

Heavy Vehicle National Law Review – Issues Paper 1

A risk-based approach to regulating heavy vehicles

Submission from the Tasmanian Transport Association 31 May 2019

1. Background

The Tasmanian Transport Association is the peak body representing the interests of the Tasmanian Transport Industry, with members are drawn from road, rail, warehousing and shipping sectors.

The TTA supports the review of the Heavy Vehicle National Law and intends providing a response to the discussion and issues papers as they are released by the NTC during the course of the review. We recognise this as a critical opportunity to contribute to the development of a law which is fit for purpose and will provide a suitable and supportive operating environment for industry for the future.

This response is in relation to the first Issues Paper: *A risk-based approach to regulating heavy vehicles* and provides a high-level response to how the TTA views current and future regulation for the road transport sector.

2. TTA supports a National Regulator and a National Heavy Vehicle Law

The TTA supports the premise of a National Heavy Vehicle Regulator and a National Heavy Vehicle Law. The intent of the law; to ensure a safe and efficient heavy vehicle journey – is also supported. Additionally, TTA believes that a national approach should provide a framework of harmonised operating conditions across state jurisdictions. This is in the interest of industry and of operators and of customers of the supply chain and the general community.

3. Issues with the current HVNL

As is clearly set out in the Issues Paper, the current HVNL has not achieved the benefits expected by industry with respect to providing a regulatory operating environment that supports a “safe and efficient heavy vehicle journey”.

The TTA agrees that the current heavy vehicle national law and regulations are complex, lengthy (1032 plus pages) and difficult to interpret. They are highly prescriptive and do not suitably recognise or provide regulatory concessions to operators who adopt advanced safety solutions or recognise the increasing applications for technology within the industry.

Regulators acknowledge that the laws are difficult to interpret and to enforce.

Moreover, the law has not resulted in the harmonisation or productivity improvements anticipated. As examples:

- Derogation by jurisdictions
- WA and NT not participating
- OverSize OverMass (OSOM) and access permit processes are highly problematic and cause significant cost to industry and to customers
- Inconsistent pilot / escort requirements and services across jurisdictions

The law requires co-operation from other parties not subject to the law and not compelled by the law to co-operate. This particularly applies with the OSOM sector and road access processes where a myriad of other authorities are involved in consent for road access; for example the 537 local governments in Australia and multiple third parties to the process. There is no power in the HVNL to compel other parties to participate within specified timelines.

Pilot / Escort requirements, services and the qualifications for pilots and escorts vary across jurisdictions. This is a further barrier and adds complexity (and cost) to the movement of OSOM. The issues with OSOM nationally represent significant costs to Tasmanian transport operators, Tasmanian business and their customers.

These issues with OSOM were further investigated, and well documented, through the national OSOM review conducted by WSP – Pascal Felix, in 2018 – the recommendations of which are yet to be advanced in a meaningful way or timeframe to support this industry.

4. Chain of Responsibility Provisions

The TTA supports the recognition under the HVNL that the assurance of a safe and efficient heavy vehicle journey is impacted by parties other than those immediately responsible for the heavy vehicle (eg driver and operator).

Chain of responsibility provisions in the HVNL recognise this and, through imposing a primary duty on other parties to the transport chain, seeks to regulate those who control or influence the component parts of a heavy vehicle journey (Issues paper pg 26).

TTA supports the principles of Chain of Responsibility and the inclusion of these within the heavy vehicle national law, however has concerns about whether the regulator has sufficient resources to effectively investigate and progress cases against CoR parties at high levels within the chain.

TTA is also concerned that unless a party is specifically identified in the current CoR provisions in the HVNL, that even although they may have control and influence over the safety of the transport activity there is no recognition of their role within the law.

5. Risk Based Approach to Regulation

TTA supports the concept of a risk-based approach to regulation. The risk-based approach centres on the principle that regulation should target the more significant risks to safety.

From the Issues paper, page 10: *“not everything that is illegal is harmful, and many things that are legal can cause harm”*

Current prescriptive laws within the HVNL and regulations with a strong focus on administrative functions, for example those relating to work diary offences, are damaging in that they do not have a strong safety related risk but carry significant penalties. For example: HVNL Subdivision 3

How information must be recorded in work diary, 301 (f) *information must be written on a daily sheet with enough pressure to ensure a readable record of the information appears on the duplicate daily sheets*; (maximum penalty \$1500).

This supports a situation where compliance and enforcement is more readily focussed on issues that are viewed effectively as 'red tape' and do not have a real impact on safety.

TTA acknowledges that a risk-based approach to regulation depends on the regulator having data to identify the risk profile of those it is to regulate. To do this, the regulator needs tools to develop the risk profile.

6. Scope of new HV Law

In addition to the retention of CoR provisions, the TTA considers that the scope of a new HVNL should recognise the following -

Transport drives the economy

- A safe and efficient heavy vehicle journey is critical to all industries, other road users and to the economy.
- The HVNL impacts all industries who have transport as part of their supply chain.
- Inefficiencies in the HVNL have a flow-on effect to these industries, to consumers and the broader economy.

Industry demographics

Road freight is the largest sector in transport and logistics and the majority of road freight operators are small businesses. The issues paper identifies that 70% of all operators only have one truck in their fleet and about 24% have two to 4 trucks. The current highly prescriptive legislative compliance burden on these operators is crippling.

Investment in safety technology and systems by transport operators

Transport operators who invest significantly in safety technology and systems currently do not achieve regulatory benefit. TTA considers that those operators who make such investment and implement strong safety systems should have the opportunity to achieve flexibility in how they meet the key safety provisions of a HVNL, particularly through accreditation and assurance schemes.

Workforce Issues

As the transport and logistics task grows the industry faces a corresponding workforce development challenge. Supply chains globally are challenged by a lack of suitable competent drivers to move freight by road. This has real cost impacts on all parties in the supply chain. The onerous requirements and costly penalties on drivers and operators related to non-safety, administrative breaches provided for within the current HVNL is a disincentive for people to enter, or remain within, the road transport industry.

7. Views on Accreditation Schemes for Industry

TTA supports robust and safety-based industry accreditation schemes to provide regulatory and productivity benefits for operators. These schemes should be based on risk and safety management.

TTA supports a HVNL:

- where accreditation schemes are regulated and where there is co-recognition across schemes;
- where an operator's accreditation is recognised as evidence by CoR parties that the accredited operator meets CoR obligations, reducing the current trend for CoR parties to require additional evidence of compliance from transport operators; and
- where accredited operators in regulated accreditation schemes have regulatory concessions available which provide an alternative model to relevant prescriptive conditions of the Heavy Vehicle National Law.

A review of heavy vehicle accreditation schemes conducted by the NHVR in 2017 and detailed in the report released in Feb 2018 by Fellows Medlock and Associates (the Medlock Review), made recommendations for an accreditation framework for Australian trucking industry.

This review made a welcome contribution to the basis for accreditation schemes and recognised the industry-based model TruckSafe as a robust scheme. As things stand however, operators in TruckSafe do not enjoy the same concessions and regulatory benefits of operators in the NHVR's National Heavy Vehicle Accreditation Scheme (NHVAS).

There is scope for industry specific accreditation modules and schemes for specific sectors of industry such as OSOM.

8. Structure of a future HVNL

TTA supports the structure of a HVNL that provides two "streams";

- a simplified and risk-based prescriptive model for operators who seek to work within this and secondly,
- an alternative opportunity for accredited operators to achieve greater flexibility based on outcomes and concessions from prescriptive aspects.

The HVNL must retain capacity for regulators to identify and act against unsafe operations whilst at the same time, recognising the significant efforts by those operators who establish effective and advanced safety systems and accreditation.

TTA supports a model where less prescription is detailed in primary legislation. As noted in the issues paper (pg 30), Primary legislation (eg, the Heavy Vehicle National Law) is difficult to change and should provide the framework, rather than the prescribed detail, of the regulation.

TTA supports the use of regulatory instruments such as Codes of Practice (eg the HVNL Master Code), standards, guidelines and notices, which can be authorised by the regulator and updated to reflect the changes in industry operating models and advances in technology.

9. Submission by the Australian Trucking Association

The Tasmanian Transport Association is a member of the Australian Trucking Association and has been consulted on the development of the ATA's submission relating to Issues Paper 1. The ATA submission addresses additional themes around regulator governance, recourse and protection for regulated parties, and procedures for jurisdictional disallowances, which are not addressed in this submission, but are also supported by the TTA.