



VEHICLE STANDARDS AND SAFETY HVNL REVIEW ISSUES PAPER 5

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 18 SEPTEMBER 2019

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Introduction

In July 2019 the National Transport Commission (NTC) released the vehicle standards issues paper for the Heavy Vehicle National Law (HVNL) review.¹

In the paper, the NTC has proposed four draft regulatory principles as aspirations for the new HVNL. After detailed consultation with our members, including through our unique Industry Technical Council, the ATA supports these broad aspirations with amendments and additions (ATA amendments are highlighted):

Draft regulatory principle 1: The future HVNL should promote greater use of vehicles that perform to higher safety standards and deliver productivity benefits. It should support international harmonisation of vehicle standards and recognise and encourage the use of safer vehicle technology.

In supporting an amended draft regulatory principle 1, the ATA notes that this is dependent on reforms to improve heavy vehicle access approvals.

New draft regulatory principle 1B: The governance of vehicle standards by the future HVNL and RVSA (*Road Vehicle Standards Act 2018*) should be integrated, seamless for operators and provide proactive and timely adoption of international standards and safety technologies.

Draft regulatory principle 2: The future HVNL should support effective, flexible, risk-based maintenance regimes to improve safety outcomes. ~~It should support efforts to bring consistency to inspections.~~-(see new draft regulatory principle 5)

Draft regulatory principle 3: The future HVNL should support proactive, efficient identification, repair and clearance of defects. It should support getting vehicles back to service quickly, enable in-situ repairs and self-clearing defects.

Draft regulatory principle 4: Technical breaches that do not pose an imminent safety risk to operators, drivers or other people should be managed proportionally.² Roadworthy inspections should be nationally consistent and proportionate to the reason for the inspection and condition of the vehicle.

¹ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#).

² NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 31-33.

New draft regulatory principle 5: The future HVNL should establish enforceable standards for defect notices and vehicle inspections, delivering consistency and a review mechanism.

New draft regulatory principle 6: The future HVNL should not duplicate existing legislation and government responsibilities, including *the Australian Consumer Law* and Australian Government responsibility for fuel quality standards.

New draft regulatory principle 7: The future HVNL should recognise the NHVR's role in setting national vehicle standards and implement COAG's best practice regulation requirements, including the application of new standards and policies to a consultation regulation impact statement.

The new HVNL should make significant reforms to defect notices and national inspection policies, which are detailed in section three of this submission. This section supports the ATA's recommendations for amending draft regulatory principles three and four, and the addition of new draft regulatory principle five.

Our responses to the specific questions set out in the issues paper are in section four of this submission. This section supports the ATA's recommendation for new draft regulatory principles 1B, six and seven and amendments to principle one.

3. Reforming defect notices and national inspection policies

The reform of defect notices and inspection approaches is necessary, even though the NTC issues paper finds that in general, the regulation of vehicle safety is working well.³

The ATA raised in 2014 the need for an agreed, stable national approach to the assessment of heavy vehicle roadworthiness, including accreditation, inspection, interception and defect processes.⁴

This included the need for clear, nationally accepted criteria to be established for the purposes of declaring a vehicle roadworthy or not, and for issuing and clearing defect notices.

The ATA also called for consistent interpretation of the National Heavy Vehicle Inspection Manual by inspectors and authorised officers and for the role of accreditation through schemes such as TruckSafe to receive more support from governments.⁵

Unfortunately, the lived experience of the HVNL since the ATA's 2014 recommendations only reinforces the need for reform in this area. Concerns raised by our members include that defect notices are inconsistent, poorly structured and do not always have an identified link to a significant safety issue.

As a central reform principle, the ATA's 2014 recommendations cited international best practice and the need for the focus on improving heavy vehicle safety to recognise that some elements of roadworthiness have a greater impact on road safety than others. The

³ Ibid, 8.

⁴ ATA, September 2014, [Submission on the Heavy Vehicle Roadworthiness Review – Phase 2 integrity review](#), 4.

⁵ Ibid, 4.

ATA supported the identification of eight safety critical or primary elements requiring high priority attention during inspections:

- Axle/wheel-ends
- Brakes
- Couplings
- Frame/chassis
- Load restraint
- Steering
- Suspension
- Tyres.⁶

Other vehicle components do require assessment, but the focus should be on the safety of the vehicle on the road for the driver and other road users, without defects being used as an inconsistent and extra-judicial form of punishment.

It also needs to be recognised that heavy vehicles do not sit in a depot or a showroom – they operate on the road, in Australian conditions and often on roads where the quality of the infrastructure contributes abnormally to the wear and tear on vehicles.

The nature of the task and operating environment of a heavy vehicles will inevitably contribute to the likelihood of defects developing whilst the vehicle is on the road.

Purpose of a defect notice

The Heavy Vehicle National Law sets out a clear intent of vehicle defect notices is to apply if the vehicle on the road poses a safety risk.⁷

However, the lived experience of trucking operators is that enforcement agencies seek to use defect notices as a punishment. At the ATA's 2018 Technology and Maintenance Conference, VicRoads outlined a clear intent to use every opportunity, including defect notices, to affect the direct income of some trucking companies in terms of both the direct cost and the loss of time and potential failure to meet delivery contract timelines.

Ultimately, the purpose of a defect notice should be focused on safety and the risk posed by the vehicle on the road.

Defect notices should not be used as a form of extra-judicial punishment. The NHVR and road agencies have ample powers, backed by substantial penalties, to prosecute operators through the court system if they consider it necessary.

⁶ Ibid, 5.

⁷ HVNL, s526 (1) (b)

Reforming defect notices under the HVNL

The new HVNL should:

- Deliver enforceable defect standards by incorporating the National Heavy Vehicle Inspection Manual and the NHVR's national risk-based inspection criteria and framework as legislative instruments under the three-tiered structure of the new HVNL. These manuals would need to be revised, with a formal consultation process, prior to being incorporated as enforceable standards.
 - This should include establishing consistency on the clearance requirements for defects.
- Establish a risk-based approach to managing defects and identify that the purpose of defect notices is to ensure the conditions of use of a heavy vehicle reflect the elevated risk the vehicle poses to its driver and other road users, as a result of a defect.
- Enable and set out enforcement standards for minor defects which can be addressed by formal warnings, on the spot (in-situ) repairs (when safe, appropriate and timely) and self-clearing processes.
 - For example, a cracked windscreen should be self-clearing with an appropriate repair invoice. This should not require a follow-up vehicle inspection.
- Provide a review mechanism for defect notices, enabling the NHVR to review and overturn defects that may have been issued in error or are inconsistent with inspection and roadworthiness manuals.
- Deliver nationally consistent and proportionate roadworthiness inspections.

Ultimately, the NHVR's inspection manual and risk-based approach need a stronger legislative basis to establish consistency in their application by requiring all inspectors and authorised officers to comply with it. This should extend to better enabling the NHVR to review defects that may have been issued in error or in conflict with the NHVR's manual.

Roadworthiness inspections provide an important safety role. Inspection requirements, including frequency and scheduling, methods and practices vary by jurisdiction.⁸ They also represent a significant cost to business, including the costs of the inspection and the opportunity cost of the vehicle not operating a transport service.

Additionally, some operators report routinely replacing partially worn components that are still within their serviceable tolerances simply to ensure the vehicle passes an inspection and avoids further costs of being out of service.

Additional cost and unnecessary waste also result when a defect relating to an ADR requirement then requires a vehicle to undergo a full inspection. Only the component at fault should require inspection, unless there are grounds for a wider inspection.

⁸ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 21.

Case study 1: Retracting seat belt defect

In this example, a trucking operator had one of their trucks receive a defect in South Australia for the seat belt on the vehicle not retracting quickly enough. The truck was less than three years old and the driver reported that it was operating in very good condition.

Following replacement of the seat belt, the trucking operator had the truck taken to VicRoads to have it inspected and were informed the vehicle would require a roadworthy certificate, requiring a full inspection on the whole truck.

The roadworthy will cost the business around \$2,000 and result in them missing a customer's load. The full cost to the business is between \$8,000 to \$10,000, which is a substantial cost for a small business and a crippling cost for the business in question.⁹

The financial impact of this particular defect notice is in the magnitude of \$10,000. Over 14 per cent of Australia's trucking operators have a turnover of less than \$50,000.¹⁰ The bottom quarter of trucking operators have either a negative or non-existent profit margin.¹¹

Defects, clearances and the use of roadworthy inspections must be proportionate to the safety risk or they will drive small and family businesses out of business.

Case Study 2: Inconsistent number plate positioning rules

A Queensland truck driver was fined \$673 and three demerit points for not having the vehicle number plate correctly fixed whilst driving in New South Wales. The relevant NSW law specifies that number plates need to be no more than 1.3m above ground level. Whilst the same law applies in Queensland, it does not apply to vehicles with a national heavy vehicle plate (so the vehicle was legal in Queensland but not in NSW).

The truck driver eventually had the matter dismissed through the courts, although had to plead guilty to enable that outcome. The driver was out of pocket \$10,000 for taking time off work to travel to NSW for the court appearance. The magistrate is reported to have stated the matter was "trivial rubbish."¹²

⁹ Example as provided to the ATA, September 2019.

¹⁰ Australian Bureau of Statistics, [June 2018, 8165.0 – Counts of Australian businesses, including entries and exits, June 2014 to June 2018: Businesses by main state by industry class by turnover size ranges](#).

¹¹ ATA analysis of ANZ industry research.

¹² Big Rigs News, 6 September 2019, Truckie fights 'trivial' penalty, 12.

4. Response to issue 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?

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

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?

Harmonisation with international standards / MVSA / RVSA

The issues paper identifies that the *Motor Vehicle Standards Act 1989*, to be replaced by the *Road Vehicle Standards Act 2018*, sets the national standards for new or used imported vehicles for initial supply to the Australian market.¹³ This legislation and framework is administered by the Australian Government and is not within the scope of the HVNL.

However, the regulatory oversight of vehicle standards for the initial supply of heavy vehicles to market and the oversight of in-service standards by the HVNL are linked and need to be integrated in their objectives.

The NTC reports that mass and dimension limits can present an unintended barrier to the supply of safe vehicles to the Australian market.¹⁴ Ultimately Australia is part of a global marketplace and harmonisation with international vehicle standards would increase the accessibility of heavy vehicles to the Australian market.

The ATA also notes that the issues paper references the Austroads width research project exploring the possibility of moving to a permissible vehicle width of 2.55 metres from the current 2.50 metre width.¹⁵

This process, the Austroads project scope and the timetable all illustrate the limited priority that governments place on delivering harmonisation with international standards.

The ATA supports the Austroads project's stated commitment to international harmonisation and exploring greater width. However, productivity benefits and supply chain integration do not happen because it is written in a project brief.

The scope of the project rules 2.60 metres width out of scope, despite acknowledging the need for international harmonisation on the width of refrigerated truck trailers. The clear international benchmark for refrigerated vehicles is a width of 2.60 metres.

It should be recognised that this is not a new issue, so the failure to actively consider the issues involved for a permissible width of 2.60 metres continues a long trend of governments committing to international harmonisation as an intent, but not as a policy to actually be delivered. The process of international harmonisation has been slow and reactive.

¹³ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 16.

¹⁴ Ibid, 26.

¹⁵ Ibid, 26.

Mandating new safety technologies

The regulatory process for mandating new safety technologies does not maximise safety outcomes.

The ATA welcomed the Australian Government decision to mandate stability control technology for all NC category prime movers; NC category rigid prime movers with short wheelbases and all TD category. This technology will save 126 lives and prevent 1,101 serious injuries in the coming years.¹⁶

However, the ATA recommended approach would be to extend this decision to include all rigid trucks. This is estimated to save an additional 22 lives and prevent an additional 395 serious injuries, compared to the current policy decision. The overall reform benefit-cost ratio would be at least 1.99.¹⁷

The Australian Government has now released a consultation regulation impact statement on autonomous emergency braking (AEB) for heavy vehicles. It recommends that AEB should be mandated for new heavy vehicles under a broad scope, which would save 78 lives and prevent 2,152 serious injuries in the coming years. Associated ESC requirements, consistent with the ATA recommendation to broaden the scope of the current ESC policy decision, would see 102 total lives saved and 2,564 serious injuries prevented in coming years.¹⁸

It is important that the decisions on mandating these new safety technologies prioritise road safety benefits.

Incentivising business investments in new heavy vehicles

The new HVNL, in combination with the MVSA/RVSA framework, in seeking to deliver a safer vehicle fleet needs to incorporate the understanding that new laws don't deliver safer vehicles if businesses are unable to invest in purchasing those vehicles.

Whilst a number of barriers to investment in new vehicles are outside of the HVNL (such as stamp duty), it is important that the new HVNL does not increase barriers to purchasing new vehicles and that governments proactively seek to reduce other barriers to purchasing new heavy vehicles.

The ATA has made several recommendations for incentivising business investment in a submission to the House of Representatives Standing Committee on Economics inquiry into the impediments to business investment.¹⁹

¹⁶ Department of Infrastructure, Regional Development and Cities, April 2018, [Regulation Impact Statement: Improving the Stability and Control of Heavy Vehicles](#), 57.

¹⁷ ATA, February 2018, [Submission on Improving the stability and control of heavy vehicles consultation Regulation Impact Statement](#), 8.

¹⁸ Department of Infrastructure, Transport, Cities and Regional Development, August 2019, [Regulation Impact Statement: Reducing Heavy Vehicle Rear Impact Crashes: Autonomous Emergency Braking](#), 41.

¹⁹ ATA, May 2018, [Submission on impediments to business investment](#).

PBS approvals, access and modular combinations

The NTC issues paper cites strong benefits with the use of PBS vehicles, but also lists barriers to their uptake.²⁰

Restrictions and regulatory burden on access to the road network is a critical concern, and the ATA recommended approach on access issues is contained within the ATA submission to the *Easy access to suitable routes* issues paper.

The NTC vehicle standards issues paper lists administrative hurdles in the approval process for PBS vehicles.²¹ This was also cited in the NTC review on the effectiveness of the PBS scheme in 2017.²²

Ultimately, PBS has failed to deliver industry-wide productivity improvements, despite benefits for individual vehicles. The ATA submission on access further details the comprehensive reforms needed to unlock the economic gains from delivering a more productive road network.

As noted in the ATA's 2017 submission, the restrictive nature of the PBS scheme, limited road access and long lead times, PBS is not suitable to the significant part of the road freight task that does not have predictable freight volumes and sufficient lead times suitable for PBS approval.²³

The practical experience of road freight operators is that while the PBS scheme works well in particular sectors (such as the intense and high volume gravel and cement markets, and for container haulage (excluding containers with unknown load heights)), it only has a limited at best application for the wider road freight sector.

Additionally, the NTC vehicle standards issues paper notes that the PBS scheme was intended to be a testing ground, where new vehicles and combinations would transition to the prescriptive heavy vehicle fleet. This has not been fulfilled, with no PBS vehicles having transitioned to the prescriptive fleet.²⁴ As the original intent of the scheme has not been realised, governments should not be surprised that the PBS scheme is failing to lift industry-wide productivity.

If governments continue to rely on PBS for productivity improvements, in its current form, the current decline in industry productivity will continue. Industry needs access to more productive combinations, with road access, which are modular combinations. Modular combinations provide higher flexibility as they can be reconfigured to smaller legal combinations when they need to reach parts of the road network with lower access approvals.

²⁰ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 24.

²¹ Ibid, 24.

²² NTC, August 2017, [Assessing the effectiveness of the PBS Scheme Discussion paper](#), 32.

²³ ATA, October 2017, [Submission on assessing the effectiveness of the PBS scheme](#), 5.

²⁴ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 25.

Fuel and Diesel Exhaust Fluid (also known as AdBlue) quality

The ATA notes that fuel and diesel exhaust fluid quality have been raised as issues that should be included in the HVNL.²⁵ The ATA does not support any recommendation to include fuel and diesel exhaust fluid quality in the HVNL.

Ultimately, fuel standards are within the legislative and administrative responsibility of the Australian Parliament and Government. It would not be appropriate to include these issues within the HVNL.

There is no evidence from operators that DEF quality is an actual issue in practice. Its sale is adequately regulated through Part 3-1 of the *Australian Consumer Law*.

VSB6 modification codes

The issues paper sets out the framework for the approval of modifications to heavy vehicles and the role of the Vehicle Standards Bulletin 6 (VSB6) in providing modification standards.²⁶ VSB6 is one in a series of bulletins providing information on the design, manufacture, sale, modification, maintenance, import and repair of road vehicles for industry and other clients. While most of this series are provided by the Australian Government, VSB6 is hosted by the NHVR.²⁷

VSB6 does not supersede (over-arch) a vehicle manufacturer's guide and in most cases a component manufacturer's modification guidelines. Where a modification covered by VSB6 is made it must be assessed by an accredited approved vehicle examiner (AVE).

ATA members have raised concerns around some of the G codes and the P2 code relating to vehicle modifications. **The future HVNL should adopt a risk-based approach to heavy vehicle modifications.**

The G Codes: these relate to brakes and ancillaries that may impact on braking systems. As an example, some transport clients require operators to fit a park brake interlock that won't allow the release of the trailer parking brakes whilst the rear door/s of a van/tautliner/reefer are open; or, the AIP (Australian Institute of Petroleum) Driveaway Protection System (Gate) is open on a fuel tanker (to prevent a drive off during loading/unloading or loading/delivery of fuel). This system is commonly referred to as NAIM (no air in motion).

These systems do not impact on the service brake nor parking brake performance but are a modification to the trailer parking brake circuit.

If this system is fitted by the OEM (truck manufacturer) before the Compliance Plate is fitted, even though the "certified braking system" has been modified it doesn't require a Modification Plate; but if the trailer is then registered and then taken back to the same OEM for this very same modification, then technically the vehicle requires a modification plated issued by an AVE, and the OEM is unlikely to be an AVE.

²⁵ Truck Industry Council, August 2019, [HVNL review submission on vehicle standards and safety](#), 2.

²⁶ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 19.

²⁷ Australian Government, [Vehicle Standards Bulletins](#), accessed 16 September 2019.

ATA recommendation: Systems such as Parking Brake Interlock (NAIM) should be “controlled” via a self-certification modification, which is available only to operators/workshops in an approved Accredited Maintenance Scheme along the process of:

- The initial modification (for a specific operator) be certified by the OEM or an AVE who provides a Report that includes a report number, diagrammatic drawings, parts listing, installation instructions and post-installation system validation instructions.
- The operator/workshop would complete modifications to subsequent trailers in accordance with these instructions as a “self-certified modification (SCM)”
- The proposal for “plating the modification” needs to be simple and auditable. For example: “Accredited Maintenance Scheme – SCM Report No:”) and that record be maintained as part of the Accreditation Scheme Record keeping.

The P2 code: (specifically, the fitting of fifth wheels to prime movers). This was not enforced in states other than Queensland until the 1st July 2015, even though it has been in VSB6 since 1993.

- Prime movers are supplied with fifth wheel mounting angles; and the fifth wheel assembly is certified via the CRN (component registration number) system; in raw basics the Signatory is really only certifying the bolting of the fifth wheel baseplate to the mounting angles;
- If the fifth wheel mounting angles are drilled for multiple mounting angles and this range is stated on the Modification Plate, then it is acceptable for workshop personnel to relocate the fifth wheel (which may or may not use the original bolts);
- When a workshop is performing detailed maintenance in the rear suspension area, frequently the fifth wheel is removed for access – the refitting is completed without re-certification;

Self-certification needs to be within the bounds of an approved accreditation system, the OEM could readily provide a guideline (ie: within the OEM body builders manual) stating the fifth wheel position range; or, it could be based on an AVE Report.

The issue here will be the accreditation, but again there is an opportunity within the scope of an Accredited Maintenance Scheme.

ATA recommendation: A “controlled” via self-certification modification, which is available only to operators/workshops in an approved Accredited Maintenance Scheme along the process of:

- The initial modification (for a specific operator) be certified by the OEM Body Builder Guidelines or an AVE who provides a Report that includes a report number, location drawings, installation instructions and post-installation system validation instructions.
- Then the operator/workshop would complete modifications to subsequent trailers in accordance with these instructions as a “self-certified modification (SCM)”

The proposal for “plating the modification” needs to be simple and auditable. Eg: “Accredited Maintenance Scheme – SCM Report No:”) and that record be maintained as part of the Accreditation Scheme Record keeping.

Steer axle mass limits

Governments are considering through the Strategic Vehicle Safety and Environment Group (SVSEG) a regulatory proposal to vehicle dimensional and mass limits.²⁸ As part of this proposal, the NHVR and/or states and territories would allow additional axle mass limit allowances for vehicles with Euro VI emission standards.

The SVSEG proposal recognises that legacy state and territory requirements for vehicle configuration are a barrier to international harmonisation and a disincentive to the take up of newer heavy vehicles with improved emissions standards. It is also effectively an acknowledgement that additional steer axle mass limits are compatible with Australian roads.

However, the ATA does not support the SVSEG proposal in its current form. Restricting additional steer axle mass limits to Euro VI vehicles would put Australian made Euro V heavy vehicles at a competitive disadvantage.

The priority for renewal of the heavy vehicle fleet should be in updating vehicles with much older emission standards (or none at all). Euro V heavy vehicles still have a significant role to play in renewal of the Australian truck fleet.

The ATA recommends that additional steer axle mass limits should be granted, and if these are to be based on emission standards they should include Euro V heavy vehicles.

The NHVR's role in setting national vehicle standards

In the ATA's submission to the HVNL review issues paper on risk-based regulation, the ATA recommended that the future HVNL should include a consultation obligation.

The NHVR is a national standard setting body, which is clearly illustrated in relation to vehicle standards and the NHVR's oversight of modifications and VSB6. It should be required to comply with Council of Australian Governments (COAG) best practice regulation requirements. This includes a requirement that regulators:

- establish a case for action before addressing a problem.
- consider a range of feasible policy options and assess their costs and benefits
- adopt the option that generates the greatest net benefit to the community, and
- consult effectively with affected key stakeholders at all stages of the regulatory cycle.²⁹

²⁸ Considered by SVSEG on 5 June 2019.

²⁹ COAG, October 2007, [Best practice regulation: a guide for ministerial councils and national standard setting bodies](#), 4.

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

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?

The new HVNL should encourage maintenance and provide assurance to road transport authorities by getting the accreditation framework right and incentivising its use.

This should include:

- Reduction in inspection requirements for accredited operators in an approved maintenance accreditation program.
- Applying competitive neutrality to heavy vehicle accreditation to encourage more businesses to become accredited.
- Enable the NHVR to focus its safety and regulatory role on oversight of a small number of accreditation schemes rather than running an accreditation scheme itself.
- Legal recognition of accreditation within the new HVNL.
- Operators in all authorised accreditation schemes would be eligible for regulatory benefits.

The ATA will further expand on these issues in response to the upcoming HVNL issues paper on accreditation.

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?

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

Defect clearance

Defect clearance is considered in section three of this submission.

Third-party repairs

According to the NTC³⁰, the development of Chain of Responsibility (CoR) provisions applying to vehicle standards was investigated in 2004 and 2005 but the NTC did not proceed for a number of reasons, including what was described as a lack of evidence of the link between breaches of the vehicle standards and on-road incidents.

Previous analysis by the ATA found that research showed vehicle defects account directly for less than five per cent of heavy vehicle accidents, but they can be a latent condition

³⁰ NTC stakeholder brief on chain of responsibility and vehicle standards. 2014

associated with a higher percentage of accidents. A safety related defect in a vehicle can mean the difference between a near miss and an accident.³¹

To deliver on the safety objectives of the HVNL, this risk should be addressed.

In the ATA's view, the TruckSafe maintenance module sets out a best practice maintenance system for trucking operators. This module requires:

- daily visual checks of vehicles
- a system for recording and reporting faults
- procedures for prioritising and repairing faults
- a system for conducting scheduled maintenance
- procedures for documenting and recording maintenance activity and decisions
- defined responsibilities for maintenance staff and a program to ensure they are trained in their responsibilities
- an internal review process to fix non-conformances and deliver continuous improvement and
- procedures to ensure that speed limiters are maintained and checked for tampering at regular intervals.

Coronial reports can also show what can happen when businesses do not follow these practices, or at least some of them. Previous ATA analysis of reports on maintenance-related truck crashes suggest extension of CoR to vehicle standards should target corporate behaviours such as:

- the lack of an effective system to manage maintenance, although the HVNL should not require every business to have a scheme as comprehensive as TruckSafe
- the lack of appropriate maintenance or fault repair
- unauthorised vehicle modifications and
- not allocating the necessary resources to carry out vehicle maintenance and quality assurance.

Previous advice from the NTC suggests there had been disagreement in 2004 and 2005 about targeting entities such as maintenance providers in chain of responsibility, because of the argument that they were potentially covered by other legislation and did not have a role in influencing on-road behaviour.

However, for some businesses there is a trend towards outsourcing of vehicle asset management and maintenance to third party providers. As a consequence of outsourcing this activity, operators lose control over workshop outcomes. **Third party providers play a critical role in managing the business's maintenance management systems and compliance obligations, and should, as a result, be included as chain parties.**

³¹ ATA, September 2014, [Submission on the Heavy Vehicle Roadworthiness Review – Phase 2 integrity review](#), 7.

Replacement parts

The NTC issues paper identifies concerns that replacement parts fitted to a vehicle in service may not be exactly the same as the original parts and as a result may exhibit different performance characteristics, raising safety concerns.³²

The ATA notes that recommendations have been made to the HVNL review to install a new layer of regulatory approval for replacement parts.³³ The ATA does not support these recommendations.

The Australian Competition and Consumer Commission provides clear guidance that businesses cannot mislead about their products or services, including about the quality or benefits of goods or services, or any associated guarantee or warranty.³⁴

Again, *the Australian Consumer Law*, s 18, establishes that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

The HVNL should not seek to duplicate other areas of legislation.

Additionally, knowingly using unsuitable parts, or not exercising due diligence to assure that parts are suitable, would be a general duties breach.

Rather than duplicating existing legislation, governments should focus on improving guidance material and education on the application of *the Australian Consumer Law* to the trucking industry.

³² NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 29.

³³ Truck Industry Council, August 2019, [HVNL review submission on vehicle standards and safety](#), 5-6.

³⁴ ACCC, [False or misleading statements](#), accessed on 6 September 2019.