NATROAD

NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

Issues Paper: Vehicle Standards and Safety

30 August 2019

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the Issues Paper entitled *Vehicle Standards and safety*[1] released by the National Transport Commission (NTC) in July 2019. The Issues Paper is part of a series that informs the current review of the Heavy Vehicle National Law (HVNL).[2]

2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.

3. This submission responds to the questions posed in the Issues Paper.

Question 1: What risks to safe vehicles that are currently out of scope for the HVNL should be brought into scope? What is in scope that shouldn't be?

4. Registration is mentioned in the Issues Paper at page 18 to 19. But the discussion does not cover some matters critical to the topic of safe heavy vehicles which we now address.

5. Until the passage of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, Chapter 2 of the HVNL covered registration. It did not come into force before being repealed.

6. Hence, registration is regulated by the States and Territories. Yet there is a "national plate" that is now affixed to heavy vehicles when establishing or renewing registration. That "national plate" is only affixed to vehicles in jurisdictions that have agreed to be bound to the HVNL i.e. it is not affixed to vehicles registered in WA and from 1 August 2019 will be an optional matter for vehicles registered in the NT.[3]

7. Sometimes the national plate is not affixed because one of the many State-based exemptions applies e.g. heavy tow trucks in NSW,[4] primary production vehicles registered in Queensland, discussed below.

8. The specific rules relating to the issue of the national plate have been summarised by the National Heavy Vehicle Regulator thus:

> *From 1 October 2018, a national heavy vehicle plate is issued in the ACT, New South Wales, Queensland, South Australia, Tasmania and Victoria whenever:*
>
> - *a new heavy vehicle is registered*

[1] https://www.ntc.gov.au/Media/Reports/(33808A95-79CE-98DE-D23C-70ECF09B9C36).pdf
[2] https://www.ntc.gov.au/heavy-vehicles/safety/review-of-the-heavy-vehicle-national-law/
[3] https://www.nhvr.gov.au/news/2019/08/06/nt-to-come-on-board-with-national-heavy-vehicle-number-plates?utm_campaign=On%20the%20Road%20Issue%2065&utm_content=nhvr.gov.au/news/nt-to-come-on-board-with-national-heavy-vehicle-number-plates&utm_medium=email&utm_source=www.vision6.com.au
[4] See https://www.ntc.gov.au/media/2060/ntc-issues-paper-risk-based-approach-to-regulating-heavy-vehicles-warren-clark-national-road-transport-association-natroad-may-2019.pdf at paragraph 39 for a short summary of the problematic issues involving heavy vehicle tow trucks in NSW in particular.

- *an unregistered vehicle is re-registered (contact a transport authority customer service centre in your state or territory for details about the particular conditions that apply in your jurisdiction)*
- *a state or territory registration is transferred to a participating jurisdiction*
- *a lost, damaged, destroyed or stolen number plate is replaced.*[5]

9. State and territory transport authorities manage and administer heavy vehicle registration services, such as new registrations, renewals, changes to registration details and all matters related to the carriage of dangerous goods.

10. The governments of each State and Territory have legislated that there be exemptions from the requirement for the national plate to be affixed. The change to State-based registration, the tied abolition of the Federal Interstate Registration Scheme (which NatRoad opposed) and the affixing of a national plate raised the ire of NatRoad members. For example, one member said:

    The whole 'National Heavy Vehicle Plate' thing is a sham of the highest order, a shallow attempt by Government to con the populace into believing there is a National Heavy Vehicle Registration Scheme when it is the same old broken inefficient State managed schemes with a token agreement to use a common plate design.

11. Matters concerning registration should be regulated under the HVNL. There is no good policy rationale for this process to be in part administered by the States and Territories and in part by the NHVR e.g. through the registration portal.[6] The rules for each of the areas mentioned in the prior paragraphs should be consistent. They relate to heavy vehicle safety in a number of ways, self-evident for example, with respect to heavy dangerous goods vehicles.

12. The lack of national uniformity is compounded by different subject areas for exemptions in the States and Territories. Plus, where the same subject is covered by the exemptions, they are not consistent. For example, in Queensland primary producer registered vehicles are issued with "farm plates." To our knowledge Tasmania is the only other jurisdiction which has primary production vehicles with separate farm-plates but only for vehicles with a GVM that exceeds 15.9 tonnes.

13. This separate farm plate shows that the relevant heavy vehicles have been concessionally registered as primary production vehicles, a concession that in turn differs between States and Territories. In States and Territories other than Tasmania and Queensland, the national plate applies to concessionally registered vehicles, causing confusion should a primary production vehicle cross State borders.

14. It would assist to level the competitive playing field if primary production vehicles were better identified in all jurisdictions.

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[5] https://www.nhvr.gov.au/road-access/registration/national-heavy-vehicle-plates
[6] https://www.nhvr.gov.au/news/2019/03/13/time-saving-for-new-rego-portal-access

15. The problem to be solved is in large part that of unfair competition. NatRoad submits that a reform should be introduced so that all concessionally registered primary production heavy vehicles are able to be identified via a "farm plate." This is so enforcement officers and others in the supply chain would be better able to identify primary production vehicles.

16. So, where the vehicle is being operated in competition with those who pay far greater registration fees, a matter that is regularly confronted by NatRoad members, an offence could be more readily detected.

17. NatRoad is not against concessions being provided to the farm sector. Many members service and are dependent on primary producers for their work. We support Australia's primary producers. But individuals would be less inclined to mis-use the registration concession if their vehicles were easily identifiable via a farm plate.

18. NatRoad has raised enforcement issues throughout our submissions to the NTC in the course of this review. This issue also has enforcement repercussions.

19. For example, we have proposed to the New South Wales government in our call for better enforcement of the abuse of the primary production concession the following measures which have currency in the HVNL review:

    - Recording of exemption conditions on the NHVR vehicle registration database.
    - Making this information available to authorised officers on the roadside.
    - During roadside intercepts, authorised officers should check if registration conditions apply, and if so, are these being complied with?
    - A clear legislated, consistent offence for misuse of primary producer registration.
    - More frequent risk-based checking of known offenders.
    - A penalty that is a multiple of the registration costs avoided.

20. Safe vehicles are those which are well maintained and regularly serviced. Farm vehicles are often used only in short bursts, say during harvest. Many are not intended for use on public roads. They are generally older and less fit for service than vehicles operated by hire and reward entities.

21. Accordingly, the issue of competition against those abusing the primary production registration financial concession impinges directly on the question raised by the NTC about vehicle safety as well as raising the unfair competition issue discussed at length.

22. All of these factors lead NatRoad to submit that this is an area that is crying out for reform: primary production concessionally registered vehicles must bear a "farm plate" and those who abuse the privilege of concessional registration should be required to pay a multiple of the registration cost avoided.

23. There is a need for uniform seasonal registration for road transport operators, at least, where they can register based on short periods or distance travelled. This is relevant for those that work for primary producers and have trailers that are only used during harvest. NatRoad is in the course of developing a proposal in this context.

Question 2: Have we covered the issues relating to safe vehicles accurately and comprehensively? If not, what do we need to know?

24. All Australian governments have agreed to policies relating to the roll out of land transport technology.[7]

25. As part of this policy platform the following is said:

    If required, best practice regulatory approaches will be adopted to ensure regulation is cost efficient, transparent, proportionate to the risk, fit for purpose and done in consultation with affected stakeholders. ***This includes adopting relevant international or regional standards, unless there is a compelling reason for a unique Australian requirement.***[8]

26. Heavy vehicle policy must move in the direction of taking up international standards but not slavishly. A compelling reason for Australian unique conditions to apply should be where clear productivity gains without compromising safety is shown.

27. Take the example of width, an issue that is the subject of analysis by many industry participants. [9]

28. NatRoad has taken part in discussions with Government officials on proposals to increase the maximum width for heavy vehicles. NatRoad is advocating that vehicle width should be permitted to be 2550mm rather than the current maximum of 2500mm, with refrigerated vehicles being permitted to have a width of 2600mm. Governments should grant general access to heavy vehicles with these widths under the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation 2013* or the subsequent instrument governing this subject after the HVNL review is completed.

29. Work on the ramifications of making the changes advanced by NatRoad and others is being conducted by Austroads, as mentioned at page 26 of the Issues Paper. This follows government work on impediments to reducing the average age of the national heavy vehicle fleet so that newer models with greater safety features are able to be introduced to the Australian market at lower cost, an obvious productivity benefit that has positive safety outcomes. Newer vehicles have greater safety features fitted.

30. The Government's work shows that to meet current Australian regulations, heavy freight vehicles must be 50 to 100mm (2–4%) less in width than vehicles in other major markets. This costs manufacturers $15–30 million per year to redesign their vehicles, and in some cases reduces the availability of safer, cleaner models.[10] It adds costs to NatRoad members in their purchase of heavy vehicles.

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[7] https://www.transportinfrastructurecouncil.gov.au/publications/files/national_policy_framework_for_land_transport_technology.pdf

[8] Id at p19 our emphasis

[9] The main policy differences have been summarised recently in a paper by Heavy Vehicle Industry Australia https://www.hvia.asn.au/documents/item/318

[10] https://www.roadsafety.gov.au/action-plan/2018-2020/critical_action_L.aspx

31. NatRoad notes that already the regulations (section 8 Heavy Vehicle (Vehicle Standards) National Regulation) permit heavy vehicles to be 2550mm wide when taking into account load restraint.

32. There are also pedantic rules that exclude vehicles on the basis of not meeting width requirements and therefore being denied general access. For example, members have informed us that in some jurisdictions, being over width by less than 100mm for tautliner curtains/poles has resulted in infringements being issued and we have assisted members where an infringement notice was issued for being 30mm over width in this context.

33. It appears that as this issue is otherwise well known, road authorities often do not enforce this design issue as a breach. This again points to NatRoad's concerns that many aspects of the enforcement of the HVNL are unsatisfactory.

34. NatRoad believes that the arguments against the move to greater width flies in the face of available evidence and is inconsistent with the Government's own policy framework.

35. The main argument against increased width is that potential safety risks will arise because of reduced separation between vehicles and vulnerable road users such as cyclists. But the evidence shows that with greater width the capacity to install side underrun protection increases. These devices protect road users such as pedestrians and cyclists from slipping sideways under the wheels of trucks and trailers and may also improve the aerodynamic performance of heavy vehicles.

36. In addition, the assessment of on-road performance for different heavy vehicles shows that the PBS variant of each particular heavy vehicle generally performs better in safety and efficiency terms than the corresponding vehicle subject to prescriptive standards, clearly made plain in the Issues Paper and discussed below.

37. The disappointing part of the work being undertaken on width is that it excludes assessing potential changes to vehicle mass. NatRoad supports greater maximum steer axle loads or at least further research on the effects of taking that step when heavy vehicles use certain tyre types.

38. The example of the debate about width has wider repercussions for the review of the HVNL. The review should trigger an examination of all of the basic building blocks of the current law, particularly about vehicle dimensions. The revised HVNL should not act as an impediment to regularising Australian and international standards or to enhancing the productivity of the road freight sector where that regularisation is not required.

39. We also note that the Government in addressing the issue of how ADRs could accelerate new safety technology in the Australian market (mentioned at page 27 of the Issues Paper) has said:

All parties will examine current regulatory requirements, as well as network capacity for vehicles of different size and mass, where the roadway can safety accommodate such vehicles and minimise crashes. Subject to this assessment, the Commonwealth will release a discussion paper, ahead of a regulatory package for any agreed changes to heavy freight vehicle width and any other dimensions, and axle transitional mass, in the Australian Design Rules. [11]

40. Given the time that has elapsed since this announcement was made, it is unclear whether this work has been subsumed into the current review. If not, Government should ensure that the work is completed in a timely way so that any changes can be implemented at the same time as changes are made as a result of the current review. The Department should allocate sufficient resources to this work, so the promised discussion paper is not published outside of the HVNL review time frame.

41. In the context of vehicle dimensions, we also mention the problem with sleeper size. This is an issue that members feel about deeply as it affects driver comfort and wellbeing.

42. ADR 42 sets out the minimum legal requirements for sleeper berths, which include the following bunk dimensions:

    - 1,900 mm of bunk length
    - 530 mm of bunk width at the shoulders, reducing to 440 mm after 1,200 mm
    - 630 mm of headroom, noting that the horizontal and roof corners of the berth can be rounded to radii not exceeding 270 mm.[12]

43. These dimensions are not adequate for driver comfort. One non-member commented, unsolicited: "There are fatigue issues and mental health issues attached to the small sleeper berths available in Australia....(Brand name) has a pathetic sleeper berth and a (sic) even more pathetic bed, where they expect us to manage our fatigue. Its rather difficult when your bed is smaller than a child's single bed. i (sic) actually had drivers quit and it was all over the sleeper berths..."

44. NatRoad would urge a change in dimensions, particularly length to 20 metres for general access where the additional space is utilised to accommodate a larger sleeping berth, that is larger than is currently prescribed.

45. We note that the Australian Trucking Association has modelled the optimal way to accommodate this proposed increase in sleeper space in its submission related to fatigue and NatRoad endorses the modelling.

46. In the context of omissions from the scope of the Issues Paper, we mention the subject of engine brake noise.

47. NatRoad supports a regular review of regulations concerning vehicle standards provided those standards reflect current market conditions, up-to-date safety measures and are

[11] Ibid

[12] https://www.legislation.gov.au/Details/F2006L03251 clause 42.15

accessible and transparent. These principles should be translated into how technical standards for heavy vehicles are developed.

48. However, these latter two factors seemed to be absent in the engine brake noise provisions, that the NTC proposed in the 2018 review of heavy vehicle standards.

49. NatRoad made formal and informal submissions pointing out the deficiencies in the proposed regulations and the complexity in the underlying test standard. As a result, the draft engine brake noise standards were withdrawn by the NTC for re-consideration.

50. NatRoad remains concerned that the proposed test procedures were based on the idea that engine brake noise created "annoyance" in a selected group of people. This foundation, based on a range of subjective views, contrasts with more objective readings based on amplitude or the loudness of sound.

51. As stated, NatRoad's understanding is that the test procedures that underpinned the draft regulations related to annoyance due to engine brake noise. This annoyance was triggered because in the process of using the engine as a braking force, it acts like a compressor and emits short staccato bursts. The test procedure was, therefore, not just related to the level of noise measured in the way of, say, a decibel reading but focused on the change in frequency that occurs when the engine brake is used.

52. The resulting scale from the application of the testing procedure was difficult to understand. How the scale could be translated into something practical that could be used by members to check their vehicles in the workshop was absent from the draft law. The proposed regulations therefore failed the test of being accessible and transparent.

53. In short there is no way NatRoad's members could accept a regulation which sets a standard in a unit of measure that is not able to be understood because of its complexity and its lack of application in the real world.

54. This statement and our prior submissions do not represent an attempt to avoid this subject being regulated. There needs to be regulation of engine brake noise as this is a significant source of complaint from the community about heavy vehicles; it impinges on the industry's social licence.

55. The point is, however, that the measurement process and underlying test method need to be transparent and accessible so that reforms can be made which engender acceptance and comprehension. And generally, the criteria of transparency and accessibility should be used to assess all elements of heavy vehicle technical standards.

Question 3: How can the future HVNL most effectively deliver safer vehicles to the road? Which aspects of the PBS scheme are working well, and which aren't? What barriers to the broad uptake of safer vehicles exist?

56. The Issues Paper raises a number of matters relating to the performance based standards scheme which enables PBS vehicles to be approved. NatRoad receives a number of member complaints about the PBS approval process, mostly to do with its lack of timeliness and its opacity.

57. We are rarely able to assist members with these inquiries about approvals given that the scheme requires the integral involvement of assessors[13] in the approval process and the complaints are generally motivated by lack of expedition and the costs of the process, as well as by ex post facto access constraints.

58. We note that the Issues Paper recognises the lack of timeliness in getting approval, indicating that "PBS vehicle operators need to set aside at least 7 weeks (35 business days) to get a permit."[14]

59. There must be better administrative systems applied to make PBS approval times shorter, inclusive of changing the HVNL so that every application does not need to go to the PBS Review Panel. We support, for example, the National Heavy Vehicle Regulator's (NHVR) efforts to recognise "some well-known PBS designs to be 'pre-advised' by the Panel."[15]

60. The NHVR has indicated that the so-called "pre-advice" process has meant "most major combination designs have been pre-advised by the Panel; it is estimated that 90% of all PBS design applications will qualify for approval under the simplified pre-advised design approval process."

61. Whilst this is worthy progress, the "pre-advice" system is clunky and complex. It does not provide the level of certainty required by operators, with the NHVR stating:

    It must be noted that the Panel may object or advise against an application that was approved under the pre-advised design approval process, even though a Design Approval has been issued. In this case, the NHVR may have to revoke the approval and the application be redirected to go through the ordinary design approval process.[16]

62. The solution is for new vehicles to transition from the PBS scheme to so-called prescriptive standards. This would be welcomed as a way to get rid of red tape. The current listing of pre-advised combinations in the NHVR's material is a good start to show which vehicle combinations should transition.

63. The solution proposed in the prior paragraph is reflected in the Issues Paper finding that:

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[13] https://www.nhvr.gov.au/files/201803-0017-pbs-assessor-accreditation-rules.pdf
[14] Above note 1 at p24
[15] https://www.nhvr.gov.au/files/201903-1031-updates-to-the-pbs-pre-advised-design-approval-process.pdf
[16] Ibid

The PBS scheme was intended to be a testing ground, where new vehicles and combinations would transition to the prescriptive heavy vehicle fleet (NRTC, 2000). This has not eventuated. To date, no PBS vehicles have transitioned into the prescriptive heavy vehicle fleet.[17]

64. A member has indicated to NatRoad that one of the key issues with gaining PBS approval is that the approval is issued for a specific combination not an individual unit saying:

    One of the core attributes of traditional and modern road trains is that they are modular and can be split and reconfigured in multiple ways. In order to do this under PBS you have to gain PBS approval for every possible combination of prime mover, trailers and dollies which is prohibitively expensive (In theory you can gain type approval but given fleets are purchased in batches over a number of years the opportunity for type approval of matched sets is limited.) This in effect prevents PBS approval of traditional road trains. The resolution of this issue is for PBS type approval to be issued for individual units rather than a nominated combination.

65. The individual units should be permitted to transition to the prescriptive heavy vehicle fleet and a clear process for this to occur should be set out in a reformed HVNL.

66. Access is a very real issue with the PBS scheme. As NatRoad stated in the recently lodged submission on the NTC issues paper relating to access, there does not appear to be a priority in putting in place road networks for PBS vehicles, a position that must change.

67. Where road managers do not have the resources to properly assess their networks for PBS access, assistance should be provided by the NHVR and funding allocated appropriately. Attachment B is a case study that shows that the issue of administration is pressing. Administrative concerns would be ameliorated if access and approval issues were better integrated.

68. As the NTC said in its 2017 report on the PBS scheme: "Generally, the more productive a heavy vehicle, the more likely it is to be regulated under a permit regime."[18] That must change.

69. There is a need to improve PBS access certainty by:

    a. mapping networks for all four A and B levels of the PBS network at GML, CML and HML, and ensuring these are integrated with the NHVR Journey Planner and Access Portal: the "pre-approved network" approach mentioned by NatRoad in the access submission;

    b. the mapped networks (through the process at (a) or a more developed mapping that for example links to service levels under the Heavy Vehicle Road Reform process, as we proffered in the NatRoad submission about access) could then be used to close gaps in the road network, including disjoints at State boundaries; and

[17] Above note 1 at p25

[18] https://www.ntc.gov.au/Media/Reports/(EE70D6AE-0895-3CE0-C3C4-6AEE88C7138F).pdf at page21

c. providing PBS vehicles with as-of-right access to the PBS networks without the need to obtain permits: this fits in with the NatRoad aspirational system set out in the submission to the NTC on access arrangements.

Question 4: How can the future HVNL encourage suitable maintenance programs? How can it most effectively identify and remove dangerous vehicles from the road?

70. The NHVR has material on its web site that relates to the introduction of a national system for roadworthiness. It says:

*Drawing on the work around inspection types and risk-based criteria the NHVR is preparing a National Risk-based Inspection Criteria Framework to be delivered to responsible Ministers **in 2018**. The aim of this project is to bring together all the elements of the National Heavy Vehicle Roadworthiness Program into a cohesive framework for the identification, frequency, selection and method of inspection for heavy vehicles utilising a risk-based criteria matrix.*[19]

71. Clearly the work in this area is not progressing as fast as NHVR contemplated. Industry supports a consistent approach to the issue of roadworthiness of heavy vehicles and the frequency of inspection required.

72. South Australia has produced a summary of the various Australia wide inspection requirements currently in place.[20]

73. The summary document shows that there is no uniformity in roadworthiness requirements or timing of inspections.

74. NatRoad proposes that a risk-based inspection framework be implemented, discussed below.

75. We propose that the revised HVNL contains consistent, harmonised rules about a roadworthiness system that is vested in the NHVR in the revised HVNL and which replaces the current disparate inspection framework nationally.

76. We refer to the earlier discussion in this submission about registration. In our understanding, five of the eight jurisdictions require heavy vehicle inspections on registration renewal.[21] NatRoad's policies in this context are based on the need to ensure that operator costs are kept to a minimum, that there is no unnecessary increase in the regulatory burden, and that all options and recommendations are based on the best available data.

77. The single regulatory system that is introduced should be focused on areas of highest risk not on the idea of "registration renewal means an inspection must happen."

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[19] https://www.nhvr.gov.au/safety-accreditation-compliance/vehicle-standards-and-modifications/roadworthiness-program our emphasis

[20] https://dpti.sa.gov.au/__data/assets/pdf_file/0009/484875/HVIS_Australian_Jurisdictional_Summary_-_Heavy_Vehicle_Periodic_Inspection_Requirements_.pdf

[21] Ibid

78. These considerations line up with what the NTC previously recommended as follows: (noting that the NTC RIS set out what is referred to as a preferred "composite option" derived from the range of options then under consideration):

The composite option comprises:

- *Revising the National Heavy Vehicle Inspection Manual (NHVIM) and providing material that provides guidance or direction on how to administer, or comply with, the law by the NHVR to service providers and operators for guidance only (from option 2).*
- *Developing a risk-based approach to scheduled inspections (from option 3). A decision to implement this approach would not be made until the necessary additional data is gathered (via the National Roadworthiness Data Strategy) and risk criteria based on that data are considered and approved.*
- *Strengthened compliance measures of a primary duty on employers, principal contractors and operators (from option 4) and enforceable undertakings (from options 3 and 4).*
- *Changes to the NHVAS Business Rules to allow for inspection of heavy vehicles before renewal of accreditation.* [22]

79. The NTC RIS took into account the administrative compliance cost of businesses and heavy vehicle operators (such as changes in costs of undertaking required inspections) as well as the government administration costs (such as regulator and service provider costs of development, training and implementation). The NTC option is supported as being in line with risk based regulation.

80. The data in this context shows that mechanical failure losses reported by the National Transport Accident Research Centre comprised about 6.5% of all Australian heavy vehicle losses for the 2017 year.[23] This is an increase from 3.5% in prior years with steer tyre failure being the predominant underlying cause of the increase. With other tyre-related incidents being taken into account, mechanical failures were 60% related to issues with tyres.[24] This is a matter that is not necessarily picked up at the required annual inspection at the time of registration renewal, as the issue often is inadequate tyre inflation. These statistics reinforce NatRoad's call for a risk-based, national roadworthy system to be introduced rather than a "tick and flick" at registration time.

81. We emphasise that those who undertake inspections must have the same training and apply technical standards consistently. This proposition links to the position put forward by NatRoad in the submission made to the NTC on risk based regulation[25] that those who enforce the law must have undergone a minimum training requirement. That training must

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[22] NTC *Heavy Vehicle Roadworthiness Program: Final Regulatory Impact Statement 2015* *http://www.ntc.gov.au/Media/Reports/(CDC2F23F-CDD7-4197-9973-9B21F7C65CD1).pdf*

[23] https://www.nationaltransportinsurance.com.au/supporting-trucking/2019-ntarc-report at p 8

[24] Id at p 12-13

[25] Above note 4

encompass a technical element sufficient for those who have undertaken the training to understand and apply the National Heavy Vehicle Inspection Manual (NHVIM).[26]

82. In the current context, those who enforce technical standards should be required to meet a minimum standard of training so that all elements of the NHVIM are consistently applied. In particular the management and clearance of defects must be consistently applied, with a much greater emphasis placed on the self-clearing defect process. This entirely appropriate, risk-based enforcement mechanism must be consistently applied by all who enforce the HVNL, including the police.

83. Currently s531A(1) of the HVNL deals with self-clearing defects and in part says:

This section applies if an authorised officer who has inspected a heavy vehicle under this Law reasonably believes—
(a)the vehicle is a defective heavy vehicle, but the use of the vehicle on a road does not pose a safety risk; or
(b)a number plate of the vehicle is wholly or partly obscured, defaced or otherwise not legible.

84. In relation to s531A(1)(b), the enforcement policy in NSW appears to be the opposite to viewing an obscured number plate as a matter that should be the subject of a self-clearing defect.[27]

85. In NSW obscured number plates on inter-state vehicles result in the issue of an infringement notice for driving an unregistered vehicle. [28]

86. By way of further example, NatRoad has assisted a member who was issued a penalty notice by RMS for having his number plate too high compared with the width of the plate. The plate was affixed to a 30 year old trailer that had been registered and therefore inspected many times. No visibility issue or other risk was involved. The member was not convicted of an offence when the matter was formally heard.

87. The harshness of this enforcement policy is one of the issues that must be ameliorated under a revised HVNL, with harmonised offence regimes for all matters that relate to heavy vehicles. That regime must be risk based and must apply the self-clearing defect remedy as the default enforcement option.

Question 5: How can the future HVNL meet the assurance needs of all Australian state and territory road transport authorities in a way that does not unreasonably impose on operators?

88. The risk based system that NatRoad proposes would mean that those risks which the NHVR and State authorities recognise as critical would be targeted. This should bring about the balance that the question refers to.

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[26] https://www.nhvr.gov.au/safety-accreditation-compliance/vehicle-standards-and-modifications/national-heavy-vehicle-inspection-manual
[27] https://www.fullyloaded.com.au/industry-news/1811/interstate-trucks-with-damaged-number-plates-pinged-as-unregistered
[28] S68 *Road Transport Act 2013, (NSW)*

89. The Issues Paper sums up the NatRoad position where it indicates the proposed future policy thus:

    Vehicles should not be kept off the road unless they pose an imminent safety risk that is not manageable in any other way.[29]

Question 6: Do we need assurances regarding repairs and replacement parts? If so, could these be achieved using standards? Should third-party repairers be explicitly included in the Chain of Responsibility? How can defect clearance processes be reasonably expedited?

90. NatRoad has provided extensive feedback to the NTC about how the chain of responsibility test should change, particularly in the first submission lodged with the NTC for the current review.[30]

91. NatRoad indicates that repairers would, under the revised test proposed by NatRoad, be caught within the chain duties as a party that exerted influence or control in the chain.

92. The present situation is that the nominated parties in the chain, particularly operators, have a duty under section 26C HVNL to ensure, so far as is reasonably practicable, the safety of the party's transport activities relating to the vehicle, inclusive of proper maintenance and repair of vehicles. That is plain from the s5 definition of transport activities in the HVNL (s5(a)(ii) in particular).

93. It appears that at present it is an operator's responsibility to ensure that a person who repairs their vehicles, albeit an independent contractor holding themselves out as capable of carrying out the relevant repairs, has appropriate skills, experience and qualifications to carry out the particular repair. In the revised HVNL repairers should be held accountable in their own right.

94. Making repairers liable in their own account could also be accompanied by an obligation in the restructured HVNL that, when supplying spare parts, the repairer warrants that they are approved by the OEM or of equivalence to the parts supplied by the OEM for the particular heavy vehicle.

Question 7: Should the future HVNL apply a risk-to-safety threshold for vehicle standards and loading matters?

95. The answer to this question is a resounding yes.

96. The following table shows a number of offences that are too harsh or unrelated to the risk they seek to control relating to heavy vehicle standards. The table, together with the balance of NatRoad's submissions to the review to date, demonstrate that the HVNL should be re-considered in every aspect in order for it to be fit-for-purpose:

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[29] Above note 1 at p32

[30] https://www.ntc.gov.au/media/2060/ntc-issues-paper-risk-based-approach-to-regulating-heavy-vehicles-warren-clark-national-road-transport-association-natroad-may-2019.pdf

Section	Offence	Maximum penalty	Infringement penalty	Issue
96 et seq	Mass breach	Minor $4470 Substantial $6740 Severe $11210 NOTE: Maximum penalty is increased for an additional maximum $560 for every additional 1% over a 120% overload (but so that the additional maximum penalty does not exceed $22,430)	$447, $674, Court penalty	Arbitrary definitions with significant changes in penalty.
102 et seq	Dimension breach	Minor $3360 Substantial $5620 Severe $11210	$336, $552, Court penalty	Arbitrary definitions with significant changes in penalty. Harsh penalties. Limited option for warnings. Severe breach must be decided by court with penalties possible that are less than infringements for lesser offences
111 et seq	Loading breach	Minor $3360 Substantial $5620 Severe $11210	$336 $562 Court penalty	Arbitrary definitions with significant changes in penalty. For example, nonsensically, anything falling off a truck or any shifting load is automatically a substantial breach regardless of the nature of the fall or shift or risk. Harsh penalties. Limited option for warnings. Severe breach must be

				decided by court with penalties possible that are less than infringements for lesser offences.
132(2)	Not keeping a relevant document while driving Class 1 or Class 3 HV under mass or dimension exemption notice	$3360	$336	Should not be an offence. Notices issued digitally - should be accessible digitally. Offences should be to not have valid permit and not be able to prove there's a permit within reasonable time.

97. The dividing line between a minor, substantial and severe offence is set out in the HVNL in respect of certain offences. In relation to the load restraint issues raised below, these are in sections 112-114 inclusive. The category of a "minor" risk breach is not available where there is an extremely small discharge of say water or effluent from a load because s112(a) says that a minor breach is if "the subject matter of the contravention does not involve a loss or shifting of the load."

98. In general, and as just illustrated in the specific context, compliance with prescriptive, offence based HVNL requirements does not necessarily equate with being safe. As stated earlier, the primary duty established by s26C HVNL is to ensure, so far as is reasonably practicable, the safety of the party's transport activities relating to a heavy vehicle. The large number of prescriptive, harsh offences that still populate the HVNL should be culled as they undermine the intent of this broader duty. That is because the offences often focus on behaviour that is not unsafe as with the example of a minor, inadvertent escape of material from a load.

99. NatRoad has for some time proposed a policy where the HVNL should be changed so that it would be amended to provide that the minor, incidental and unavoidable escape, release or discharge of part of a load in circumstances such as a minor spillage of materials such as sand, water or effluent does not constitute an offence.

100. This is a common-sense approach that would simply solve the legal issue identified where minor spills of effluent or water or dust occur during a journey. But the systemic change indicated in the prior paragraph must occur.

Conclusion and Case Study

101. There should be a re-consideration of mass and dimension limits having regard to productivity and overseas standards where safety is not at issue. The case study at Attachment A shows an example relating to car carriers.

102. Vehicle standards must reflect current market conditions, up-to-date safety measures and be accessible and transparent. These principles should be translated into how technical standards for heavy vehicles are developed.

Attachment A

Case Study – Car Carrier efficiency

NatRoad has a number of car carrier members. Recently, we were approached on their behalf to assist to ameliorate the number of offences issued for a dimension infringement, described in this case study, and to seek a change to the requirement to mirror the more sensible New Zealand requirement.

The issue is the front overhang permitted under the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation (Aus Reg).*

The relevant provisions are contained in section 4(3) and 4(4) of Schedule 6 of Aus Reg as follows:

(3)The part of a semitrailer or anything attached to a semitrailer in front of the trailer's front articulation point, other than another vehicle, must not protrude beyond the prescribed limit.
(4) For the purposes of subsection (3), prescribed limit is an imaginary line created by drawing a semicircle of 1.9m radius from the centre of, and forward of, the front articulation point.

The member who notified us of the issue indicated that this provision is causing difficulty because:

"The issue is that when they load vehicles on a car carrier, the front overhang of the vehicles being loaded on the top & bottom pin decks, exceed the 1.9m Dimension. This is caused by the size of the vehicles now being transported that have up to 1 metre overhang from the centre of the steer wheel to the front not the bumper. Vehicles that are affected are Ford Rangers, Isuzu 4x4, Mazda BT 50's , Mazda large Suv's etc. All of these cars / utes / SUV's are growing in length due to solid imports and consumer demand.

"As the particular companies can only load 5 of the above vehicles instead of 6 on trailers produced in Australia … this requires additional vehicles to complete the tasks of delivery of these consumer vehicles (which they all share the delivery task of) but also an added cost of some $500,000 per year for the principal contractor."

In New Zealand the *Land Transport Rule: Vehicle Dimensions and Mass 2016* made under the *Land Transport Act 1998,* contains a more sensible approach. It has clear front overhang distances that are better expressed in Schedule 2 of that instrument than under the Aus Reg as follows:

Dimension Distance (metres except where indicated otherwise):

Semi-trailer 2.04 radius arc ahead of kingpin centre

Simple trailer 2.04 radius arc ahead of tow coupling centre

Full trailer 2.04 radius arc ahead of turntable centre Pole trailer 2.04 radius arc ahead of turntable centre on towing vehicle

Agricultural motor vehicle 4.0

All other vehicles 3.0

To overcome the growing impact on productivity due to the above mentioned market trends and vehicle dimension changes, we propose that a review of the "prescribed limit" of the swing arc radius of 1.9 metres be undertaken. When the car carrier is loaded, allow a swing arc radius of 2.2 metres. In manufacture, all trailers will continue to meet the existing regulation of 1.9 metres.

Should the change not be adopted, when double deck carriers are loaded with utilities or larger SUVs, compliance with the existing 1.9 metre swing arc would result in a load of only 5 vehicles - the vehicle behind the prime mover on the top deck would have to be left off the load.

The impact is very clearly a 15% productivity loss to the industry.

Attachment B

Case Study on administrative issues with PBS permits

NatRoad was recently asked to assist a member by helping accelerate the access approval for a PBS vehicle that has not been able to undertake the work for which it was designed given administrative issues associated with access. This case study substantiates the issues we have raised in the submission about this problem needing integration between the technical and access aspects of PBS approval and a better process in that regard.

The company referred the matter to NatRoad in the following terms:

We currently have some new equipment (PBS) sitting in our yard which cannot be used until we obtain PBS permits, the equipment is worth approx. $750, 000.

I believe we went through the correct process in obtaining PBS In-Principle (route) approval whilst the vehicle was being built; however there seems to be a secondary process where we are now required to obtain 'A vehicle approval' to obtain a permit.

An example of one route request below:

- *XXXXX (number) – lodged with NHVR on 13 Aug 2019*
- *The application then sat with NHVR for 10 days until it was reviewed*
- *The NHVR then amended the proposed route to include the return journey and asked if the company was happy with the alternate route*
- *The company replied "Yes" and stated that it had copied the route from the In-Principle Approval. The relevant manager at the company said to NatRoad: "I am still unsure why it would be any different?"*
- *The company then received another request from the NHVR asking if the application was for an access permit or an In-Principle support, even though 'A vehicle approval' had been indicated on the front page of the application.*
- *The company responded: "Yes this is a request for an access permit"*
- *The company then received another request (from a different case manager) asking if the company required a return journey to be included despite the earlier communication.*
- *The company replied, "yes return journey required, however the vehicle will be empty".*

Company comment to NatRoad was: All of this and I cannot see that the application has even been submitted to any of the road managers, some 15 days after it was submitted. We have phoned NHVR several times and been told that they have a backlog and will get to our application/s as soon as they can.

This administrative burden would be eliminated were the NatRoad proposals set out in this submission adopted.