



victorian**transport**association_{inc.}

Response to the National Transport Commission Safe People and Practices

Submission Number Four

Submission on behalf of the
Victorian Transport Association

August 2019

Submitted by:
Peter Anderson – Chief Executive Officer
Victorian Transport Association
Level 1, Mirrat House
46 Kooronga Way
Port Melbourne VIC 3207
Telephone: (03) 9646 8590
Email: peter@vta.com.au



TABLE OF CONTENTS

1.0 ABOUT THE VICTORIAN TRANSPORT ASSOCIATION (VTA)

- 1.1 Introduction
- 1.2 Representation
- 1.3 Services
- 1.4 Industry Regulations and Compliance
- 1.5 Industrial Relations
- 1.6 Training and Education

2.0 VTA'S RESPONSE TO THE ISSUES PAPER

- 2.1 Introduction
- 2.2 VTA approach
- 2.3 Specific responses to questions:
 - 2.3.1 *Have we covered the issues relating to safe people and practices accurately and comprehensively? If not, what do we need to know?*
 - 2.3.2 *What aspects of safe people and practices are currently regulated well? What needs to be regulated better? What aspects of safe people and practices are currently regulated well? What needs to be regulated better?*
 - 2.3.3 *What should the future HVNL do to regulate safe people and practices so heavy vehicle drivers and others are safe? What risks are adequately managed by other regulatory controls? Are there any risks to the safe driver that are not currently regulated at all, and if so, how should these risks be regulated?*
 - 2.3.4 *Does the primary duty and chain of responsibility in the current HVNL comprehensively cover the people who can influence the safe driver and their practices? What improvements are needed?*
 - 2.3.5 *How can the HVNL support better training and a higher level of driver competency? How can it support ongoing professional development?*
 - 2.3.6 *Is driver health and medical fitness managed as well as it could be? Is there a case for regular medical assessments for drivers (and possibly other parties), similar to those for Safety Critical Workers in the Rail Safety National Law? Is the Rail Health*



Assessment Standard a good basis for a heavy vehicle medical assessment standard?

- 2.3.7 Should heavy vehicle driver licences be national? If so, should this be by mutual recognition, nationalisation or some other approach? If licences shouldn't be national, why not? Should licencing progress subject to experience rather than arbitrary timeframes?*
- 2.3.8 Should the HVNL do more to help manage drug and drink-driving? For example, should it include a drug and alcohol management program requirement such as the one required in rail? Is on-road enforcement enough?*
- 2.3.9 Do the Australian Road Rules do enough to manage driver distraction, speeding and other on-road behaviours? Is the primary duty in the current HVNL rigorous enough to manage the practices of chain of responsibility parties who can influence a driver to operate unsafely?*
- 2.3.10 How can the future HVNL encourage a stronger role for safety management systems in a way that doesn't disadvantage smaller or more seasonal operators? Can registered industry codes play a role in supporting smaller operators to develop safety management systems?*
- 2.3.11 How can the future HVNL nurture a culture that places a high level of importance on safety?*

3.0 SUMMARY



1.0 ABOUT THE VICTORIAN TRANSPORT ASSOCIATION (VTA)

1.1 Introduction

The Victorian Transport Association (VTA) has over 800 members and is dedicated to the service of members and supporters in all sectors of the transport and logistics industry.

With over 100 years' experience and a specific business focus, we possess the industry acumen, market knowledge and industry contacts that enable members to capitalise on the current commercial and regulatory environments.

Recognised as Australia's pre-eminent multimodal prime contractor and employer organisation in transport and logistics, the association works with all levels of government, the unions, statutory authorities and the industry to achieve mutually beneficial outcomes. The VTA is committed to enhancing the image of the industry while helping improving the commercial environment for our members to operate.

2.0 VTA'S RESPONSE TO THIS ISSUES PAPER

2.1 Introduction

The Victorian Transport Association (VTA) welcomes the opportunity to respond to this 'Easy Access to Suitable Routes' Issues Paper released in June 2019 by the National Transport Commission (NTC). The VTA will refer to this document as Submission Number Four.

The HVNL in its current form falls short of being truly national and is overly prescriptive and complicated. This review (the Review) of the HVNL will have a significant impact on the heavy vehicle industry. It will determine the shape, practices and operational standards within the industry that at times falls short of community expectations and struggles to project a positive culture.

The VTA and its members maintain that this Review must ensure that any changes to the law remain focused upon and are underpinned by three key pillars: improved efficiencies, improved productivity and improved safety outcomes.

It is vital that we confront past standards and legal structures whereby we build a new HVNL framework which addresses the current problems and short-comings and most importantly, ensures that we deliver a far more robust, purposeful and flexible framework in order to meet future industry challenges.

2.2 Approach to the VTA Response

The VTA responded to the initial March 2019 Issues Paper, titled 'A risk-based approach to regulating heavy vehicles' (referred to as Submission Number One) and made a concerted effort to include many of its key issues and topics within this submission.



Given the breadth and complexity of this Review, the number of issues involved, the NTC timelines and demands upon consulting and gaining feedback from its members, the VTA will provide more concise submissions for this and each of the future Issues Papers.

Our responses are based upon the VTA's knowledge and thorough understanding of the transport and logistics across different sectors, jurisdictions, government bodies and agencies, as well as, the feedback from VTA members through its well-established VTA Secretariat structure.

The VTA appreciates that 'flexibility' in the new Law is essential. The VTA also acknowledges getting the balance right between flexibility and certainty is paramount.

In summary, the VTA supports the ten principles presented in this Issues Paper, however, it strongly believes that the Regulatory principles 4 and 5 must be significantly strengthened. They currently read as follows:

Draft regulatory principle 4: The future HVNL and the regulatory environment that supports it should prevent a driver who is not competent from driving on Australian roads. It should encourage drivers to continuously improve their competencies, or at least maintain them.

Draft regulatory principle 5: The future HVNL should encourage driver health and fitness for duty, for their own safety and for the safety of all road users.

By way of background, we have had a number of reports about the status and issues involved with heavy vehicle licencing and assessments. This extends to many of the associated challenges of attracting, training and retaining heavy vehicle drivers. In more recent times, we have had the Austroads Research Report, *Review of the National Heavy Vehicle Driver Competency Framework*, published in May 2018.

In brief, the reviews and reports acknowledge that the heavy vehicle licencing and assessing is very complex and challenging, however, there is a lack of commitment for action because 'it is all too difficult'. The VTA believes it requires a major change in mind-sets, the political will and the genuine commitment to change by all key stakeholders.

The change in the HVNL must support changes to the Heavy Vehicle Licencing processes that will drive improved productivity, efficiencies and safety through the transport and logistics industry.

2.3 Specific VTA responses to the questions.

2.3.1 *Have we covered the issues relating to safe people and practices accurately and comprehensively? If not, what do we need to know?*

Overall, the Issues Paper has accurately covered the issues relating to safe people and practices. At the same time, there is a need to highlight two key points.



By way of feedback from members and through the delivery of the VTA's Chain of Responsibility (CoR) workshops, the industry continues to be confused as to 'why' the heavy vehicle driver remains outside of the CoR parties. This needs to be better clarified in the development and 'roll out' of the new law and drivers need to be included.

The VTA also wishes to highlight that the implementation of CoR is not equal and it is indeed discriminatory and not inclusive. When the CoR is applied, it is still the directors and owners of an organisation who are pursued and prosecuted.

Whilst the HVNL espouses the theory that each of the respective employees with responsibilities along the supply chain will be proportionally pursued and prosecuted for any breaches, this is not the case in reality. The prosecutions and fines are directly levelled at the owners and directors of the organisation. The motivation for this approach is self-evident.

The second point relates to the specific parties named in primary duties of CoR. It is suggested that the list of parties needs to be more comprehensively covered in new Law. There needs to be the inclusion of a greater number of the roles involved within the supply chain.

2.3.2 What aspects of safe people and practices are currently regulated well? What needs to be regulated better? What aspects of safe people and practices are currently legislated well? What needs to be regulated better?

The VTA believes that the transport and logistics industry have a genuine commitment to safe people and practices reflected in their safety management system of many organisations. The VTA also acknowledges that there is always 'room for improvement' in this area.

Given the focus on improving safety standards and safety outcomes, there is an array of other directly and indirectly related issues which need to be considered. They include: heavy vehicle driver licencing and assessments; driver assessment and fitness for duty; vehicle standards and Australian Design Rules. We should also at least consider some of the learnings and practices from other industries such as, rail, aviation and construction.

2.3.3 What should the future HVNL do to regulate safe people and practices so heavy vehicle drivers and others are safe? What risks are adequately managed by other regulatory controls? Are there any risks to the safe driver that are not currently regulated at all, and if so, how should these risks be regulated?

The VTA has presented its position on one of the key significant issues relating to safe people and practices, that is, heavy vehicle driver licencing and assessments. As it has already been argued in previous submissions, the VTA supports the adaptation of risk-based approaches but the new HVNL must ensure and achieve greater alignment between its penalties and the nature and seriousness of the breaches.



From a regulatory perspective, the future HVNL should complement Work Health and Safety Laws (WHS) and the HVNL penalties should be better aligned with the penalty regime contained in WHS laws.

For many decades the road transport industry has suffered with a shortage of skilled and professional drivers. The road transport industry has not been seen as an industry of choice or as one that an individual will develop as a career.

This issue has meant that the road transport industry has not been accepted within stakeholder environments as an industry that can lead and determine its own development or direction. While many great businesses have sprung from the hard work of those in the industry many businesses have failed as the pressures of growing companies regularly not take in the basic business skills and levels of responsibility that are necessary to maintain a sustainable and successful business.

There is no doubt that one of the reasons that the industry fails to attract and retain professional people is due to the levels of qualification and experience needed to start within the industry. At present, these levels are very low and there is little recognition of experience, knowledge and responsibility within a road transport company.

Many workers remain at the same level of recognition and remuneration after decades of hard work and therefore do not gain the elevation and rewards that are often seen in other industries.

The current heavy vehicle driver licencing system does not attract people who see themselves building a long-term career or wish to develop and improve upon their skills to attain greater opportunity.

Through Freight Victoria, Department of Transport, the VTA has been instrumental in achieving a review of the Victorian Heavy Vehicle Licencing system in Victoria. It will shortly produce competency based and skilled drivers that will be job ready and attractive to employers and deliver a secure workplace, acknowledging skill levels and knowledge and attitude and safety being key educational elements.

Given that heavy vehicle licensing services are consumed primarily by those wanting to enter the road transport industry, heavy vehicle licensing should also adequately prepare licensing applicants by ensuring that they receive adequate 'behind the wheel' (BTW) training in those driving environments that they are likely to be exposed to on a daily basis.

The review of the Heavy Vehicle Licencing System is a step forward for the road transport industry becoming more accountable to the community, more professional in itself and delivering safer outcomes for all road users. The future HVNL must ensure that Heavy Vehicle Licencing is more effectively regulated and harmonised on a national basis.



The new Law should also include that drug and alcohol policies should be mandatory, along with the need for mandatory medical examinations being conducted on a regular basis.

The VTA believes that the real challenges involve the extent of the testing and defining the specifics of 'fitness for duties'. This area still requires significant work.

2.3.4 Does the primary duty and chain of responsibility in the current HVNL comprehensively cover the people who can influence the safe driver and their practices? What improvements are needed?

The VTA does not believe that the current HVNL comprehensively covers the people who can influence the safe driver and their practices. Under the HVNL, the CoR includes most supply chain parties who have a duty to make sure transport activities relating to heavy vehicles are safe. The current list of safe parties is limited and needs to be extended in relation to CoR.

As a further extension of our comments in section 2.3.1, the new Law must also ensure that each CoR party is held fully accountable and the appropriate penalties.

We need to ensure that the new Law clearly articulates where the heavy vehicle driver is defined in the process of primary duties and CoR. The VTA fully understands the rationale that the heavy vehicle driver sits outside of the CoR and is subject to the Australian Road Rules, however, this requires clearer explanation going forward with the new Law.

2.3.5 How can the HVNL support better training and a higher level of driver competency? How can it support ongoing professional development?

As stated in 2.3.3, better training and higher levels of driver competency is paramount. The VTA's approach to safe people is underpinned and predicated on three key pillars: improving skills; improving competencies; and improving behaviours. Consequently, heavy vehicle licencing must be more extensive in the delivery of the necessary skills and competencies. It will be more costly than the present situation, however, the current system is not 'fit for purpose', and certainly does not meet the requirements and expectations of applicants, businesses and the community.

In preparing this submission, it was highlighted and reinforced by VTA members that the transport and logistics industry is characterised by very low margins, low barriers of entry and that it is already over regulated. This impacts the level of commitment by individual operators to the HVNL.

The transport and logistics industry is committed to productivity and safety. The VTA argues that in addition to the application of mandatory operational standards, the operators who invest in and implement additional productivity and safety measures should be rewarded with greater access to realistic incentives built into the new Law.



Many VTA members (small, medium and large organisations) who are already committed to operating effective management systems highlighted the enormous costs of resourcing, implementing and maintaining such systems. They have also made it very clear that from their perspective, there is a lack of understanding and appreciation of these requirements by regulators and government agencies.

This further highlights that this Review must result in a reform of the HVNL whereby the scope and key considerations (as per Terms of Reference) are achieved and that the benefits of increasing national consistency of heavy vehicle regulation are also able to be adapted and applied effectively to remote, regional and urban areas.

There needs to be structured education and training for the transport and logistics industry. There also needs to be qualified acknowledgement of the skills and competencies which is supported by a fully funded process for the 'development by industry for industry' from the federal government.

2.3.6 Is driver health and medical fitness managed as well as it could be? Is there a case for regular medical assessments for drivers (and possibly other parties), similar to those for Safety Critical Workers in the Rail Safety National Law? Is the Rail Health Assessment Standard a good basis for heavy vehicle medical assessment standard?

Driver health and medical fitness continues to be a challenging issue for all businesses. The VTA acknowledges that many businesses have excellent 'on-boarding' processes which incorporate very thorough and effective health and medical fitness assessments and procedures. The application of these practices varies significantly across the different organisations across the industry.

The challenges associated with these processes have certainly increased and they require more advanced approaches especially in relation to a heavy vehicle driver being fit to work. This is particularly highlighted in relation to fatigue management.

Under the HVNL a driver must be fit for work. This is based on a driver appearing physically and mentally fit to drive. The other risk controls, such as work and rest hours, assumes that the driver starts a trip well rested. There lies a major issue as this is indeed not always an accurate assumption.

Drivers operating under standard hours are not regularly assessed to make sure they are medically fit to perform the duties. Drivers that operate under standard hours do not need to complete fatigue management training. The VTA believes that drivers should be required to complete fatigue management training for all vehicles greater than 4.5 tonne.

The VTA acknowledges and supports 'Assessing Fitness to Drive Guidelines' which are designed to assess medical fitness for driver licencing, however, they are only limited to chronic illnesses, non-acute concerns.



The VTA does not believe it necessary nor the industry is ready to adopt the regular medical assessments for drivers similar to those for Safety Critical workers in the Rail Safety National Law.

2.3.7 Should heavy vehicle driver licences be national? If so, should this be by mutual recognition, nationalisation or some other approach? If licences shouldn't be national, why not? Should licencing progress subject to experience rather than arbitrary timeframes?

Yes, the heavy vehicles driver licences should be national and based upon effective training, skills and competencies.

As already stated in earlier submissions, as well as, in 2.2 and 2.3.2 of this document, the VTA strongly argues that a reformed national heavy vehicle licencing system must be developed and implemented.

The VTA also supports the need for licencing progress subject to training and experience and accompanied by the recognition of the skills and competencies specific to the different sectors of the industry.

2.3.8 Should the HVNL do more to help manage drug and drink-driving? For example, should it include a drug and alcohol management program requirement such as the one required in rail? Is on-road enforcement enough?

The VTA fully concurs with the NTC's comments contained in the Issues Paper:

"Truck drivers affected by drugs or alcohol should not be allowed on Australian roads. The future HVNL should encourage safe behaviours. That includes making sure drivers are properly educated about the risks of drug and drink-driving." p46

The VTA is committed to raising the levels of safe behaviours in all aspects of the roles, duties and responsibilities of all employees. The VTA also advocates that whether or not drug and alcohol offences, testing and penalties reside under HVNL or Australian Road Rules for heavy vehicle drivers, they must be nationally consistent with no variations between states and in fact should be zero.

Over the past 10 years, jurisdictions have adopted tougher sanctions. This is supported by the VTA. The VTA believes that a proactive approach must be taken to prevent drug and alcohol driving. It also acknowledges more work needs to be done into researching the impact of new emerging drugs and substances and the means in which they can be tested more effectively during on-road enforcement. The VTA also highlights this issue must be a focus of road safety for all road users not only heavy vehicle drivers.

As already expressed, these measures and the new law needs to apply to all vehicles greater than 4.5 tonnes (GVM).



2.3.9 Do the Australian Road Rules do enough to manage driver distraction, speeding and other on-road behaviours? Is the primary duty in the current HVNL rigorous enough to manage the practices of chain of responsibility parties who can influence a driver to operate unsafely?

This question is indeed far more complex to determine when applied to the way distraction is regulated. Based upon feedback from our members, the issue of the distinction between manageable and unmanageable is open to interpretation and is very much dependent upon the specific heavy vehicle sector and the vast range of specific driving tasks which apply to that particular sector of the industry.

The 'real time' distraction on the roads can be broken down into long distance distraction and short distance distraction. The basis of this perspective is to illustrate the delineation of those drivers who look for distractions to remain focused and active while driving compared to those drivers who lose concentration based on those distractions in the vehicle.

Long distance professional drivers (LDD) regularly have extended periods on roads that are travelled repetitively. They are aware of the risks and issues at all times and display the highest driving skills. However, the issue of complacency and concentration become negative factors as the journey progresses. The long-distance driver looks for elements that will stimulate the mind and assist in maintaining focus and concentration. This does not mean that the LDD is consistently on a mobile phone but rather is consistently exercising different stimuli in the course of the journey. This may include examples such as drinking water, play music media, mathematical equations, physical tests and other exercises to ensure that the mind remains receptive and evaluating the risks on the road at all times.

Short Distance Drivers (SDD) are more prone to finding distractions that diminish their ability to concentrate on the task of driving. Distractions that take away the driver's ability to correctly assess an increase of risk while driving are more prevalent in the community with the development of portable media. Rather than be distracted to assist in concentrating and assessing risk, while SDD's do not see or understand the importance of continued risk assessment when driving the habitual reference to portable media while driving reinforces the issue of negative distraction.

The VTA wish to assert that there are both positive and negative distraction that affect drivers and that a simple reference in long and short distance driving illustrates this point. Consequently, to inform the way driver distraction is regulated based upon a distinction between 'manageable and unmanageable' is very difficult to determine and a high degree of caution is required.

This VTA position is primarily based upon the knowledge and experience of VTA members who have witnessed and experienced the 'untended' consequences of previous changes to laws, regulations and rules without the policy and law makers fully investigating and determining the full impact of their proposed changes upon the key stakeholders, in



particular, the heavy vehicle industry. In relation to speed, this issue is far more straight forward and can and is effectively regulated.

The VTA believes that the primary duty in the current HVNL is rigorous enough to manage the practices of chain of responsibility parties who can influence a driver to operate unsafely.

2.3.10 How can the future HVNL encourage a stronger role for safety management systems in a way that doesn't disadvantage smaller or more seasonal operators? Can registered industry codes play a role in supporting smaller operators to develop safety management systems?

The VTA has consistently argued that in addition to the application of mandatory operational standards, the operators who invest in and implement additional productivity and safety measures should be rewarded with greater access to realistic incentives built into the new law.

The industry is very concerned that regulators and government agencies do not appreciate the true cost to businesses to effectively implement, comply and maintain efficient safety systems.

We support the implementation of effective safety management systems but they could also better supported by being interconnected with real time data which should be available through the NHVR.

The VTA also argues that by adopting, integrating and connecting the 'right' technologies, law makers and particularly the regulators and operators are in an excellent position to maximise current and future systems and tools to significantly reduce red tape and time-consuming administrative burdens which currently prevail.

Registered industry codes do have a role in assisting businesses to develop safety management systems by being sound resources for developing and implementing such systems.

As stated in the VTA's Submission Number One, mandatory standards are required for fatigue management for all vehicles greater than 4.5 tonne.

While many existing transport and logistics organisations have excellent and effective systems to manage risks involving HVNL, the VTA also acknowledges that the industry has many operators across the 40 plus sectors who do not manage nor fully understand their fatigue management obligations.

Hence, the need and rationale for mandatory operational standards to be developed and implemented is paramount. The HVNL must apply to all heavy vehicle 4.5 tonnes and that it must be consistently applied and enforced.



The VTA argues that in addition to the application of mandatory operational standards, the operators who invest in and implement additional productivity and safety measures should be rewarded with realistic incentives built into the new law.

The VTA believes that operators must take full responsibility for risk management. In relation to be to drive, driver should be required to sign off that he or she is fit to drive by signing a declaration indicating a recording that this is the case. The driver is responsible for statement to be true and correct, furthermore the penalties for false declaration should be increased.

2.3.11 *How can the future HVNL nurture a culture that places a high level of importance on safety?*

In 2.3.3 and 2.3.5 of this submission, the VTA's approach to safe people is underpinned and predicated on three key pillars: improving skills; improving competencies; and improving behaviours. If the new law is to nurture a culture that places a high level of importance on safety, then it must be underpinned by the above.

3.0 SUMMARY

We welcome the opportunity to discuss this submission in more detail. The VTA believes that this Review provides an excellent opportunity to address the short comings and issues associated with the current HVNL. It also acknowledges the significant complexities involved in reviewing and changing the current HVNL and legislation.

The VTA and its members maintain that this Review must ensure that any changes to the HVNL remain focused upon three key pillars: improved efficiencies, improved productivity and improved safety outcomes.

The VTA also believes that these improvements can be achieved through: Heavy Vehicle Licencing Reform; ensuring Occupational Health and Safety principles are in all safety reviews and that sufficient funding is provided for training programs.

It is vital that we 'get it right' whereby we build a new HVNL framework that effectively addresses the current problems and short-comings and ensures that we deliver a far more robust, purposeful and flexible framework to meet future challenges of our industry.

Peter Anderson
Chief Executive Officer
Victorian Transport Association

