

INTERCAPITAL
TRANSPORT CONSULTANCY & PARA- LEGAL
Division of intercapital holdings p/l
Abn 90122425594

Jerry Brown-Sarre
Dip of LP

13 CLIFTON ST. EUROA .VIC
035795 2251
gj@oldhume.com
0409326832

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National Transport Commission
Level 6
600 Bourke st Melbourne
Vic 3000
enquiries@ntc.gov.au

Submission NHVA
Safe Drivers Safe practices

Dear Sir /Madam

1/ This is an industry of approximately 40300 transport companies, give or take a few depending on bankruptcies for each year

a/ There are only a few associations that represent a minority of these companies in these Australian wide issues.;

b/ Nat Road whose mandate it is to look after their major corporate members and who's membership represents approximately 3.6 % of the of the major companies

c/ Australian Trucking Association who represent major companies and associations as was found out with their involvement in the now repealed RSRT

d/ And various state associations who handle mainly state issues for various members

e/ Transport Workers Union

f/ Artio

2/ There are approximately 31000 independent contractors, some often called owner drivers, who have no representation in dealing with government issues and rely on receiving benefits that the flow from the gains that major companies receive from the above representations to governments.

Drivers and public risk is where safe practices begin

3/ Prescriptive Regulation in relation to drivers and to fatigue management is wrong as we have explained in our submission to the NTC enquiry into the NHVL and the risk it implies

4/ A risk-based approach to regulating heavy vehicles is absolutely the only way laws and regulation ought to be set out however that said, there is some prescriptive law is needed and whether the NHVA will be the regulatory body to oversee the reforms is another question.

5/ In my submission to the NTC we suggested there has to be prescriptive law into the roadworthiness of heavy vehicles across Australia which should be lowered to apply to all heavy vehicles over 3 tonnes because that goes to safety of drivers and the general public ,and across Australia after heavy rigid vehicles are being involved in many accidents ,this goes to risk to the public good .

6/ We also submitted that all road safety component repairs on heavy vehicles only be done by accredited heavy-duty mechanics

7/We suggested that driver testing and licensing for all heavy vehicles be prescriptive and controlled by the NHVA after consultation setting out the level of driver's ability and knowledge on a national level before being granted the privilege of driving on Australia roads, this again goes to risk to the public good.

8/ Following onto this, the knowledge and ability to drive/ operate a road train multi trailer combinations other than a B Double combination (M /C licence B double only) Should be another class of licence ie; (M/T/C) the accreditation would need to be granted to drivers who can supply checkable records of driving history in support for all current drivers in all states, in the future teaching and actual testing in states where there are facilities, this is a must after the accidents in Victoria with M/C drivers driving pocket road trains without the knowledge and ability to do so, this goes to risk and safety for the public good. Primary duty s26 ,a,b,c,d, COR

9/Heavy vehicle driving licenses that allow drivers to only drive heavy vehicles with automatic transmissions should be never considered, this is basically impossible to police, either you can drive a heavy vehicle with a manual gearbox or you can't, if you can't you should not be able to get a licence to drive a heavy vehicle over 4.5 tonnes.

For the best productivity

10/ of this industry there has to be one set of rules and laws across Australia for all participants in the industry, and states cannot have the right to opt out of those rules and laws.

11/We would suggest the reformed non prescriptive NHVL should be incorporated into the dormant and un enacted Part 5 of the Interstate Transport Act cth 1986 so that it can be applied across Australia.

12/The NHVA as a Commonwealth entity should be the missing authority of Part 5 to enforce that part of the Act, the NTC should give this consideration as a way to makes state and territories to be bound to the law to prevent road deaths.

13/Part 5 of the Interstate Transport Act cth only needs a transport minister to sign off on it for it to become law

14/The NHVA could then also stand alone as the body to enforce all other issues of the states that it currently covers that cannot be legally enacted as part of Commonwealth law.

15/Part 5 of the Interstate Transport Act cth1986 sets out the licensing of the industry as an enforcement tool and to control the entry into the industry by new players without business experience and it should be used in that way in the future.

16/From when a driver steps into a heavy vehicle he is subject to inherent risk of unforeseeable events that could happen at any time .and prescriptive laws may increase risks to drivers and the general public good.

17/The inherent risk multiplies as the exposure to risk of mechanical failure, tyre failure, fatigue and other road users' mistakes, and prescriptive law further puts drivers lives at risk.

18/ The Chain Of Responsibility Act as part of the NHVL must also apply across Australia and in particular the primary duty that applies under s26, A,B,C,D of the Act has a wide range of protection that can apply to all participants in the industry and also protection to the public good across Australia as part of contracts and agreements between prime contractor and subcontractor rates that could involve risk .

19/When I talk about risk and government laws, then the principle of law of this following judgment comes to mind

20/ Held by lord chief justice Willmot CJ. .Collins v Blanter 1767 2 wils KB quote.

*A contract that Tempts a man to transgress the laws, to **do that which, is injurious to the community** is void at common law And the reason why the common law say such contracts are void ,**is for the common good** Unquote,*

21/The principle of law of this judgment should be the reason behind every decision of the NTC when reforming practices that are currently in place

Viability and safety

22/The NTC should be actively involved in installing a fairer transparent system of payment of registration fees by heavy vehicles across Australia by going to a user pays model for road building and road maintenance.

23/Registration fees should be added to fuel imposts so no matter how many klm per week the vehicle does, road maintenance charges are paid as you go, and it matters not how many trailers are being towed by that combination, it is reflected in the fuel economy of the vehicle, an example would be;

24/A quad trailer road train combination vehicle may return from 0.8 klm to the litre ,a 2 trailer vehicle combination will return from 1.5 to 1.9 litres to the litre, a single trailer combination may return from 1.9 to 2.2 klm to the litre ,but for all the time that vehicle is being driven on a highway the fuel burn of the particular vehicle will collect the imposts required to pay for the replacement of registration costs that currently apply as a user pays policy. .

25/ Currently the registrations costs for an independent contractor registering 1 prime mover and 2 trailers travelling 120000 kilometres per year are the same as the major fleet vehicles of the major companies, whose same vehicles work 24/7 and amassing 350000 klm per year, and in multi trailer road train jurisdictions this unfairness multiplies, this is an unfair system.

26/Clearly single vehicle multi combination truck owners are being discriminated against in registration costs and klm travelled and major transport companies are getting a free ride at the small independent contractor's expense as are those using Performance Based Vehicle permits gaining extra weight advantage at no extra cost in registration fees.

27/With the current NHVA permits for many different performance-based vehicles a user pays system on fuel is the only way every person will pay his fair share of the costs for the combination weight of that particular vehicle under this system.

28/All major highways and freeways must have more full amenities truck stops and pull offs for short rests periods to alleviate fatigue risks and should be spaced at 25klm intervals.

29/This should be a commitment from local councils and shires across Australia to assist implementing these as a priority, as duty of care under NHVL COR, road safety for the public good

30/The NTC should be involved in toll charges for heavy vehicles which are currently a major burden on industry in particular independent contractors who are price takers in the rates they are paid and toll fee recovery is not part of the rates they obtain from prime contractors for work done.

31/It appears at this time that road toll operators have no intention of setting fair tolls but are content to just set a figure that suits them to maximise profits, the NTC should have more involvement in the rates they charge transport vehicles ,and should involve themselves into making prime contractors reimburse subcontractors these imposts.

32/Until prescriptive hours of rest are removed from the fatigue management act their will not be an improvement in road safety of heavy vehicles until proper laws are enforced that are proved to be based on risk to drivers and the public good and not revenue for the states, and as part of the reform, trivial offences that don't go to risk should be removed in line with legal maxims on the point as set out in previous submission.

33/Based on current heavy vehicle accidents and driver deaths in 2019 it would appear that the magic bullets that were proposed to make roads and driver's lives safer, with ESC, RSC, ABS, Automatic gearboxes according to all the alleged experts, have not worked and they won't work and mandating these alleged safety features should not be done and they should remain at the purchaser /operators discretion

34/As set out in my previous submission to NTC accident prevention will only work if we replace the outgoing experienced driver's with proper driver training. Unfortunately, we are 20 years behind in proper long-distance driver training and I refer to my previous submission on the point.

35/This is one vocation where experience, ability and knowledge cannot be replaced with university degrees

Competitive Pressures and duress

36/ contrary to the submissions of Nat Road and others, is still one of the main causes of road deaths of heavy vehicle long distance drivers

37/The NTC should lobby that every truck accident resulting in death or injury be investigated by ABS or National Truck Action Research Centre (NTARC) or a similia body, with particular attention to," was the driver and or the owner of the vehicle subject to financial duress that could have contributed to the accident, was the pay rate of the load a contributory factor.

38/The NTC should also under COR s26 A,B,C,D, NHVL, make transport driver deaths and injuries' subject to OH&S ,work safe laws of all states ,using the Interstate Transport Act 1986 cth as the vehicle to do this .

39/ Road Safety Remuneration Tribunal, under the RSRA and the RSRT, enacted by the Labor federal government was the most feared law to all associations and their corporate members, and supply chain participants to be enacted by a federal government in our history.

40/The reason being, it had the power to make a difference to the culpability to major transport companies and supply chain companies for unfair practices leading to road deaths which continues today with the repeal of the RSRT order.

41/These associations and supply chain participants who refused, and still do not accept the findings of numerous enquiries where independent contractors and drivers gave evidence pre RSRA into road safety and who found rates of pay and road safety go hand in hand, be it employee drivers or independent contractors.

42/These associations with corporate investment are relying post RSRT opinions where independent contractors and drivers had no input into them and have no relevance to the

truth.

43/The Road Safety Remuneration Tribunal was the first time that a government body had a proper interest into road safety and drivers lives.

(a) That allowed direct place at the table representation by owner drivers/independent contractors into laws that directly affect the way they operate their business and their safety

(b) The right to take direct action into a legal jurisdiction for breach of any provisions of an order

(c) The right to a no cost tribunal in all states to appeal any alleged infringements before fines could be enforced

(d) Transparent consultations into the real costs incurred to operate vehicle at that time and the agreed costing formula that followed

(e) Transparent consultations involving independent/ contractors (4 were involved in the negotiations for the period of the RSRT) supply chain and the major transport players , took place over 3 years between all parties to bring about provisions of the orders to protect small business and promote driver safety .

(f) That the tribunal was the first government body to request prime contractors to produce their individual operating costs as comparable evidence to owner drivers' payments, which they refused to provide.

44//The RSRA was repealed by the federal government on the 18th April 2016 after the federal government was presented with misleading and deceptive facts and material by all major transport associations and companies .the same people who for 3 years sat in front of the tribunal saying they were in full of support of the Act and the work the tribunal, and the work of the genuine parties involved to prevent road deaths, with the intent to have it repealed.

45/ We note the opinions of associations saying the proposed RSRT rates order would not have reduced drivers' deaths is a flawed opinion with no facts to back them up.

46/The PricewaterhouseCoopers (PwC) opinion for the RSRT that only 20% or 20 drivers in a hundred were caused by driver's mistakes is also a flawed opinion and failed to take in to account contributory evidence and dismisses those deaths as inconsequential.

Policing of the NHVA

47/The NHVA should be the main body to enforce HNVL with properly trained personal enforcing NHVL as they are now doing in SA ,Tasmania and ACT, and with only properly trained state police also authorised to infringe drivers to prevent unqualified people infringing drivers with false interpretations of law ,changing the words of acts to suit themselves as currently happening .

48/The big stick approach to penalties NHVA for doesn't work, and massive fines won't stop operators from making simple mistakes and the draconian fines imposed that they don't have ANY way of paying due to financial duress, in transport we have a vernacular that states, you can't get crap from a rocking horse.

49/The penalties under HVNL must be changed to penalties based on risk instead of penalties to suit revenue, to do this, the penalties for all fatigue breaches and other breaches of NHVL must be taken out the hands of the Queensland legislation, and be framed and drafted with a penalties board ,of government and industry representatives to

take into account drivers administration mistakes, errors and genuine risk across the board for all heavy vehicle breaches, for the public good and for proper transparency into penalties.

50/With reformed non prescriptive NHVL and revised penalties based on risk, the most powerful tool to enforce breaches of law is still, “a licence to operate” for major companies and independent contractors, and a licence to drive for driver’s, the then transport minister, Peter Morris supported this when the Act was written and the reason for Part 5 of the Interstate Transport Act 1986 cth

51/All major transport companies opposed Part 5 of the Act, as originally proposed with a licence for every vehicle and a licence before more trucks could be purchased, but a single licence for one truck or one thousand trucks should not be opposed as a way to penalise rogue companies if their practices put drivers or the lives of the public at risk.

52/The only decision is, how much for the licence, many good opinions were raised on this point but never expanded on, the licence fees would contribute to the running of NHVA .

53/The Act could also be used to make supply chain participants liable for contributory risk which they do not accept and are still continuing to put drivers at risk in unloading and loading practices because of lack of policing on the matter.

54/In a perfect world the NHVA should have the power to set up a tribunal in all states where drivers can appeal alleged infringements, without costs, before penalties can be enforced. This would stop the current situation where most drivers are unable to get to the court to advocate their guilt or innocence because distance, cost, and time off the road ,where a driver or an owner in Victoria, as an example, has to engage out of state lawyers and travel out of state to defend an action ,this is not justice .

55/ Under NHVL at this time penalties are being issued to drivers and owners for alleged infringements that where they are issued, many contravene the jurisdiction of that state’s courts.

As previously stated, time and money distance prevent driver’s from defending this legal point of law. This is not justice.

Older vehicles

56/There are many parties trying to suggest that older vehicles should be replaced and newer vehicles be compulsory because fuel burn and other grounds but omit to make reference to the other costs to operate euro engines that make them more costlier in the long run and also adds to finding drivers who want to drive euro built or designed trucks .

57/This argument was raised in many meetings of the RSRT between independent contractors and those representing major players, but no company could advise the tribunal how independent contractors could pay for these new vehicles, other than to say independent contractor will have to buy cheaper inferior European vehicle on the freight rates that they receive ,instead of the up market American vehicles they prefer.

58/Most major companies themselves are downgrading to cheaper euro trucks because of the freight rates they are compelled to accept by supply chain participants.

59/Consideration must give to the majority of older vehicles being used that are better maintained and in better roadworthy condition than many later model trucks running up and down the highways. We are in the position to attest to this through our accredited

heavy vehicle roadworthy business where we see the both types.

60/The most important advance into both drivers safety and fuel economy in trucks was the design and implantation of cruise control which increased economy by as much as 15% on some trucks and others by more, and our own tests have shown by the limiting vehicles to 100 kph with cruise control, older vehicles, are as, or more, efficient than current the euro 5 controlled engines.

61/There are some opinions that automatic gear boxes are more efficient on fuel, however this is argumentative and depends on the driver training and more important, the experience and knowledge of the driver, but basically, they are known in the industry as idiot proof gearboxes and are a driver/ vehicle purchaser opinion.

62/The final order on safe rates of the 18/4/16 order addressed this argument and factored allowances for independent contractors to purchase the vehicle of preference although none of the parties to RSRT will admit to this fact and will pivot to other self-interest issues.

63/In the first edition of the load restraint guide now part of NHVL experienced drivers were driven a defense to argue against provisions of the guide based on knowledge and experience, this right was removed in later editions, and should be reinstated, contrary to university degrees, there is no substitute for knowledge and experience gained actually doing something, than from knowledge gained from just reading how to do something as most enforcement personal have .

64 / This is one prescriptive law that put drivers lives at risk daily because common sense has been removed from allowing drivers to restrain loads the way they have for decades and in the manner they have found to be safe and effective without risk to themselves while doing it .

Thank you for opportunity to put forth our views on the true facts on these totally important issues.

Jerry Brown-Sarre

