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National Transport Commission
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HVNL Review Issues Paper – Risk based approach to regulation

Thank you for the opportunity to provide comment on the first Issues Paper provided in relation to the Review of the Heavy Vehicle National Law (HVNL).

To answer the main question posed by the Issues Paper, there is little doubt in my mind that most participants and regulators would agree that the overly prescriptive approach of the current Law must be replaced by a more modern, realistic, flexible and risk-based structure that copes with the dynamic sector in which it operates.

The challenge in doing this will be that we do in fact deliver better safety and productivity outcomes to underpin the vital role the road freight sector plays in our economy - rather than the possible perverse outcome of achieving merely more of the same, or indeed making it worse.

Initial Law was a good start point

I think we can all acknowledge that the initial HVNL was a critical “in principle” step forward in attempting to replace the previous state-based system, even though in many respects, it just replicated and perpetuated the then existing problems. We needed the initial process and learnings to get to the unique place we are in today where we can undertake a comprehensive Review that has the opportunity to provide a modern and simplified approach to road freight industry regulation.

I have no doubt the Review will be extremely difficult given the generational change that is required from the past owners of this space (that is still happening) and I imagine some will continue to encourage continuation of the prescriptive and deeply complex and administratively cumbersome past approach.

In this sense, I hate to think how much of the NHVR (and state authority) Budgets and energies that the industry currently funds are taken up doing unnecessary administrative tasks such as issuing large numbers of worthless permits and pursuing sanctions, the majority of which appear non safety-based, rather than the modern role of ensuring important safety and productivity initiatives are vigorously pursued in a timely and efficient manner.

Industry has greatly improved – time to be recognised as a genuine partner

Given my extensive experience over the last 50 plus years in the industry, I can say that the large majority of industry operators have greatly improved their safety performance particularly in the last 20 or so years. The supply chain is also now starting to acknowledge its safety responsibilities thanks to the increased focus on the chain of responsibility laws. I'm hoping most bureaucrats are also updating their thinking and approach to industry regulation to focus their efforts on the greatest risks and also genuinely partnering with industry to address these.

Unfortunately, these dynamic changes have not been matched by changes in the Law where we still see vast investments in innovation and improved safety technology and systems go unrecognised – sometimes these advances are even often penalised by the current structure of the Law which just encourages the prescriptive and administrative approach by some to enforcement activities rather than achieving real safety and productivity gains.

New Law – must reward the good, target high risk offenders

The Commissioner of Taxation made the point in a speech in November 2017 to the IPA National Congress:

“...that many regulators administer systems for the very last worst person – which in turn imposes burdens on those who want to do the right thing. It causes the majority of people to have a more expensive, time consuming and a painful experience”.

This is how I and most operators see the current HVNL – sadly, instead of targeting the high-risk offenders whilst rewarding those who try and do the right thing, the opposite occurs.

As an example, and I can provide many more, you can reference the NatRoad submission to this Issues Paper which highlights the frustrations and high costs we bear each day for no gain and little empathy from within the regulatory authorities involved.

I will also say here that I do not support the entry level Operator Licensing concept proposed by some as an answer to the next stage of improving industry safety outcomes. This has been considered previously, even enacted under Federal Law which was never promulgated and eventually removed. I think the NTC has previously come to the same conclusion.

New technology is exciting, possibly a game changer in the fatigue area

Ron Finemore Transport (RFT) has invested heavily in fatigue and distraction monitoring technology simply because we believe it can stop crashes happening rather than looking at them in the rear vision mirror.

There is still a lot of work to do in this area, but the new HVNL must provide the flexibility for the Regulator to move quickly to capitalise on supporting and rewarding this type of innovation to match industry's speed of adoption. The current Fatigue Laws are overly prescriptive and as highlighted at last year's NHVR Fatigue Forum, perversely, operations considered compliant within the Law can sometimes be unsafe. Our drivers are often stressed and anxious about work diary compliance which adds to their fatigue rather than being able to focus on better safety outcomes.

We have a unique and challenging road freight task here in Australia and we do not have the luxury of using other transport options like many freight competitor countries do. What we do have is the real potential through the HVNL Review to build the safest and most flexible way to ensure our working hours system allows the road freight sector to undertake our vital role.

Modern and high productivity vehicles are not welcome

We currently have outdated systems and approaches to maximising our ability to utilise innovative higher productivity and safer vehicles.

The access system is based on old values and politically motivated mode or road protection concepts. It also doesn't hold road owners accountable for timely and relevant decisions. This is all further exacerbated by operators having to apply for access on a per route basis, rather than opening up key networks and keeping road owners accountable for their infrastructure by being required to identify infrastructure impediments that aren't capable of withstanding increased weights i.e adopting a "tell us where we can't go" system and approach. The current Law supports and perpetuates the current outcome rather than facilitating proactive and productive results.

The Performance Based Standards (PBS) system is a major inhibitor to efficiency. Despite some small gains in recent years, it is still based on a complex and outdated administrative systems and approach. There are many log jams which frustrate efforts to bring safer and more efficient vehicles into operation in a timely and cost-effective way – this is usually perpetuated by regulatory authorities who are perceived to oppose change to maintain the status quo. If it's hard for RFT to negotiate and use this system, I hate to think about how smaller operators could attempt to pursue such improvements. Again, the current Laws promotes this outcome rather than embracing and encouraging quick adoption of these vehicles and a modern approach from those who regulate it.

RFT can provide examples of these unsatisfactory and costly negative outcomes to further support these comments, but presume the NTC and NHVR have enough to substantiate these key challenges.

In the main, I have taken the approach of outlining some of the key challenging areas as a means of highlighting how important it is to ensure the Law provides a broad and flexible framework to allow the NHVR to do its job, with other partners including a genuine partnership with industry to improve safety and productivity in the road freight industry.

I'm happy to expand on these matters if appropriate and will continue to provide input as appropriate as other Issues Papers are released.

Kind Regards



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