNL.

One of the more dire consequences has been drivers declining work that means spending time in HVNL jurisdictions because “... no matter how law abiding, truck drivers are treated like criminals by Police Officers on the side of the road.” This sentiment has been echoed in various forms by a number of interstate jurisdictions. The enforcement attitude and culture must change to be more cooperative and striving to achieve a common goal of road safety.

NT PERSPECTIVE

The Council of Australian Governments (**COAG**) intention to improve safety whilst reducing costs and the regulatory burden for transport companies was flawed by a fundamental principle; to impose a full cost recovery model on the heavy vehicle regulator, immediately. Rail instead applied an 18-year time frame for achieving full cost recovery and the Marine regulator agreed to a 10-year incremental cost recovery time frame. This decision, along with the reverse onus of proof, unrealistic timeframes for implementation of the NHVR and the highly prescriptive nature of the legislation cemented the NTRTA’s decision to lobby the NT Government and remain outside the HVNL.

Reform of the HVNL should be considered within the context of the Heavy Vehicle Road Reform (**HVRR**) agenda, currently underway under the direction of the Transport and Infrastructure Council. The HVRR is intended to turn the provision of heavy vehicle road infrastructure into an economic service and provide links between the needs of road users, the charges they pay and the services they receive. As such the HVRR agenda stands to encroach upon much of the HVNL subject matter including access, vehicle operating standards, mass, dimension, loading and Over size Over mass (**OSOM**). The HVNL needs to be cognizant of where the (HVRR) is moving and what the interface between the Independent Price Regulator and the NHVR might be in the short to medium term.

Because of the manner in which the model law was drafted hindsight has highlighted the extent to which the NHVR was more focused on its enforcement functions than on education functions.

By way of example NTRTA requested information on the sections of HVNL under which drivers were being fined for breaches of fatigue. The intention was to provide targeted education and training to upskill drivers and address potential safety concerns whilst reducing the likelihood of additional fines and undue financial hardship. Unfortunately, NTRTA was informed that such details were not able to be extracted from the data.

The NHVR's educational programs across all jurisdictions to inform stakeholders of their Chain of Responsibility (**CoR**) obligations signaled a shift towards a more deliberate educational approach. A cultural shift towards education, similar to the WHS Act is required if the regulator is to provide an effective regulatory regime under a new risk based HVNL. The new HVNL cannot ignore the importance of the role of Police Officers in road side enforcement activities and the future interface of risk management education, compliance and enforcement.

As noted in (Chapter 4 The Problem) the HVNL is not nationally consistent and is not consistently applied throughout participating jurisdictions. It is our contention that a one-size-fits-all model is neither workable nor in the interests of a productive future-focused transport industry.

RESPONSE TO QUESTIONS

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

The NTRTA agrees with the VTA in so far as stating that the new law needs to achieve greater alignment between the penalties and the nature and the seriousness of the breach. Currently, there are harsh and unreasonable fines for trivial administrative breaches, most of which are associated with completing work diaries.

Issues Paper 1 captures broadly the overarching intentions of the NTC adopting as it does a first-principles approach to reviewing the HVNL. However, as Queensland Transport Association (QTA) recently highlighted in conversation; A safe and efficient heavy vehicle journey comprises: a safe driver, a safe vehicle, *a safe transport operator* and a suitable route. The notion of a safe transport operator is of central importance to a new look, risk-based heavy vehicle law and cannot be overlooked at any stage throughout this Review.

The NHVR was intended to bring greater efficiency and reduce red tape by offering a ‘one-stop-shop’ to the road transport industry. Permit issuing, problematic from day one, remains unresolved and will not be rectified by technological solutions only. No matter how simplified, streamlined and unambiguous HVNL (Mark II) is the legislation will not achieve enhanced efficiency and productivity outcomes without timely access approvals for heavy vehicles to use the road networks of the road asset owners. Industry will not gain more access at the local government roads level without significant additional Federal investment in local road infrastructure or other incentivized inducements for local government road managers concerned mostly with damage to their roads.

The NTRTA affirms that the over many years the NT has led the development of Australia’s higher productivity vehicles including; designing and developing power trailers (used effectively on mine haul roads), side tipper trailers (now a common sight across the Australian landscape which has transformed discharging materials safely through lower center of gravity and efficiently), introducing quad roadtrains onto the network and triaxle dollies as well as establishing the widespread use of double deck stock crates.

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?

When questioned, members of NTRTA struggled to identify a single component of the current HVNL that stands out as preferred when contrasted with the NT laws applicable to NT-based transport operators. The October 2018 amendments to the HVNL on Chain of Responsibility (CoR) have potential to achieve improved safety outcomes if high risk parties in the chain are successfully prosecuted. The amendments have been intended to minimize complexity, simplify obligations on parties in the chain and reduce duplication. The NHVR's capacity to effectively undertake complex investigations leading to prosecutions is yet to be fully tested.

Self-clearing defect notices for vehicles not imposing a safety risk is acknowledged to be a step in the right direction.

NTRTA and the NT Government support national consistency for heavy vehicle roadworthiness and adopted the national standard for the National Heavy Vehicle Inspection Manual on 01 June 2017. The Manual is used by NT Transport Inspectors, Authorised Inspectors and Police Officers as the inspection criteria for roadworthiness. In the NT annual roadworthiness inspections of all heavy vehicles and trailing equipment is compulsory, and effective.

The NT has an open road access regime with the readily accessible Registrar of Motor Vehicles having the final say on all permits issued. Except in exceptional circumstances OSOM permits in the NT are issued within 24 hours. Given that 75% of the NT's road infrastructure is unsealed the industry and government work hand-in-hand to manage access, productivity and asset protection in the interests of all parties. The Department of Infrastructure, Planning and Logistics (**DIPL**) is both responsive to the needs of the heavy vehicle industry and solution focused. The road transport industry recognizes the value of sound and effective working relationships with asset managers. As such the knowledge, trust and respect, built up over many years is not taken for granted.

NHVR noted that 97.5% of the permits issued through NHVR are issued 'blind' without any tier of government looking at either the infrastructure asset or the equipment yet permit delays continue to impede the productivity and efficiency of transport operators.

The \$10 million allocated by the Federal government to the NHVR to assist off-set the cost of road engineering inspections on local government authorities may provide some beneficial outcomes in the short term leading to further gazette notices.

One of the primary determinants of the NTRTA's strong advocacy to government to remain outside the HVNL was to be able to retain flexible, individualized fatigue risk management under the WHS law. In the NT fatigue is defined as a workplace hazard, and everyone in the workplace has a work health and safety duty to ensure fatigue does not create a risk to health and safety at work. In agreeing to the NT's approach to managing fatigue risk under the WHS Act the Transport Infrastructure Council recognized the different operating environment in remote areas and that risk management is a highly effective way to assess and control fatigue risks.

Section 19 of the WHS Act outlines the primary duties to ensure, so far as reasonably practicable, workers and others are not exposed to health and safety risks arising from the business or undertaking. Fatigue risk management systems form a component of a transport operator's safety management system. The level of sophistication of an operator's safety management system is determined by the size of their operations, the type of work undertaken and the level of risks to which the business is exposed.

On demand or as requested operators must be able to produce records for NT WorkSafe Inspectors to demonstrate compliance with their safety management systems but there is no requirement to keep prescriptive work diaries.

One of the aspirations for the HVNL was to do the freight task with less trucks and greater performance. That ‘aspiration’ is simply a fact of life in the non-participating jurisdictions of NT and WA. By way of example on selected road networks in Western Australia accredited 60-metre long super quads are operating safely and efficiently carrying a payload of 140 tonnes. Quad road trains of 53.5 metres with a carrying capacity of 114 tonnes operate throughout the NT. The NT and WA allow tri-drive prime movers on the road network to improve efficiency by carrying heavier loads and reducing operating costs. Tri-drives achieve six tonnes freight advantage over a tandem drive prime mover.

A revised HVNL that the Northern Territory could even consider being a part of would need to provide a legislative framework that covers and identifies areas of risk/concern but allows a flexible approach to managing these risks (dependent on the circumstance). Otherwise it will simply not be feasible (economically, practically, safety) for the NT to be covered by the HVNL.

“The new law should provide a range of compliance options that can be applied depending on the capacity and performance of the operator or regulated party.” (NTC pp. 49)

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?

Risk management affords the necessary scope to respond to evolving situations with greater flexibility than the current prescriptive HVNL. Amendments to the HVNL (effective from 01 October 2018) replacing deemed liability for CoR parties with a positive duty to ensure safe practices introduced the need to take a strategic preventative approach to managing risks.

The NHVR has stated clearly that all transport operators must adopt safety management systems to meet CoR legislative requirements. Transport operators already have safety management systems that cover their WHS responsibilities.

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

NTRTA has reviewed the scope of the HVNL. Whilst the object and scope may not need to change significantly, how this Review reflects and incorporates any findings from the Productivity Commission Review (report due April 2020) in new legislation requires consideration.

The Review must also give due consideration as to **why** there has been such significant derogations of the existing law in each jurisdiction that render harmonisation as ideological and an unfeasible goal.

NTRTA concurs with the concern outlined in the ATA's submission in relation to the NHVR's limitations in making productivity decisions that are in the wider national interest.

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

The NTRTA accepts the premise of national consistency but not at the expense of higher productivity gains, flexible fatigue risk management system or open access regimes, all of which contribute to a safe and productive heavy vehicle industry in the NT. Both the NT Government and NTRTA are committed to exploring all the options through this Review.

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?

The new HVNL should have a legislative framework that covers risks and allows flexibility in alignment with the WHS legislation. Removal of the reverse burden of proof and placing the

obligation on the prosecution to prove all elements of an offence was one of the most important remedies to the HVNL to date and must be reflected in the new HVNL

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?

Digital technologies are changing rapidly however communications infrastructure in remote Australia has not kept up with the demands for high speed downloads and internet access. Large parts of the NT remain communication blackspots with reliance on costly satellite telecommunications. The cost of implementing and maintaining consistent digital technology for regulatory purposes is not equitable across Australia with the potential to impose a significant cost burden on operators in remote areas.

Scrutiny of the costs of implementing the Intelligent Access Program (IAP), whether it remains fit for purpose or whether its relevance has been superseded by other GPS technologies will be examined in a future issues paper.

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

The NTRTA agrees with VTA that the current administrative timelines and associated permit delays are unacceptable, unnecessary and costly. The recent OSOM Review recommendation that *Approved Guidelines for Granting Access* be fully reinstated with the guiding principles a key feature in access decisions has merit and is supported as a method by which the new law can be less prescriptive.

There is an urgent need to harmonise the Pilot and Escort Vehicle Driver requirements across all jurisdictions, with the expectation of simplifying the law, and regulations.

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

As has already been discussed above, the NTRTA only supports the proposal of cross jurisdictional harmonization if it provides sufficient flexibility to benefit the variety of individual circumstances in each State and Territory.

This will also assist in the agility of the legislation and capacity to respond to changes in areas such as fatigue technology.

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?

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

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

The NTRTA looks forward to working cooperatively with NTC and the industry representatives of the Australia jurisdictions in developing a new HVNL that achieves the intentions of the original legislation on a practical day-to-day level.