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Department of
Transport and Main Roads

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Ms Gillian Miles
Chief Executive Officer
National Transport Commission
Level 3, 600 Bourke Street
MELBOURNE VIC 3000

Dear Ms Miles

I refer to the release of the Heavy Vehicle National Law (HVNL) Review Issues Paper 'A risk-based approach to regulating heavy vehicles' by the National Transport Commission (NTC).

I am pleased to provide the enclosed submission from the Department of Transport and Main Roads (TMR) to inform the detailed policy analysis and ongoing work of the HVNL review. Thank you for the consideration of your officers in agreeing to an extension for this submission.

I note that the issues paper does not clearly recognise the importance of the role of state and territory ministers. While conceptually the HVNL is a national regulatory framework, the HVNL is, in fact, state and territory legislation that is delivered through a single law that is passed in the host jurisdiction and applied as law in all participating jurisdictions. The state and territory ministers are ultimately accountable for the effective administration of the HVNL and the achievement of outcomes for safety, network management and productivity. The HVNL review process and the resulting new law needs to recognise the constraints and obligations of this arrangement.

I will take this opportunity to encourage the NTC to urgently progress work on developing a shared understanding of the outcomes sought from the proposed new law. While these outcomes are generally agreed in broad terms around safety and productivity, the clear statement and early agreement of the intended outcomes of the HVNL that will be reflected in the objects of the new law, are essential to undertaking a risk-based approach to the regulatory framework. The desired outcomes and their relative priorities must be known before a proper assessment of the potential risks and harm to those outcomes can be made. This shared understanding will assist in finalising the proposed regulatory principles to effectively progress the work of the review.

Having a shared understanding of the HVNL object and the regulatory principles will, in turn, support good decision-making on policy proposals, where obligations should be placed in the hierarchy of legislative instruments, and the regulatory approach to be taken to deliver outcomes for specific policy areas. All of these elements will be addressed in detail through the options presented in the Consultation Regulatory Impact Statement.

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I am mindful of the limited time available for the development of this important policy work. The Jurisdiction Strategic Oversight Panel (JSOP) is the ideal forum to provide support and direction to work through refining the HVNL outcomes, object and the proposed regulatory principles.

I support the collaborative approach that the NTC, the expert panel and the JSOP are taking to the conduct of the HVNL review. This approach will be pivotal in the work of the HVNL review working groups to develop innovative and practicable policy solutions.

The HVNL review is a rare opportunity to take a fresh view of the regulatory approach and ensure the HVNL is fit for purpose to meet the challenges of the future. Queensland looks forward to working with our industry and government partners towards this outcome.

If you require further information, I encourage you to contact Mr Andrew Mahon, General Manager (Land Transport Safety and Regulation), TMR, by telephone on (07) 3066 7512 or email at andrew.w.mahon@tmr.qld.gov.au.

Thank you for considering TMR's submission in the HVNL review.

Yours sincerely

Neil Scales
Director-General
Department of Transport and Main Roads

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Queensland Department of Transport and Main Roads (TMR)

Submission in response to the National Transport Commission Issues Paper 'A risk-based approach to regulating heavy vehicles' (March 2019)

Section 4 – The problems

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

The paper provides a comprehensive overview of a broad range of issues and gives stakeholders a good starting point to draw out concerns and provide focus for conversations about the HVNL and the review.

TMR recommends that a more objective and evidence-based assessment of the scope, coverage and effectiveness of the current HVNL be undertaken for inclusion in the proposed Consultation Regulatory Impact Statement (RIS). For example, in assessing the coverage of the current HVNL, additional measures could be used in addition to geographical area to assess whether reform has been successful. For the 12 months up to June 2018 the Survey of Motor Vehicle Use (SMVU)[1] found that 84.6% of rigid and articulated trucks were registered in jurisdictions participating in the HVNL. And that these vehicles accounted for 86.9% of the total kilometres travelled and 81.4% of the total road freight measured through tonnes per kilometre travelled.

Additionally, in TMR's view the number of derogations from the law was an outcome of the speed with which the initial legislation was drafted. And the number of derogations remaining could be considered more a reflection of the shortcomings of the HVNL maintenance program to resolve inconsistencies in a timely manner rather than problems with the HVNL reform itself.

TMR suggests that in considering potential policy interventions for the problems identified through the review, due consideration be given to whether the problems could be best solved with legislation reform or whether operational changes could provide a better outcome. For example, problems with the inconsistency in enforcement activities would likely be best addressed through other means, such as changes to the national compliance strategy, uniform procedures or officer training.

In summary, TMR recommends that future issues papers and documents for the HVNL Review place a strong focus on objective evidence-based analysis with data that clearly demonstrates a case for change.

[1] Table 4 and Table 21, Survey of Motor Vehicle Use, 12 months ending June 2018, Australian Bureau of Statistics, http://www.abs.gov.au/ausstats/abs@.nsf/mf/9208.0 (accessed 28/05/2019).

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?

TMR supports the HVNL Review emphasis on identifying best practice elements from heavy vehicle and safety regulatory approaches around the world. The current HVNL regulatory approach is just one of the many systems available to investigate and draw on. Keeping an open mind at this stage of the review will help prevent missed opportunities that could be caused by too close a focus on current arrangements and operational details.

In TMR's view the HVNL currently does a number of things well, including providing a single body of law which has provided clear improvements over the previous model law approach. While not drawn out in detail in the issues paper the HVNL currently houses all the regulatory models presented in the issues paper. For example, the HVNL contains prescriptive rules in prescribed limits for mass and dimension (model 1), the outcomes-focus of the Performance Based Standards (PBS) scheme and National Heavy Vehicle Accreditation Scheme (NHVAS) modules (model 2), and self-regulation approaches in the primary duties provisions (model 3).

Other jurisdictions, particularly Western Australia, have dealt with issues such as fatigue management through work health and safety legislation, industry sector-specific guidance and codes of practice. A detailed evaluation of this approach will provide guidance for development of policy proposals for the new law.

Care must be taken when drawing comparisons with other modes, such as rail transport and aviation. Road transport experiences significant differences to these sectors in terms of operational environment, number of regulated operators, operator expertise in developing and managing risk/safety management systems, and constant exposure to and interactions with the public. This means that systems and approaches that work for rail and aviation operations are unlikely to be directly transferrable to the heavy vehicle environment.

The HVNL Review will also provide the opportunity to investigate areas of heavy vehicle regulatory activity that cross over into other legislative domains, such as work health and safety, road rules and dangerous goods. This work should assess whether there is unnecessary duplication and how the two areas can best complement the other's activities to improve outcomes for the community, industry and government.

Section 5 – Aspirations for a new law

Section 5.1 – Regulation based on risk analysis and control

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?

TMR supports using a risk-based approach to the development of the HVNL regulatory framework. **This approach can be improved by clarifying the outcomes, developing a shared understanding of the best applications for the different regulatory models, and settling on shared language and terminology that is consistently used.** The first step in this approach is to be clear about the outcomes to be achieved from the regulation of heavy vehicle activities, and the prioritisation or hierarchy of often conflicting goals, such as safety and productivity. How these outcomes will be reflected in the objects of the law will be guided by the regulatory models adopted. TMR supports focussing risk-based interventions enabled by the HVNL regulatory framework on the areas of heavy vehicle activities that pose the greatest risks to achieving the outcomes of the law. The outcomes must underpin the risk-based approach.

Determining the appropriate regulatory model to be used for the management of risks must be guided by knowledge of the benefits and disadvantages of each model (briefly addressed in the issues paper), and the situations to which each model is best suited. A good summary of these points has been laid out by the New Zealand Productivity Commission (refer Table 8.2)[2] and clearly summarised by Emeritus Professor Arie Frieberg (2017)[3].

Professor Malcolm Sparrow (2012)[4] presents a guide for decision-making by outlining a set of criteria for when model 3 (self-regulation, safety assurance approach) is best utilised to manage a group of risks where operators:

1. Have visibility of the risks and have the information and ability to identify them
2. Are willing to acknowledge risks and disclose information (have no incentive to hide risks)
3. Have an interest in controlling the risks (their interests align with the public interest)
4. Have the ability to control the risks

Sparrow notes that risks where the responses to all these points are positive has historically been limited and provides the following guidance. If the response to points 3 or 4 is negative, a prescriptive rules-based approach (model 1) should be considered. If point 1 is the sticking point, a performance-based approach (model 2) would improve outcomes. If commitment to point 2 is problematic, safety assurance (model 3) may still be an option, but systematic 'detection and verification' methods would be required to support reporting and periodic auditing activities.

TMR notes that risk-based safety management systems concepts are embedded in the National Heavy Vehicle Accreditation Scheme modules, yet only a limited number of operators have taken the opportunity to use these systems to manage their business, many preferring to remain within the prescriptive rules regime. A performance-based or self-assurance regulatory model may not be valid for all provisions of the HVNL. In assessing risk and severity, those parts of the HVNL not suitable

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[2] New Zealand Productivity Commission (2014) *Regulatory institutions and practices*, Wellington (p194-195).
[3] Frieberg, A. (2017), *Regulation in Australia*, Federation Press, Sydney (p234-245).
[4] Sparrow, M.K. (2012), Chapter 3 – 'Unraveling a Risk-Management Challenge' in *Ports in a Storm: Public Management in a Turbulent World*, Eds J.D. Donahue and M.H. Moore, Brookings Institution Press, Washington. (p25-54).

for complex risk management responsibilities to be assumed by an operator under their risk management system should be identified and remain prescriptive.

What does risk-based regulation mean to different groups of stakeholders and individuals? Effort should be spent on building a shared language for these risk-based policy development discussions, and on consistently using the agreed terms. In this way stakeholders can be confident that policy proposals developed are unlikely to suffer from unidentified misunderstandings that may not become apparent until policies move towards implementation in the real world. For example, the term 'principles' has been used to describe both model 2 and model 3. Clarity of language will also limit confusion arising about whether a discussion is surrounding the regulatory approach (high level strategic issues), or risk-based approaches to operational or enforcement activities (implementation issues), for example. These distinctions will help the new HVNL be developed to target high risk areas and provide the regulatory tools to support a risk-based approach to operational and enforcement activities to improve the extent to which the outcomes are achieved.

The OSOM worked example provided in Table 1 appeared to be a thorough assessment, however, it did not provide a clear guide to assist in decision making on which regulatory model or intervention best manages the risks in terms of the desired outcomes.

TMR supports investigating options for providing operators with choice on how they comply with the HVNL requirements, noting that the enforcement and prosecution task will be more complex due to the variations in ways operators may choose to meet their regulatory obligations. This may lead to an increase in regulatory costs such as those associated with authorised officer training, and the development of intelligence and monitoring systems. However, the cost of enforcement may be reduced, and efficiency increased, if industry shares data and undertakes regular performance reporting. This could be similar to reporting requirements for near misses and safety incidents as occurs in the rail and aviation regulatory domains.

Section 5.2 – A law with the right object, coverage and scope

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

TMR broadly supports the proposed approach to the object of the new law outlined in section 5.2.1 of the issues paper, noting that environmental and public amenity issues would need to be addressed. The objects should be stated in a way that makes clear the prioritisation of goals to minimise the impact of conflict, particularly for safety and productivity. As stated in the response to question 3, TMR recommends that outcomes and objects of the new law be agreed early in the HVNL Review process.

Issues that should be addressed when considering the scope of the HVNL include whether the HVNL provides coverage of the right areas of risk, support for road safety strategies and alignment other safety legislation.

Reviewing the object and scope of the HVNL should consider whether risk areas such as pilot and escorts, programmed inspections, dangerous goods, driver licensing, and drug and alcohol provisions should be included in the HVNL and/or how the HVNL intersects with other legislation covering these matters. Particularly good arguments exist for bringing the regulation of pilots and escorts, and programmed inspections under the scope of the HVNL as these issues are unique to the heavy vehicle industry.

The object and scope of the HVNL should also consider alignment with the 'Vision Zero' safety objectives and Safe Systems approach (safe people, safe vehicle, safe roads and safe speeds), that underpin the national and jurisdiction road safety strategies.

In comparing the HVNL objects to approaches taken in Work Health Safety (WHS) legislation and the National Road Safety Law (NRSL), the statement of the objects and principles seem to be reversed. In the HVNL, section 3 provides the objects as high-level principles underpinning the law and section 4 lays out the regulatory framework that will achieve the objects. Under the model WHS law section 3 describes first the objects, the regulatory framework, and is then followed by the principle that supports interpretation of the law, that people be given the highest level of safety protection as is reasonably practical. Consideration could be given to whether the HVNL objects should be reframed in a way that is consistent with other safety focussed legislation.

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?

The HVNL Review provides a timely opportunity to consider arguments for whether national consistency should be pursued. It is TMR's view that while there are benefits to national consistency, it should not be pursued if it would result in adverse impacts for safety outcomes or undue restrictions on local productivity initiatives. Attempting national consistency may require compromises to a jurisdiction's perception of risk, public amenity and safety that governments and their constituents are not willing to accept.

The rationale for national consistency needs to be clearly demonstrated and should not be pursued without a comprehensive review of the costs and benefits to each jurisdiction and industry participants. For the 12 months up to June 2018 the Survey of Motor Vehicle Use (SMVU)[5] found that for rigid and articulated trucks registered in participating jurisdictions 73.5% of the total tonne kilometres travelled was intrastate. Due to the large number of borders shared by participating jurisdictions, a reasonable assumption would be that the majority of the interstate work for these vehicles is within other participating jurisdictions and within the coverage of the HVNL. For rigid and articulated trucks registered in non-participating jurisdictions intrastate travel accounted for 91.5% of the total tonne kilometres travelled.

On face value, national consistency does not appear to be the pressing problem that the paper suggests, when cross-border freight movements and operators are not in the majority. Effort and resources expended in the pursuit of increased national consistency may not be the best investment, when the majority of operators and vehicles are operating under the HVNL in their respective jurisdictions in the manner that they have done for years and are not troubled by interstate concerns. There may be more benefit in identifying the shared principles relating to the safe, efficient and productive movement of freight across the country. And jurisdictions agreeing on the elements where mutual recognition approaches could be applied to enable cross-border operations with a minimum regulatory burden.

[5] Table 21, Survey of Motor Vehicle Use, 12 months ending June 2018, Australian Bureau of Statistics, http://www.abs.gov.au/ausstats/abs@.nsf/mf/9208.0 (accessed 28/05/2019).

Section 5.3 – A responsive and flexible law

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?

It is TMR's view that achieving simplicity in the legislation should not be a goal itself as this may result in adverse outcomes. It may be necessary for legislation to be complex and technically detailed in order to achieve the outcomes sought. This should not be a problem provided the obligations and how to comply is easily understood by all parties. For example, the *Transport Operations (Road Use Management) Act 1995* sections 79-82 include complex requirements about liquor and drug provisions, including testing and evidentiary requirements. However, what is required and how to comply is easily understood by drivers – don't drink or take drugs and drive.

TMR supports placing obligations as low in the hierarchy of legislative instruments as is appropriate and with sufficient regard to fundamental legislative principles relating to the rights and liberties of individuals and the institution of Parliament. Matters that must remain in primary legislation would include, for example, provisions for the heads of power for the making of regulations, the granting of exemptions, the review of decisions, offences requiring serious penalties, and significant breaches of fundamental legislative principles, if and where justified. Obligations suitable for subordinate legislation would include, for example, very detailed or operational matters, and matters likely to experience frequent change.

Development of criteria for determining where obligations should be placed would be helpful in the structuring and drafting of the new law. The types of issues that will need to be considered will be guided by the regulatory model selected to manage the groups of risks.

The flexibility and responsiveness of the HVNL could be significantly improved by moving detailed provisions to regulations or to standards or guidelines referenced by the law. TMR's view is that all subordinate legislation (that is authorised by the primary legislation), including standards and guidelines, should be approved by the responsible Ministers in the first instance. Once established, it may be appropriate for the legislation to provide for minor and non-controversial amendments to standards or guidelines be approved by a formally recognised group of chief executives from participating jurisdictions. Regulation changes should still require unanimous approval of responsible Ministers. Whereas operational procedures and educational or guidance material could be delegated to approval by the Regulator.

A further consideration will be for communication mechanisms to be in place to ensure that operators are able to keep up to date with changes to standards or guidelines. Transition periods may also be required so that operators trying to do the right thing are able to adjust their operations and are not caught out by frequent amendments.

Ensuring the HVNL remains appropriate and fit for purpose could be addressed by embedding requirements for the periodic review of subordinate legislation, including regulations, standards and guidelines in the law. This could be similar to section 54 of the Statutory Instruments Act 1992 (Queensland) which provides for subordinate legislation to expire after 10 years.

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?

TMR notes that the issues paper has not explored the emergence of automated vehicles. A future issues paper, perhaps under the 'Other policy matters', will need to identify how the HVNL review will account for automated vehicles and how the HVNL will integrate with the AV regulatory framework being developed by the NTC.

It is TMR's view that operators are more likely to embrace new technology, share data or upgrade vehicles where they see material benefits in doing so. Improved collaboration and partnering between government, industry experts and researchers and developers in evaluating technologies that have the potential to achieving the agreed HVNL outcomes would help demonstrate these benefits. The take up of technology and sharing of data in the heavy vehicle sector could be improved if:

- operators are informed of the safety benefits, and are confident the sharing of data will not have negative commercial effects,
- drivers find the technology useful and usable,
- industry is confident that the systems are reliable and cost-effective, and
- that privacy will be protected.

The HVNL needs to consider information sharing responsibilities to support optimal uptake of technology including the ability to use existing technology. These obligations would need to make the distinction between the requirements for data that is provided as information, for monitoring or research and policy purposes, and data that is required to an evidentiary standard. A risk-based approach to data provision and enforcement is required as there can be a significant difference in the costs for these two approaches to data. While it is desirable to have evidentiary level data outputs and fully tamper-proof equipment in some cases the costs of this approach can be prohibitive, particularly if certified equipment is mandated. For example, many operators already collect route data at an accuracy suitable for their operations. This type of accuracy may not be suitable for use during a prosecution, however may be suitable for use in monitoring and profiling to identify operators for closer scrutiny.

Safety Technology:

New trucks offer active safety technologies such as autonomous emergency braking systems, lane departure warnings, electronic stability control (ESC) and blind spot monitoring. Increasingly heavy vehicles have in-vehicle telematic units installed capable of supporting a range of functions such as vehicle performance monitoring, job management, driver work and rest hours, messaging, document keeping (permits/notices), and dispatch information. Providing incentives for fleet modernisation such as offering subsidies or other inducements would encourage operator investment in new safer vehicles. This will have additional benefits as vehicle age is a key predictor for whether a vehicle is likely to have defects.

TMR in partnership with the Regulator is committed to adopting current and emerging heavy vehicle safety technologies as detailed in the Heavy Vehicle Safety Action Plan intervention 10. This action advocates for fast-tracking mandatory safety technologies for new heavy vehicles including, collision avoidance systems, stability control for prime movers weighing 12 tonnes, stability control for trailers weighing more than 10 tonnes, autonomous emergency braking and underrun protection.

Data:

Data analysis is the key to measuring system performance, the effectiveness of policies and the benefits of change. The new law should support the NHVR and jurisdictions in sharing information and manage programs using technology to receive, interpret and use data. Investment will be required to ensure the NHVR has the capability and capacity to use data effectively monitor outcomes and detect failures in risk management controls if they arise.

The HV industry is surprisingly tech-savvy regarding location-based and in-vehicle equipment, freight and inventory tracking systems, and personal communications and monitoring (fatigue, etc) systems and processes. The HVNL Review provides the opportunity to investigate schemes that leverage data to improve access. For example, heavy vehicle access on agreed routes could be considered if supported by operators sharing data as a requirement or condition of access. The data received could be de-identified and used to inform access risk assessments, network planning and investment decisions. A mandated requirement such as this would have the potential to benefit road managers, industry and the community through increased community safety, red tape reduction, lower operating costs and more effective network access.

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

Current provision for the use of electronic records under the HVNL is haphazard and limited. There is a need for the insertion of general provisions which allow for the collection and use of electronic records detailing when and for which purposes they may be used. The legislative burden for operators and regulators could be reduced through increased use of electronic records. This would remove the reliance on paper-based records and support modern evidentiary requirements. Camera detected offence provisions and evidentiary requirements are also needed.

The HVNL has a solid approach to general access with simple rules and limits. However, the treatment of restricted access vehicles, and the many exceptions that have developed, are very convoluted and difficult to navigate. The classification of restricted access vehicles is overly complex and results in large discrepancies in the way that non-complying vehicles are managed. These provisions contain circular definitions and create situations where similar vehicles in similar situations are subject to very different penalties and enforcement powers. For example, section 137 fines are significantly lower than severe mass and dimension offences, and breaches for exemptions and exceptions are treated differently. TMR expects that this matter will receive full attention through the 'Easy access to suitable routes' issues paper and working group.

TMR is mindful of the possibility that introducing risk-based regulatory models or approaches may have the unintended consequence of increasing the compliance burden for industry and the costs of compliance, enforcement and prosecution for regulators.

Section 5.4 – A harmonised law for diverse operations

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

Diversity should be accommodated, and flexibility be provided, where it does not adversely impact the achievement of HVNL outcomes. Approaches that could be explored for potential application under the new HVNL include performance-based regulatory models, accreditation approaches, and schemes customised for particular transport activities, risk categories or geographic zones. Consistency in enforcement and compliance activities across participating jurisdictions could be improved by reviewing compliance procedures, improving training and placing greater emphasis on data gathering and sharing of information between regulatory agencies.

Clear explanation of the meanings of terms like 'diverse risk profile', 'diversity' and 'harmonisation' would be helpful in defining the problems to be addressed and developing possible solutions. Does 'diverse risk profile' relate to, the risk level of transport activities or operator expertise and ability to manage complex safety management systems, for example.

Clarifying what is meant by 'diversity' is likewise important. Different dimensions of diversity have varying risk considerations and require different regulatory approaches to resolve, such as:

- Jurisdiction (participating or non-participating)
- Area of operation (metro/urban, regional or remote)
- Transport activity (general freight, bulk freight, livestock, mobile machinery, agricultural combinations, heavy haulage and others)
- Distance (local delivery or long haul)
- Fleet size (multi-national organisation, large fleet, medium business, owner-drivers)
- Fleet type (hire and reward or ancillary, such as a manufacturer owning delivery vehicles)

TMR notes that the NTC document *Who moves what where?* (August 2016, p33) reports that 42.3% of truck drivers work in 'ancillary' fleets where transport is not the main business.

A greater understanding of what constitutes 'harmonisation' for the purposes of this review is necessary. For example, if a 'national' scheme is developed but requires schedules and attachments to describe the variations for each jurisdiction or type of operation is this really harmonisation? Harmonisation that applies the same rules in all cases, will reduce flexibility to deal with diversity. The level of flexibility built into the current prescriptive approach to deal with the diversity in the industry has by necessity led to increased complexity in the HVNL.

Harmonisation is an activity that has been occurring for many years with varying levels of success. The rationale for historic variations and local productivity initiatives needs review to determine whether these remain valid. As discussed under the response to question 5, the benefits and costs of pursuing national consistency needs to be analysed and confirmed.

Regulatory requirements defined in terms of categories of risk, activity or area of operation will be most appropriate where the need for operators to transition in and out of categories or zones is insubstantial. Frequent movement between regimes for specific categories or zones would create artificial border-crossings with the same problems experienced by operators moving between participating and non-participating jurisdictions.

Section 5.5 – A law that responds proportionally to risks and harms

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?

Operators and regulated parties currently have recourse to protections under the HVNL in the form of appeal processes, reviews and the court system. These should be retained in line with fundamental legislative principles.

The new HVNL should support and provide the tools for a risk-based approach to regulatory activities and enforcement that delivers proportionate and fair responses to risk management failure. This means that authorised officers need the ability to make a risk-based assessment and apply the regulatory tools that will have the best opportunity of resulting in compliance. Authorised officers should not be compelled to specific enforcement approaches other than in situations with the highest severity of safety impacts. This type of discretion is reflected in some elements of the current HVNL, such as the issue of defect notices and enforcement powers for mass and dimension offences.

The particular compliance tools required will be dependent on the regulatory model adopted. If operators are provided with options on how to comply with their obligations under the HVNL, such as complying with prescriptive rules or implementing a safety management system, the complexity in managing the compliance task will be increased. This is due to the need for authorised officers to have the ability to use many different types of investigative approaches and compliance tools.

Risk-based approaches will also require new approaches to intelligence and the development of risk category and operator profiles. It will be necessary to ensure that these tools are effective but also ensure appropriate privacy protections. Data collected for enforcement purposes will need to be managed differently to data used for information or policy development purposes only.

For consistency in enforcement of the HVNL, criteria should be developed to determine what a significant risk is supported by definitions of evidence required to demonstrate significant risk. The HVNL will also need to support prosecutions without having to rely on expert witnesses in court to establish risks or to demonstrate that a safety assurance system is insufficient. This might be achieved through legislation references to clear standards and codes of practice for example. Unless these concerns are addressed, there will be significant risks of bottlenecks in court systems and uncertainty for industry and participating jurisdictions with respect to how various state courts will approach these issues.

Section 5.6 – A law that better delivers outcomes

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

Approaches that may help improve safety, productivity and regulatory efficiency that are worthy of investigation include closer alignment with national road safety strategy concepts, evidence-based risk assessment, accreditation and the use of technology to support assurance for access arrangements.

TMR is of the view that to assist in the improvement of safety, productivity and regulatory efficiency future iterations of the HVNL and its subordinate legislation should support a holistic view of the road transport system (Safe Systems approach). This would consider the interaction between roads and roadsides, vehicles, travel speeds and road users.

TMR's *Road Safety Strategy 2015-2021* has adopted the framework of the *National Road Safety Strategy 2011-2020*, and the department is committed to 'Vision Zero' in Queensland, an ultimate goal of zero fatalities with an interim target of a 30% reduction in fatalities and serious injuries by 2020. Vision Zero is being adopted in different ways around the country and internationally. The HNVL could positively contribute to this vision by aligning with the Safe Systems approach. The contribution of the next iteration of the HVNL to Vision Zero by clarifying the priority or balance point between a safe journey and an efficient journey.

If the future HVNL is risk based, a thorough understanding of the risks in terms of achieving the objectives of the law is required. For road safety, this means using an evidence-based approach to understand the types of crashes occurring and the effect of driver behaviour, vehicle performance and infrastructure on each crash type to better target interventions and risk-based regulatory approaches. Evidence based benchmarking projects, such as the National Roadworthiness Baseline Survey (NRBS), are necessary to measure performance to determine whether continuous improvement goals are being met and could be useful in terms of setting appropriate standards.

Further consideration also needs to be given around creating a culture of compliance and road safety within industry. The HVNL would need to support and encourage measures and actions that develop positive workplace road safety culture. Accreditation and safe management systems approaches may encourage the organisational factors and systematic approaches to risk management that lead to better safety outcomes and the development of safety culture[6].

In addition, assumptions should not be made that increased use of Higher Productivity Vehicles (HPVs) will automatically lead to safety benefits. While use of HPVs will clearly improve productivity and efficiency for heavy vehicle use, it will not necessarily result in less heavy vehicles on our roads nor equate to higher efficiency overall. Using more productive road freight vehicles may result in more freight being carried by road and less by other modes, especially rail. This would reduce safety and increase the negative effects on the environment and public amenity. Further consideration needs to include whole-of-network impacts.

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[6] National Transport Commission and National Heavy Vehicle Regulator (August 2014) *Integrity Review of the National Heavy Vehicle Roadworthiness System*, Melbourne (p45).

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

TMR agrees that the development of a set of HVNL regulatory principles could be useful to guide the work of the review, the development of policy proposals and the drafting of the new HVNL.

If the draft regulatory principles are intended to have utility beyond helping to frame information in the issues paper, TMR recommends that they be developed and agreed in consultation with the Jurisdictional Strategic Oversight Panel. Like the HVNL outcomes, TMR believes statements as important as the regulatory principles to the future direction for the review of the HVNL should be developed and agreed as soon as possible.

While the draft principles presented in the paper cover a broad range of the issues that should be considered, TMR does not support the principles as they are currently drafted. The draft principles presented are unnecessarily complex and repetitive. Many of the draft principles attempt to tie together concepts in ways that are confusing, such as flexibility and harmonisation. Or are based on assumptions that need to be tested, such as drawing on regulatory practice from other sectors or jurisdictions will lead to nationally agreeable and consistent legislation. The principles should be developed as clear guiding statements, an example is provided below.

The HVNL should:

- Manage the material risks to the agreed HVNL outcomes demonstrated by clear evidence
- Have the scope and coverage to effectively manage the material risks above
- Adopt the regulatory model that recognises the risk severity, and the regulated party's expertise, willingness and capacity to identify, develop and implement risk controls
- Apply demonstrated regulatory best practice
- Place obligations as low in the hierarchy of legislative instruments as is appropriate and with regard to fundamental legislative principles
- Support, and provide the tools for, a risk-based approach to regulatory activities and enforcement that delivers proportionate and fair responses to risk management failure
- Be responsive and flexible to support innovation in technology, diverse industry needs and regulator risk-based operations
- Support continuous improvement in achieving the agreed HVNL outcomes
- Support national consistency, where possible, provided the agreed HVNL outcomes are not substantially compromised