

11 September 2019



Mr Peter Harris  
Chair, Heavy Vehicle National Law Review Expert Panel  
National Transport Commission  
Level 3, 600 Bourke Street  
Melbourne, VICTORIA, 3000

Dear Mr Harris

### **Re: Submission – Safe people and practices**

The National Farmers' Federation welcomes the opportunity to provide a submission on the National Transport Commission's issues paper 'Safe people and practices'. We also look forward to engaging further with the Review, including providing input on the remaining five issues papers on the Heavy Vehicle National Law (HVNL).

The NFF is the peak national body representing farmers and, more broadly, agriculture across Australia. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF. The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers. This includes road rules that support efficient domestic supply chains which, in turn, contribute to the international competitiveness of Australian agriculture.

As the peak industry body representing Australian agriculture, the NFF has a significant interest in the outcome of the HVNL Review. Agriculture is worth nearly \$60 billion annually to the Australian economy. Essential to the productivity of our industry is the ability of farmers to move machinery and freight on public roads in a safe, efficient and timely fashion.

For these reasons, the NFF welcomes a comprehensive review of the HVNL, including of its foundational principles. This submission builds on the key asks in our first submission, '*A risk-based approach to regulating heavy vehicles*'.

We note the questions of the issues paper and provide responses to questions 2, 4, 5, 6 and 8.

#### **2) What aspects of safe people and practices are currently regulated well? What needs to be regulated better?**

In our submission to the first issues paper in this series, we argued that the balance between prescriptive and performance-based legislation could be better aligned. We argued that overly prescriptive regulation can hinder the ability of operators to innovate via new technology and methods.

In our submission to the issues paper ‘Effective fatigue management’, we fleshed out what this alignment would look like when applied to the fatigue management provisions of the HVNL. We argued that the HVNL should set out high level performance-based standards but retain the more prescriptive standard work and rest hours as an option. Operators can choose to either develop fatigue management systems which meet the high level standards or simply comply with the standard work and rest hours. This system grants more flexibility to larger operators who have the capacity to develop sophisticated fatigue management systems, which improves the efficiency of their operations. Smaller operators can avoid the burden of having to develop fatigue management systems by following clear and comprehensive rules. This gives them certainty that their actions are legal.

In the case on the non-fatigue safety concerns of the HVNL (driver competence, driver fitness for duty, driver authorisation, driver alertness and the safe operation of the vehicle), a high-level, performance-based standard already exists in the form of the primary duty. Under the primary duty, all parties in the CoR must do what is reasonably practical to ensure that all transport activities relating to a heavy vehicle are safe.<sup>1</sup> The primary duty is non-prescriptive because it does not specify ‘what’ is reasonably practical or ‘how’ it should be done. It sets a high level standard and parties in the CoR undertake different actions to meet this standard, depending on their circumstances.

As mentioned above, small operators – a category into which the majority of farmers fall – want to have certainty that their actions are legal. In 2016, 70 per cent of operators had only one truck. Twenty-four per cent had between two and four trucks.<sup>2</sup> The language used in the primary duty, that parties in the CoR do what is ‘reasonably practical’ to manage safety, is vague. In our submission to the first issues paper we asked that, where performance-based standards are legislated, generic rules or guidance documents should be provided to give operators clarity on what they need to do to meet these standards. In the case of fatigue, the standard work and rest hours (with some improved flexibility) fulfil this role. In the case of non-fatigue safety risks, the NHVR already has a range of tools which fulfil this role. The NHVR website contains fact sheets for each party in the CoR which give examples of behaviours that satisfy their responsibilities under the primary duty. Parties can also access a Chain of Responsibility Gap Assessment Tool where they answer a brief number of questions about their activities and receive recommendations which ‘outline the types of system controls that you could install to strengthen your compliance and manage safety’.<sup>3</sup>

Also, the Master Industry Code of Practice provides a set of national standards and procedures developed to assist CoR parties meet their responsibilities under the HVNL. It suggests controls for speeding, fatigue, mass, dimension and loading and vehicle standards.<sup>4</sup>

Together, the primary duty, the range of NHVR materials on the CoR and the Master Industry Code of Practice satisfy the NFF’s preference for performance-based regulation with specific guidance on how to meet the high-level standards.

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<sup>1</sup> s 26C of the HVNL.

<sup>2</sup> National Transport Commission 2019, ‘Safe people and practices’, p. 28

<sup>3</sup> <https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/cor-gap-assessment-tool>

<sup>4</sup> <https://www.nhvr.gov.au/files/ricp-master-code.pdf>

**4) 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?**

It is our view that the primary duty requires parties in the CoR to ensure the heavy vehicle driver is fit for duty. A driver who is unfit for duty presents a ‘public risk’, which it is the responsibility of all parties in the Chain of Responsibility to eliminate ‘so far as is reasonably practical’.<sup>5</sup>

To impose regular medical assessments on drivers and other parties in the CoR would therefore be an unnecessary burden and would constitute prescriptive legislation. We believe the new HVNL should seek to minimise these things wherever possible.

**5) Should heavy vehicle driver licences be national? If so, should this be done 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?**

The current system of graduated driver licensing, which operates differently in every state and territory<sup>6</sup>, deters young people from becoming truck drivers. Workforce supply challenges (which are substantial – demand for truck driving jobs rose by 60 per cent from 2015 to 2018<sup>7</sup>) cannot be met by training young people after they finish school. Compared to the broader workforce, truck drivers are underrepresented in the 15-35 age groups.<sup>8</sup> We provide below two case studies which demonstrate this problem.

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<sup>5</sup> s 26C of the HVNL

<sup>6</sup> National Transport Commission 2019, ‘Safe people and practices’, p. 36

<sup>7</sup> Labourforce 2019, Trucking Report April 2019, p. 1

<sup>8</sup> Austroads 2018, ‘Review of the National Heavy Vehicle Driver Competency Framework’, p. 5

### Case Study 1

A livestock transporter at Maleny reflects on the over 20 years of experience he has in the rural livestock transport industry, and the issues he has seen hiring new staff:

#### *Young people*

“It is difficult for transporters to hire young people because of the tier system. If someone wants to begin driving at 17, they will begin on a body truck, then move to a semi-trailer, then a B-Double; by the time they are qualified for a road train they may be 22 years old. Anyone that needs someone with a Multi-Combination license will have to wait 5 years until this person can fill that role. This is a major disincentive to hire young people, especially for an industry that is chronically understaffed – it’s so much easier to hire someone who already has the experience, especially because the insurance costs are lower too. But this isn’t the best thing for the industry. I have employed drivers under 25 that were really switched on, loyal, respectful and competent. I know a lot of transport operators know young people they’d love to hire, but current licensing requirements and the cost of training make this hard.”

### Case Study 2

A livestock transport operator in Charters Towers reflects on his issues with finding competent drivers and hiring young people:

#### *Young people*

“Depending on their age, young people need to spend a long time training with older drivers. For us, money is often too tight to pay two people to drive one road train while one of them is training. I would love to see some sort of government assistance to help employ people, similar to an apprenticeship program in other industries.

I would love to take more younger drivers, and spend the time training them properly from the start of their career. But the cost of training someone this way is high, and their insurance costs are much higher than someone over 25.

An apprenticeship program would make it much easier for me to hire and train safe, competent staff, especially younger staff under 25, to replace the older people that are moving out of the industry.”

Austroroads provides a similar case study:

*‘The industry is losing competent young drivers who have been driving on farms etc for years learning from their parents/friends and could safely operate combination vehicles at 18 years of age because they cannot be employed until they reach an age limit to legally qualify.’<sup>9</sup>*

We note that not all states and territories require drivers to undertake a competency-focussed assessment or have any behind-the-wheel experience before they progress to the next level of

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<sup>9</sup> Austroroads 2018, ‘Review of the National Heavy Vehicle Driver Competency Framework’, p. 4

their license.<sup>10</sup> A system of driver licensing which shortens the minimum tenure period on each level of license and instead ensures competency through recorded behind-the-wheel training and competency focussed assessment would help address the labour shortage by allowing younger people to progress through their heavy vehicle licenses more quickly.

Austroads has previously found that ‘current license tenure requirements, while intended to promote progressive skills development, place an arbitrary barrier which does not guarantee skill development or safety outcomes.’<sup>11</sup>

We therefore suggest that the NTC examine the viability of a national system for heavy vehicle driver licensing, in order to facilitate this improved method of licensing.

*Recommendation 1: The NTC should examine the viability of a national system for heavy vehicle driver licensing.*

### **Training Costs**

We note that except ‘in the case of large operators, or where government has provided subsidies, the heavy vehicle industry and individuals themselves have been reluctant to make this investment [in driver training]’.<sup>12</sup> We provide below two case studies from Queensland which demonstrate the cost-burden of driver training.

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<sup>10</sup> Austroads 2018, ‘Review of the National Heavy Vehicle Driver Competency Framework’. P. 6

<sup>11</sup> Austroads 2018, ‘Review of the National Heavy Vehicle Driver Competency Framework’, p. 9

<sup>12</sup> Austroads 2018, ‘Review of the National Heavy Vehicle Driver Competency Framework’, p. 9

### Case Study 1 (cont.)

#### *Training*

“There is a definite variation in the quality of training provided by RTA’s. I once let someone who was enrolled in driver training school practice on some of the trucks in my yard. I asked him to reverse and he told me he didn’t know how – they only taught him to go forwards! I’ve hired drivers from some of these schools with poor turning, poor awareness of their trailers, and poor reversing. It adds to my training costs – that’s longer they need to spend in the truck with an experienced driver, learning things they should already know with a Multi-Combination license.

Training is already longer and more expensive for rural livestock transporters, because they need to learn how to handle the animals. They also need to learn their routes more thoroughly – we really need to get them practicing some of the tight corners and potholes that urban roads don’t have.

### Case Study 2 (cont.)

#### *Training*

You need to spend long hours in a truck to properly train someone to ensure competency. Currently, there are courses on offer for \$50 that will “train” you for a Multi-Combination license and a lot of potential staff have secured their MC license this way. But all this sort of training has done is put more people behind the wheel that can barely change a tire. It’s even harder for a company like us because it’s essential we spend a decent amount of time training new staff to expert level, and that they’re familiar with livestock – when you cart livestock out in the bush, you’re going to be on your own in some really unpredictable conditions with a full trailer load of animals whose welfare is in your hands. You need to know how to handle whatever situation is thrown at you. But the lack of staff mean sometimes you just have to take what you can get.

I’d love it if something could be done about this. Currently the national regulator spends too much energy on penalizing drivers for their logbooks and has nothing for making sure drivers are competent.”

Given the merits of licensing processes focussed on training and competency (outlined above), we recommend that – where training courses are provided through registered training organisations and are a compulsory licensing requirement – the NTC investigate measures which would reduce the cost of these courses to a level that is affordable for small operators. Measures which reduce the cost of informal, behind-the-wheel training of the kind described in Case Study 2 should also be investigated.

*Recommendation 2: The NTC should investigate measures which would reduce the cost of training to a level that is affordable to operators and drivers.*

We also recommend that a national system for heavy vehicle driver licensing should make the completion of an apprenticeship program one way to satisfy licensing requirements. As indicated in the case study, this would make it easier for operators to hire safe, competent and young staff.

**6) Should the HVNL do more to 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 Australian Road Rules, which are applied by state and territory legislation, already cover drink and drug driving.<sup>13</sup>

We would also point out that the HVNL definition for a person who is fit to drive a heavy vehicle specifies that the person must not have: an alcohol concentration exceeding an amount permitted under an Australian road law of the relevant jurisdiction, or a drug present in their blood or saliva that is not permitted under the Australian road law of the relevant jurisdiction.<sup>14</sup> When we consider this HVNL definition of ‘fit to drive’ in conjunction with the requirement under the primary duty that the heavy vehicle driver be ‘fit to drive’ – a requirement which we demonstrated earlier in this submission – it becomes clear that the HVNL *does* regulate drug and drink driving.

The fact that drug and drink driving are covered by the HVNL and by state and territory traffic laws, considered alongside the fact that illegal alcohol levels rarely cause fatality or serious injury incidents involving heavy vehicles<sup>15</sup>, leads us to conclude that there is no need to apply further regulation in this area.

**8) 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?**

As noted in the issues paper, the primary duty implies that CoR parties should have a system of safe practices in place so that they meet their legal obligations under the HVNL.<sup>16</sup> This means that all operators have some form of safety management system in place, even if rudimentary.

As we argued above, guidance documents and industry codes of practice are essential for small operators who have neither the capacity nor inclination to develop comprehensive safety management systems.

Please do not hesitate to contact Prudence Gordon, General Manager, Trade and Economics ([pgordon@nff.org.au](mailto:pgordon@nff.org.au), or 0404670434) should you have any questions with regards to this submission.

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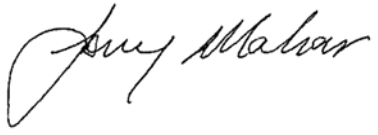
<sup>13</sup> National Transport Commission 2019, ‘Safe people and practices’, p. 28

<sup>14</sup> s5 of the HVNL.

<sup>15</sup> NSW Centre for Road Safety 2017, ‘Drink Driving Trauma Trends’

<sup>16</sup> National Transport Commission 2019, ‘Safe people and practices’, p. 40

Yours sincerely

A handwritten signature in black ink, reading "Tony Mahar". The signature is fluid and cursive, with the first name "Tony" and last name "Mahar" clearly legible.

**TONY MAHAR**  
**CEO**