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www.hvnlreview.ntc.gov.au

296 ST VINCENT STREET
PORT ADELAIDE SOUTH AUSTRALIA 5015
P +61 8 8447 0688 F +61 8 8447 0606
WWW.SAFREIGHTCOUNCIL.COM.AU

RE: A Risk Based Approach to Regulating Heavy Vehicles Discussion Paper

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to comment on the 'Risk Based Approach to Regulating Heavy Vehicles' Discussion Paper.

As you may be aware, SAFC is the State's peak, multi-modal freight and logistics industry group that advises all levels of government on industry related issues. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

At the highest level, SAFC believes that it is critical that all jurisdictions sign on to the revised law – the potential efficiency benefits of the HVNL have not been realised to a great extent due to the absence of two jurisdictions that border South Australia.

Responses to the individual questions posed in the paper are below.

Should you wish to discuss any element of this submission further, please feel free to contact me on (08) 8447 0664 or via email knapp.evan@safreightcouncil.com.au.

Yours Sincerely,



Evan Knapp
Executive Officer,
SA Freight Council.

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

Generally, Yes – noting that further detail on some issues will be supplied in subsequent papers.

Areas that may be ‘underdone’ include:

- The sophistication of industry participants and their ability to comply with performance and principles based regulation, including the knowledge and capital resources to develop solutions. The average size/sophistication level of the road transport industry’s 40,000+ operators is very different to the rail industry’s approximately 200 accredited entities – which is a reasonable explanation for why the HVNL is more prescriptive based than the RSNL (see pg 33). While it is reasonable to aspire to higher levels of individual regulatory responsibility, there is also an element of ‘horses for courses’ – that the regulatory type must be appropriate for the regulated entities capabilities.
- Challenges in relation to segments that own and use trucks, but are not in the business of ‘road transport’ – such as housing construction companies/suppliers.
- Different safety/compliance outcomes that have been observed between heavy rigid vehicles and articulated vehicles over the period of the HVNL’s operation. Generally safety/compliance statistics for articulated vehicles have improved over the lifetime of the HVNL, but have declined for heavy rigid vehicles. We note the potential correlation between this point and the point above – ‘non-road transport’ truck owners are more likely to use heavy rigid vehicles.
- Challenges in relation to local council’s financial and human capital ability to meet their obligations as ‘road managers’ under the HVNL.
- The paper has not examined the various capacities/training of ‘Authorised officers’ under the HVNL. NHVR compliance officers and all sworn police officers are considered ‘authorised officers’ for the purposes of the law. NHVR and specialist heavy vehicle branch police officers are trained to a high standard, and have the inbuilt experience benefit of operating with the law every day. General duties police officers do not – while they may have had some training, they are not specialists and road interceptions of heavy vehicles likely constitute only a small portion of their work duties. Reports from industry members indicate that these officers are more likely to charge for technical (non-safety related) breaches, and may interpret the law incorrectly. Whatever changes to the law are made through this process should be able to be understood by all authorised officers – including the risk management and safety first principles.

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?

First, it must be stated that the NHVR and HVNL as they exist in 2019 are a vast improvement and major step along the road to regulatory harmonisation compared to the previous regulatory regimes. It should also be noted that it has taken a long time to get to this point.

Primary Duties and Executive Officer Liability provisions are important elements of the HVNL and must be kept as they are critical in ensuring that those responsible for safety can be held

accountable – not just the driver. Likewise, Chain of Responsibility provisions must be kept – however with primary duties now included in the law there should be a re-examination of whether a proscriptive list of chain members is required. This could be removed, or become a non-exhaustive list of examples.

SAFC believes it is critical that all jurisdictions sign on to the HVNL. We note that WA's Fatigue and Road access arrangements have been a sticking point in gaining agreement from this jurisdiction, however their systems appear to be working relatively well (particularly in relation to access). As such, these should be examined as a potential national model.

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?

SAFC notes that 'draft regulatory principle 1' does not reference safety at all, but rather material and immaterial risks. If 'material risks' is equivalent to 'safety related risks' then we endorse the approach for development and testing purposes.

If material risks includes other risks that are not safety related (risk of infrastructure damage, for example) then we would prefer that the inclusions in this category are explicitly spelt out before the process moves further.

Furthermore, we note that if the law is to be risk based, then some of the prescriptive based elements of the law – particularly in relation to vehicle standards – should be removed, with a risk assessment to be used to determine if an element is safe.

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

The object/scope should specifically include the word 'national' – the object must be **to create a nationally consistent set of laws for the road transport industry**. This is the primary failure of the HVNL and NHVR to date, and must be rectified. Otherwise, the object and scope expressed in the paper appears valid.

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?

Absolutely – the failure to bring all jurisdictions into the NHVL fold is one of the primary reasons the full benefits of the initial reforms has not been realised to date.

South Australia is the only state that has a border with every other mainland state and the Northern Territory. As such, any non-participation by jurisdictions in the HVNL is keenly felt by operators here – causing significant issues with counting time outside the NHVL jurisdictions, for example.

Furthermore, SAFC believes that a fully national HVNL with some jurisdictional based derogations is better than a partial coverage HVNL (which still has derogations). Achieving full harmonisation may be a case of 'eating the elephant one spoon at a time', but getting all jurisdictions on board is a major step forward.

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?

SAFC generally agrees with Draft Regulatory Principle 3 as expressed in the paper, not the simplification presented in the question above.

In particular, the sentence ‘Operators should be provided with flexibility to choose the most suitable compliance option, where options are appropriate’ is important.

NTC must remember it’s own analysis of the industry’s makeup, expressed in section 4.3.3. The road transport industry is not, in general, as sophisticated as the rail industry, for example. The industry is majority comprised of sole operators with a single truck – not corporate behemoths with significant regulatory compliance arms that can build tailor made regulatory compliance solutions to accommodate their businesses.

Where paper based systems and prescriptive based requirements can be removed, they should be, as long as the new requirement is not more onerous, costly to develop etc that it ends up being a worse outcome for ‘Average Joe Trucker’.

We support flexible systems that allow an operator to choose their method of demonstrating compliance – whether by adhering to a set of black letter law (i.e work diary, max hours), becoming part of an accreditation scheme (i.e. Master Code, Trucksafe), or developing a purpose built system that demonstrates principles based compliance (in the future - perhaps a technological fatigue monitoring based system, that enforces rests when fatigue indicators rise to predetermined levels, supported by appropriate work policies and/or a SMS).

In regards to balancing flexibility with oversight, safety must be the prime determinant, followed by efficiency. Some options may require acceptance of an annual audit, for example.

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?

In some instances, inserting a last compliance option that reads something like ‘(x) or by another methodology approved by the regulator’ may be appropriate. This allows companies/associations the option of proposing a compliance option (including technology based compliance options that may not currently exist) to the regulator for scrutiny, and specifically allows for technological advancements without having to re-write the law.

Such an option would need to be assessed as ‘no less safe’ than the other options; and would require the regulator to have appropriate assessment and approval systems, principles, policies and procedures in place.

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

Permit approvals are an example already brought up in the discussion paper – potentially taking up to 28 days for what may be an urgent movement. Fatigue management through work diaries is another acknowledged example.

Black letter law rest stop rules are an issue where there is no appropriate/legal place to stop, particularly when a targeted rest stop is unexpectedly unavailable – for example full, or being used by construction gangs to store road building materials (an example that is constantly brought up in SA).

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

Firstly, by recognising that jurisdictional boundaries play no part in that diversity – rather geography, local industries, population density etc. do.

Take outback SA, WA, QLD and the NT for example (referencing the population density map on page 37 of the discussion paper). These are all low population density regions that require long distance movement of large loads – cattle, minerals etc. Safety risks to others are minimal due to the low number of interactions between vehicles – rather the primary risk is to the driver alone. Fatigue is a major risk. PBS4 and triple road train combinations are common – semitrailers are rare.

Now take any of the outback regions in those states and territories, and compare them to their local capital cities. The risk profiles are completely different. Assuming local work, fatigue is a minimal risk (hence the 100km from base rule), but interactions with and risks to other road users are constant. As such, road trains are generally not permitted, and B-Doubles and Semitrailers are the transport units of choice.

Thus, jurisdictional based derogations make no sense, however regional based ones may. Creating zones (within a truly national HVNL) that differ from other areas with different risk profiles may be a pathway to full acceptance of the HVNL.

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?

The compliance and enforcement pyramid is the correct approach, starting with low end sanctions and education and ending with banning from the industry. Procedural fairness – including the right to review by an appropriate tribunal – must be guaranteed. Costs for requesting such a review need to be lowered – currently operators are often offered the perverse outcome where appealing a decision may end up costing far more than accepting a penalty – as such incorrect decisions are not challenged.

As a general guide, technical (non-safety related) breaches should be removed from the law as much as is possible and have reduced penalties where they must be retained for safety-related administrative purposes.

As noted in the answer to question 1, not all 'Authorised Officers' interpret the law in the same way. NHVR and specialist Heavy Vehicle police officers generally have the knowledge to make the correct decisions – particularly in relation to non-safety technical breaches – but general duties police officers are not specialists in this field. SAFC believes the NHVR should have a compliance and enforcement manual to detail appropriate responses to various breaches, and there should be a requirement in the law that these are followed by officers acting under the powers in the Law.

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

The HVNL should be designed so that it encourages operators to be actively engaged with achieving safety outcomes by being able to adopt new innovations without being forced to meet excessive regulatory requirements to demonstrate this. Where possible, a history of demonstrated safety and compliance should have practical benefits for the operator in terms of lower administrative burden/costs.

Regulatory authorities should be given the tools to be as flexible as possible to meet operator and public expectations whilst ensuring that non-negotiable safety considerations are still met.

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

As noted above, Draft Regulatory principle 1 does not reference safety at all, but rather material and immaterial risks. If 'material risks' is equivalent to 'safety related risks' then we endorse the approach for development and testing purposes.

If material risks includes other risks that are not safety related (risk of infrastructure damage, for example) then we would prefer that the inclusions in this category are explicitly spelt out before the process moves further.

SAFC would also like to see a specific reference within the principles to reducing regulatory burden, without compromising safety.