

**SAFE PEOPLE and SAFE PRACTICES
HVNL REVIEW ISSUES PAPER**

**SOUTH AUSTRALIAN ROAD TRANSPORT ASSOCIATION SUBMISSION
22 AUGUST 2019**

1. About the South Australian Road Transport Association (SARTA)

SARTA is the peak industry body in SA and a member of the Australian Trucking Association (ATA) and we share the strong commitment to safety, professionalism and viability. SARTA is working closely with the ATA in response to the HVNL Review and the NTC's Discussion Papers and so we are in broad agreement with the ATA submission on this matter. We submit the following additional thoughts.

2. First Principles Approach

Ministers have directed that the Review of the HVNL be undertaken on a First Principles basis. Accordingly, the first principle that should be considered in the context of Safe People and Practices is dropping the prescriptive approach entirely and shifting the focus to an absolute obligation on all Parties in the Chain of Responsibility to manage Safety effectively, by taking appropriate measures as far as reasonably practicable. HVNL2.0 should also provide for the appropriate enforcement of that obligation in the light of a significant safety incident with appropriate penalties when Parties are unable to demonstrate they, as far as reasonably practicable, took appropriate measures to manage safety. This would reflect the stated intention of Ministers to adopt the WHS model.

In particular the focus of the HVNL 2.0 in this context should be on:

1. Identifying all relevant parties in the Chain of Responsibility, including Drivers, (who oddly and inappropriately are not considered to be part the Chain at present) Supervisors, Managers, Schedulers, Owners and Directors of HV businesses, and key players outside of the HV transport businesses, including customers' Operations Managers, Inventory Managers, DC Facility Managers and Directors, Freight Forwarders and Loading Agents including web-based freight exchange services, and third party service providers;
2. Holding them each accountable under the CoR Duty of Care with an obligation to take measures, as far as reasonably practicable, to ensure Safe Practices and to operate Safely;
3. Providing Guidance under the HVNL 2.0, such as through the Master Code, regarding practices and standards that Parties could consider as they develop and implement Safe Practices within their Road Transport Related Activities;
4. Apply appropriate penalties in the event of an incident where a Party is unable to demonstrate that they are meeting their obligations to utilise Safe Practices, as far as reasonably practicable:
 - a. Where there has NOT been a significant incident or injury, such penalties should be relatively low and only be applied where the Party fails to take appropriate corrective improvement measures; and

- b. Where there has been a significant incident or injury, such penalties would be more substantial and escalate according to the severity of the incident.

Safe Practices vs Safety Management Systems:

- 5. Focus on the utilisation and appropriateness of **Safe Practices** and NOT on requirements for Safety Management Systems (SMS) or even policy and procedural manuals per se, as these are merely a means that can be used to help with effective implementation of Safe Practices. This is an important distinction, as far too often, commonly in fact, smaller operators and even larger operators, fall into the trap of paying substantial sums to external consultants to produce glossy and apparently comprehensive Manuals and Procedures and SMS which:
 - a. Are NOT specifically tailored to addressing the safety issues and specifics of the particular business;
 - b. Are NOT written in a format or language that is readily understandable and usable for the personnel in the business; and
 - c. Create a false sense of confidence that the business has a manual/SMS and so it's legally protected, when in fact it isn't because the reality is that there are significant gaps in the business' Safe Practices.

The HVNL 2.0 should guard against creating an environment in which consultants can build a lucrative market charging substantial sums for providing largely unhelpful and ineffective CoR Manuals and SMS.

Many operators will develop documented policies and procedures and recording systems as a means of implementing and managing Safe Practices and as a means of providing evidence that they have done so. This is particularly more relevant for medium to large operators which have a more complex and multi-layered management structure, necessitating systems that enable them to monitor and assess the effectiveness of their Safe Practices.

This is not the case in the vast majority of the industry, comprised of small to medium operators, that have almost no, or at best a limited and flat, management structure and therefore their managers are active participants in the daily operations and are in frequent and close contact with the HV Drivers and other employees.

Accordingly, manuals and documented procedures and SMS have a far more significant role to play in larger businesses due to the organisational distance between managers and the coalface activities.

Entities in the Chain must have Safe Practices, but whether or not they opt to achieve this through use of documented Policies and Procedures or SMS is a matter for them and should not be a requirement under the HVNL 2.0.

Similarly, the HVNL 2.0 should guard against raising expectations of Third Party Clients and Prime Contractors that all HV operators must, regardless of size and complexity, have formal SMSs or CoR systems in place which they can present to the Third Party on demand. The administrative burden and costs imposed on HV operators by the ill-informed and overly zealous response of Third Parties to the HVNL CoR Reforms on 1 October 2018, has been intolerable and unsustainable.

Level of Influence and Control:

The Third Parties are responding to a false perception that they must micro-manage their HV contractors' operations and safety, because the Third Parties have utterly failed to comprehend the clear line of delineation between their responsibilities and those of their HV Contractors. That line is drawn by the level of the respective Parties' Influence and Control and the HVNL 2.0 must be far clearer and definitive on this.

Safe vs Safer

6. HVNL 2.0 must focus on a requirement to be **SAFE**, NOT on a requirement for Continuous Improvement which is really a government policy nicety which misses the point; namely that road transport operations need to be SAFE, as far as reasonably practicable.
 - a. Who is to say what is 'SAFER'? It is utterly unreasonable to impose any obligation on parties to "Continually Improve" for the apparent sake of it when in fact they ARE operating safely.
 - b. Taken to the Nth degree, one could argue that travelling at 80kph is safer, then 70, then 60 and ultimately staying off the road completely!

A Risk-Based law, by definition, must acknowledge and accept that some degree of risk will always be apparent, even if just by being on the road with others. The HVNL 2.0 must focus on achieving the balance between operational and environmental realities, with the associated risks, and the requirement to take measures as far as reasonably practicable to manage those risks and operate safely.

Fit For The Job vs Fit For Duty:

7. HVNL 2.0 must apply an obligation for HV drivers to be assessed as Fit for the **JOB**, through approved medical assessments which must address the medical issues raised in the ATA's submission on Fatigue Management;
8. HVNL 2.0 must apply an obligation on HV Drivers to be Fit for **DUTY**, on each day that they work and to not operate a HV if they are not Fit For **DUTY**, and a requirement on other Parties to not require a HV Diver who is NOT Fit For DUTY on any given day to operate a HV.
 - a. The HVNL 2.0 regime should provide, perhaps through the Master Code or in NHVR Guidelines, some guidance regarding ways in which HV Drivers can assess and monitor their Fitness for **DUTY**;
 - b. The employers of HV Drivers should be obliged, as far as reasonably practicable, to have safe practices in place to ensure that their HV Drivers are assessing and managing their Fitness for Duty.
9. A requirement for professional development is not the purview of the HVNL. This is a matter for individual HV drivers and HV operators.
10. A single national HV Driver Licence should be implemented.

11. HV licence qualifications should all be competency-based and progression from one Class of licence to the next should NOT be contingent upon the passage of time, merely upon demonstrated competence against the standards for that class of licence.
12. Drug and Alcohol management programs should not be mandated by the HVNL 2.0 as there is no evidence to justify the massive cost of doing so. On the contrary on-road blitzes and screening routinely show virtually zero alcohol in working truck drivers and very low levels of drug intoxication and at frequencies that are far less than the general motoring community. Applying such a requirement under the HVNL 2.0 would be a disproportionate and unjustifiably selective approach to one class of road user that is performing far better than the other major road user category, namely motorists.

S B Shearer
Executive Officer
SARTA