

## Queensland Department of Transport and Main Roads (TMR)

### Submission in response to the National Transport Commission Issues Paper ‘Vehicle Standards and Safety’ June 2019

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#### Overview

TMR notes the “*Vehicle standards and safety*” paper incorporates a broad range of issues for stakeholders to consider in providing their preliminary views on ways to improve the regulation of heavy vehicle standards and safety through the Heavy Vehicle National Law (HVNL) review.

TMR broadly supports the high-level vision for managing safe vehicles in a future HVNL, which focuses on encouraging safer vehicles, developing an effective maintenance and inspection framework and effectively and efficiently managing defects. Ultimately, the goal of the new HVNL should be to deliver a risk-based regulatory approach to ongoing roadworthiness that enables the continual emergence of a safer heavy vehicle fleet.

As suggested in previous submissions, TMR suggests the draft regulatory principles be refined to focus on legislative reform matters, rather than operational issues that may be better addressed by other complimentary activities. For example, draft regulatory principle 3 relates to the repair and clearance of defects. These activities may be better suited to guidelines and administrative processes rather than the law.

Provided below is information TMR trusts will be helpful in developing policy issues and options for consideration in the upcoming Consultation Regulatory Impact Statement (RIS). Key priority areas include:

- HVNL interaction with other laws
- Building an effective maintenance and inspection framework
- Consideration of Performance Based Standards (PBS)

Note that the information provided in this document raises points for consideration and discussion for the purposes of the HVNL review and does not form government policy.

#### 1. HVNL interaction with other laws

The purpose of the HVNL is to ensure the safe operation of heavy vehicles on the Australian road network. While heavy vehicle standards are implemented by a range of legislative instruments that apply across different stages of the vehicle’s lifecycle, the focus of the HVNL should remain on in-service regulatory oversight. As such, interaction with other legislative frameworks should be recognised in the HVNL, rather than expanding the HVNL to capture these requirements.

For example, the recent recall process for Takata airbags has identified gaps in the HVNL’s ability to enable the defecting or de-registration of vehicles where a defective component is not repaired as directed under a national recall notice. While vehicle registration provisions remain under state-based legislation and recall provisions will be included under the new Road Vehicle Standards Act (RVSA), it is appropriate that provisions be included in the HVNL which link to a recall notice under the RVSA when determining whether action can be

taken against a vehicle's registration and/or a defect notice issued under the HVNL. This is appropriate given that the non-compliance with a recall notice is relevant to matters specifically regulated under the HVNL

However, this contrasts with other matters where there is currently no direct linkage with the HVNL. For example, the Australian Design Rules (ADRs) are designed to determine which vehicle designs are suitable for use in Australia. While the HVNL should encourage the early adoption of new safety technologies to support safety and efficiencies improvements, better harmonisation of international standards is largely the domain of the RVSA and should not be included in the HVNL. Similarly, consumer protection laws may provide sufficient regulation over replacement parts and vehicle repairs and should not be considered appropriate for inclusion the HVNL. This is because duplication of regulatory requirements can lead to ambiguity and inconsistencies in the way the law is applied and can often leave provisions unknowingly redundant. There is also a very real risk that the regulatory requirements may conflict in minor details which leads to confusion within the industry and in turn, non-compliance.

Further, in creating new regulatory requirements, it must be demonstrated that the regulatory burden is not increased without evidence to demonstrate clear benefits. It would prove difficult to be able to justify regulatory requirements in relation to the same subject matter being imposed under two pieces of legislation.

## 2. Building an effective maintenance and inspection framework

### *National Heavy Vehicle Inspection Manual:*

TMR believes that the most significant risks to safety that should be addressed in the HVNL relate to having a national approach to ongoing roadworthiness that is supported by a robust risk-based inspection regime, including programmed and on-road inspections. TMR supports the concept of standardised inspection policies and defect clearance processes through guidelines or standards. These documents would require regulatory recognition within the HVNL so that they can be used as evidence to demonstrate the level of compliance. This is considered the most appropriate method for achieving national consistency and improvements in heavy vehicle safety.

TMR acknowledges that the National Heavy Vehicle Inspection Manual (NHVIM) is a very useful tool that provides authorised officers and industry with a consistent criterion for heavy vehicle inspections by establishing the components of a vehicle which must be inspected.

In addition, the NHVIM could be utilised as a very effective compliance tool. For example, the new HVNL could directly reference the NHVIM to determine that a vehicle which does not comply with the standards outlined in the NHVIM is an unsafe vehicle. This would remove any ambiguity from the current definition of a defective vehicle and would ensure all parties in the supply chain proactively maintain and operate their vehicles in accordance with the heavy vehicle safety standards.

### *Inspection Regimes:*

Any inspection regime should aim to ensure vehicles are proactively maintained to a suitable standard to increase safety and reduce the social, environmental and economic impacts resulting from unroadworthy vehicles on our roads. The RIS should consider how best to

regulate inspections to ensure a nationally consistent, targeted, risk-based approach where inspections are linked to formalised risk profiles, as opposed to time-based intervals. The age of vehicle, type of vehicle, environment of operation and history of operator should all be factors that are considered in the development of any inspection framework.

The National Heavy Vehicle Regulator (NHVR) Roadworthiness Program<sup>1</sup> acknowledges this with work streams to develop a consistent, risk-based inspection framework. Consideration of the National Roadworthiness Baseline Survey<sup>2</sup> may also provide a solid foundation on which this work could continue to be explored. This work needs to develop national policies for programmed inspections as well as on-road inspections.

#### *National Heavy Vehicle Accreditation Scheme (NHVAS):*

The NHVAS recognises operators with robust safety and other management systems in place and is increasingly being used to show compliance with general duty requirements. While the NHVAS maintenance module improves roadworthiness, there is a need to consider improvements to the scheme for assurance purposes. For example, more rigorous auditing procedures could be implemented to include a requirement for a random sample of vehicles to be inspected at the time of the audit to provide evidence that an accredited operator's maintenance management system. NHVAS vehicles should also continue to be subject to random compliance inspections on road as part of the NHVR's compliance strategy.

### 3. Consideration of PBS

TMR recognises that PBS vehicles are likely to be newer vehicles fitted with modern safety technologies and are therefore more likely to meet roadworthiness safety standards and can support vehicle safety objectives. However, PBS is primarily a scheme aimed at demonstrating safe performance to support access decisions. While the NHVR is currently conducting a review of some of the PBS standards, these standards have not been reconsidered or retested against what was considered high performing vehicles 15 to 20 years ago.

The RIS should consider the effectiveness of the PBS scheme, whether it is meeting its original policy intent and explore potential options for improvement. TMR notes that the NTC released the Reforming the Performance-Based Standards Scheme Policy Paper (May 2018)<sup>3</sup> and provided recommendations to the Transport and Infrastructure Council. The recommendations of this work, and the work being done as part of the NHVR work program, may be beneficial when considering options for the RIS.

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<sup>1</sup> NHVR Roadworthiness Program, [www.nhvr.gov.au/safety-accreditation-compliance/vehicle-standards-and-modifications/roadworthiness-program](http://www.nhvr.gov.au/safety-accreditation-compliance/vehicle-standards-and-modifications/roadworthiness-program)

<sup>2</sup> NHVR (2017), [National Roadworthiness Baseline Survey 2017 – A Health Check of Australia's Heavy Vehicle Condition](#)

<sup>3</sup> NTC (May 2018), [Reforming the Performance-Based Standards Scheme \(May 2018\)](#), Policy Paper

## 4. Issues Paper Questions

### ***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?***

Refer to comments under Section 1 'HVNL interaction with other laws'.

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

Refer to comments under Section 2 'Building an effective maintenance and inspection framework'.

Additionally, it would be beneficial to understand quantitative measures of the performance of the various vehicle safety technologies. This would enable regulators to better gauge the effectiveness of these treatments. For example:

- Electronic stability control – how does this work and how is it measured?
- Advanced braking systems – what is the improvement in stopping distance? Has it been tested for 100km/h?
- Blind-spot monitoring devices – where are these placed, and do they cover the entire area of each blind spot?
- Under-run protection – how strong is this treatment? Is it strong enough to stop a light vehicle failing to give way at a side road travelling at 20km/h from going under the heavy vehicle?

Finally, options developed for the RIS should be sufficiently future proofed to ensure emerging technologies are captured. For example, currently, there is a requirement under the HVNL to carry paper documentation detailing PBS vehicle approval. Consideration of an on-line system such as the national registration check tool could be utilised to record specific vehicle conditions, so that PBS and other information can be easily accessed by operators and regulators. The carriage of paper documentation in vehicles is unnecessarily cumbersome and does not support modern business practices. The new HVNL should support the use of electronic documents and records where possible.

### ***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?***

Refer to comments under Section 3 'Consideration of PBS'.

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

Refer to comments under Section 2 'Building an effective maintenance and inspection framework'.

**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?**

Refer to comments under Section 2 'Building an effective maintenance and inspection framework'.

**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?**

Refer to comments under Section 1 'HVNL interaction with other laws' and additional comments below:

*Repairs and replacement parts:*

The role of the HVNL should be to provide the standards that heavy vehicles must meet, rather than specify the qualifications required for people to undertake service or repair of heavy vehicles. TMR understands that this is not the core business of the HVNL and that various state-based pieces of legislation exist that sufficiently administer the vehicle service and repair industry.

*Defect Clearance:*

TMR agrees that the HVNL should support proactive, efficient identification, repair and clearance of defects. The Consultation RIS should focus on the development of policy and decision support tools to provide guidance to authorised officers when conducting heavy vehicle inspections. These tools will provide set guidelines and create a consistent approach to dealing with defects. One of the objectives should be to create support tools for determining what constitutes a roadworthy heavy vehicle and the subsequent categorisation of defects if a non-conformity is detected, along with actions for clearance of the defect.

TMR supports the investigation of alternative methods of clearing defect notices, such as approval of third party providers. Additionally, the RIS should investigate the appropriateness of allowing a driver to carry evidence of a defect being repaired and allow continued use of the vehicle on the road, until the defect is cleared on jurisdictional records.

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

Reform of the HVNL to introduce concepts such as minimal or insignificant loss into the HVNL is not practicable. TMR suggests that better outcomes would be achieved through the development of industry guidelines and codes of practice to address these matters. This is because it would be impossible to set clear parameters within the new HVNL that would determine factors such as what is a minimal or insignificant loss of load.

From a prosecutorial perspective, if minimal or insignificant loss is not an offence, then it would be necessary to prove that a loss was in fact 'significant' for an offence to have occurred. How that would be determined is questionable and without clear parameters, would be ambiguous, inconsistently determined and largely unenforceable.

The RIS should consider these matters in terms of the potential consequences being most relevant, not the amount of load that is lost. Anything falling onto a road can have a safety impact. For example, a few sugar cane billets falling from a load could be insignificant. However, if a heavy vehicle travels that same route regularly losing a few billets each time, eventually hundreds of billets dispersed onto the road will create a safety hazard, particularly for vulnerable road users like motorbike riders and cyclists. Likewise, a small amount of effluent falling from a truck could easily be viewed as insignificant. However, if that same amount of effluent makes the road slippery for a vulnerable road user, it may result in a fatal traffic accident.

The same concerns exist for vehicles that do not meet a technical standard, in that the parameters would need to be determined so that the related safety risks were clearly defined. For example, a tri-axle vehicle designed to have 12 wheels but is missing two wheels from the tri-axle assembly. While the HVNL requires that a vehicle is compliant with vehicle standards, it does not specifically call out that a vehicle designed to have 12 wheels on a tri-axle is required to have all 12 wheels attached and working. In this situation, braking force may not be distributed evenly across all axles and wheels and will cause wear on the other brake components. While the safety risk of this may be low in the first instance, this issue will be compounded over time and the vehicle will become compromised, causing a much larger safety risk.

Likewise, for a vehicle that has a slick tyre (below minimum tread depth), the driving characteristics will be totally different when being driven in the dry as opposed to driving in the wet. The risk of hydroplaning in the wet is significantly increased, as is the likelihood of the driver losing control of the vehicle. While alone, the tyre tread may not be a serious safety risk, the conditions in which the vehicle is driven can significantly impact the outcome.

These examples prove that regardless of whether the issue is minimal or an insignificant loss of load, or a minor technical breach, it could very easily turn into a major incident. There is also a risk that if these issues are not dealt with appropriately, it could negatively impact attitudes towards safety thresholds and related offences. For these reasons, it would be appropriate for the RIS to consider options such as direct reference to the NHVIM in the HVNL as evidence of the vehicle safety standards being met to clarify safety requirements. This will remove the need to rely on a subjective assessment of the condition of the vehicle or the vehicle's components or equipment making the vehicle unsafe or endangering public safety.

The information provided in this document raises points for consideration and discussion for the purposes of the Heavy Vehicle National Law Review and does not form government policy.