



# Submission to Senate Standing Committees on Rural and Regional Affairs and Transport

Importance of a viable, safe, sustainable and efficient road transport  
industry

7 November 2019

## Terms of reference

The importance of a viable, safe, sustainable and efficient road transport industry, with particular reference to:

- a. the importance of an enforceable minimum award rate and sustainable standards and conditions for all stakeholders in the road transport industry;
- b. the development and maintenance of road transport infrastructure to ensure a safe and efficient road transport industry;
- c. the regulatory impact, including the appropriateness, relevance and adequacy of the legislative framework, on all stakeholders in the road transport industry;
- d. the training and career pathways to support, develop and sustain the road transport industry;
- e. the social and economic impact of road-related injury, trauma and death;
- f. efficient cost-recovery measures for industry stakeholders, including subcontractors;
- g. the impact of new technologies and advancements in freight distribution, vehicle design, road safety and alternative fuels;
- h. the importance of establishing a formal consultative relationship between the road transport industry and all levels of government in Australia; and
- i. other related matters.

## Introduction

The National Heavy Vehicle Regulator (NHVR) is Australia's dedicated statutory regulator for heavy vehicles and pursues improvements to safety, productivity and efficiency outcomes across the heavy vehicle transport sector and the Australian economy.

The NHVR administers the Heavy Vehicle National Law (HVNL). The aims of the HVNL include minimising the compliance burden on the heavy vehicle transport industry and the reduction of duplication and inconsistencies across state and territory borders.

The NHVR is responsible for regulatory activities set out in the HVNL. These include, but are not limited to: the National Heavy Vehicle Accreditation Scheme; Performance Based Standards (PBS) scheme; vehicle design and access approvals; heavy vehicle access permit applications; heavy vehicle standards modifications and exemption permits; national driver work diaries and the risk classification system for advanced fatigue management; and national exemption notices.

A number of reviews are currently being conducted into the heavy vehicle industry, including the Productivity Commission's National Transport Regulatory Reform inquiry and the National Transport Commission's Heavy Vehicle National Law Review.

The findings from these reviews will be pertinent to further regulatory reform in the industry, and this submission reinforces the NHVR's work with both bodies in identifying key challenges and opportunities to deliver improved safety and productivity outcomes for industry, the supply chain and the commuter.

The NHVR notes that a number of the terms of reference are outside its mandate but still wishes to contribute to the relevant terms of reference through the lens of NHVR reform priorities.

## NHVR key reform priorities

**PRIORITY ONE: Simplified, easy-to-understand and harmonised law to better meet industry needs**

**PRIORITY TWO: Risk-based, data- and intelligence-led approach to target the greatest safety risks**

**PRIORITY THREE: Deliver improved productivity and access certainty with a modern access regime**

## **PRIORITY ONE: Simplified, easy-to-understand and harmonised law to better meet industry needs**

As the national regulator of heavy vehicles, the NHVR's everyday work is governed by the HVNL. This puts the NHVR in a unique position to understand the challenges created by the existing law, seeing first-hand how it can be interpreted and applied, and how it impacts the industry and the outcomes of the broader transport task.

The NHVR's number one priority is the safety of the industry and the Australian community and considers a safer industry is a more productive one and that unsafe business practices improperly distort the market for transport services.

By ensuring the law has the flexibility to empower the industry to identify and better manage safety risks, as well as by acknowledging its efforts in doing so, it will be possible to make a real and meaningful positive difference in this important area.

### *Adopt a rational hierarchy*

Simplification and flexibility of the HVNL will arise from the adoption of a rational hierarchy delegating matters of detail and procedure to the greatest extent allowable to regulations and statutory instruments, subject to appropriate checks and balances.

Currently, amendments to very minor and administrative details that are contained in the HVNL (such as the classification of some minor changes to vehicles) need to proceed through the time consuming parliamentary processes and can take two to three years to achieve. Even amendments to regulations are still often linked to amendments of the Act and are regularly delayed as a result. These excessive timeframes not only limit the NHVR's ability to regulate effectively but are a key source of frustration for industry.

Moving the administrative and technical provisions into subordinate instruments will address these issues as well as reduce pressure on parliamentary time and enable the regulator to respond to the heavy vehicle industry in a more effective and timely way.

### *Balance of risk based and prescriptive approaches*

The NHVR considers a rebalancing between a risk-based approach and the existing prescriptive approach, as well as moving details and procedures to subordinate instruments, will ensure the regulator is agile and flexible enough to be adopted by any areas of the transport sector for their specific purposes.

Across the country, the transport task is varied and duty holders in the supply chain demonstrate different appetites to manage the risk that accompanies performance-based regulation, as well as different capacities to invest to manage those risks.

For example, when it comes to heavy vehicle driver fatigue, transport law needs to embrace a multi-tiered approach incorporating both risk-based and prescriptive arrangements. Such arrangements are common in other transport regulators and in heavy vehicle transport regulators internationally (for example, in the United States of America, European Union and Great Britain).

By adopting both approaches, it enables fatigue risk management and safety to become the primary focus rather than a reliance on prescriptive work and rest hours. This approach also encourages increased adoption of fatigue detection and monitoring technology, which can assist with recognising fatigue events before they occur.

### A national, consistent approach

A greater focus should be given to how the regulator, states and territories and local government can work together in a disciplined, consistent and agreed manner to meet their shared responsibility to deliver better national outcomes.

The most significant gains in achieving national harmonisation will be delivered by removing unnecessary derogations to deliver better outcomes through true national reform.

Transitioning compliance functions from jurisdictions to the NHVR will assist in achieving more consistency by ensuring activities truly align to national heavy vehicle compliance standards and approaches.

Within this context, the NHVR must ensure it works in a cooperative partnership with Police agencies, which conduct heavy vehicle compliance and other activities relevant to the safety of the road transport sector in a broader context than just the HVNL.

### **PRIORITY TWO. Risk-based, data- and intelligence-led approach to target greatest safety risk**

As a modern, risk-based regulator, the NHVR is focused on adjusting the traditional prescriptive regulatory approach, which relies heavily on on-road enforcement and sanctions, to adopting a wide range of regulatory tools (engagement, education and then sanctions), including more effective targeting of the highest risk operations.

Key to this reform is promoting a cultural shift toward delivering better safety outcomes across the heavy vehicle industry and the broader supply chain, reinforced by the NHVR's investigations and prosecutions teams undertaking investigations where safety breaches have occurred.

#### Modern regulator focused on greatest safety risks

The NHVR's *National Compliance and Enforcement Policy* outlines the risk-based and outcomes-focused approach adopted by the NHVR (as mentioned above) and its partner agencies when planning and undertaking heavy vehicle related compliance and enforcement activities.

At its core is a more consistent and fairer approach to enforcement, based on risk and intelligence gathered. It outlines principles on how agencies should tackle high-risk behaviours and non-compliance in the heavy vehicle industry.

The recent national *Operation Kingsize*, held in early September 2019, utilised this approach and adopted an 'education first' strategy. As a result, one quarter of breaches were dealt with through information and formal warnings whereas they might have been previously been dealt with through infringements.

#### Supporting a modern and intelligence led-approach

The NHVR has established a number of tools to collect national heavy vehicle compliance and monitoring data, including information gathered using the national safety camera network. This information is captured in the Safety and Compliance Regulatory Platform and shared with officers in real time on the roadside to better ensure their focus is on the greatest safety risks, and to enable good operators to keep moving.

The NHVR is improving the collection and use of data to deliver improved and effective safety outcomes, however this approach can only be successful through partnerships with industry and government.

Key to this is the establishment of a regulatory framework that provides incentives and flexibility to support industry participants who invest in safety systems and technologies and proportionate deterrents for those who choose to actively disregard their safety obligations.

#### Chain of Responsibility

Chain of Responsibility (CoR) obligations have been part of the HVNL since it was first enacted. They recognise that all parties in the supply chain affect safety, not just drivers. The primary duty amendments to the HVNL in October 2018 recast those obligations to resemble duties imposed by model Work Health and Safety (WHS) laws. Prior to the amendments, the parties would be liable only by extension when a driver committed an offence.

A party in the supply chain now has a primary duty to proactively ensure the safety of its transport activities by eliminating or minimising public risk. These changes introduce a true risk-based approach to safety management, both by regulators and by the industry.

The primary duty laws benefit industry in another respect too. Their alignment with other national safety laws creates efficiencies in process, systems and practices, reduces costs and regulatory burden, and better enables integration across the supply chain between industry partners.

The NHVR has a team dedicated to prosecuting serious primary duty breaches. While still in their relative infancy, the amended laws enable enforcement activity, where warranted, in respect of any CoR party in the supply chain who has the ability to control or influence transport activities.

The NHVR believes the chapters in the law with respect to primary duties should be retained without significant change. This includes retaining:

- the risk-based duties regime in Chapter 1A (with some amendments around definitions);
- key investigation tools in Chapter 9 (with amendment to simplify and clarify powers); and
- sentencing orders in Chapter 10 (with consideration of additional orders drawn on Part 13 of the Model WHS Act).

Consideration should be given to the introduction of an explicit obligation upon parties in the CoR to consult with each other. This obligation is an established feature of model WHS laws.

The NHVR believes parties in the CoR are not effectively consulting with heavy vehicle operators or heavy vehicle drivers on safety-critical issues which affect the driving task. Under the current HVNL, a party in the chain could hold substantial information regarding a risk to the safety of an activity, but there is no requirement for them to share the information with other parties to enable the principles contained in section 26A to operate effectively.

The NHVR believes that a duty to share knowledge and consult across the supply chain should be introduced to enable all parties in the chain to be fully informed, so risks can be managed appropriately.

#### *Increased adoption of technology by industry*

The NHVR believes the HVNL should focus on encouraging industry adoption and use of agreed systems and technology for safety and productivity gains, and not remain narrowly focused on their use for compliance purposes. The industry as a whole has invested significant funding into their own system and technology solutions, which should be recognised when identifying ways to improve safety and productivity outcomes.

To achieve gains, industry must see the benefits of technology and how its use will translate into safety and productivity improvements in their business, such as increased network access outcomes and sharing of information to reduce regulatory burdens.

The HVNL should provide the overarching provision in the legislation to use technology to better regulate and improve safety and productivity outcomes. It should not mandate a particular type of technology that compromises market opportunities; rather it should be outcome focused.

### **3. Promote productivity and certainty with an improved and modern access regime**

The NHVR believes developing a modern legislative base is critical to enabling effective regulation which encourages and adapts to the evolving needs of the heavy vehicle industry and the road transport task.

A consistent issue identified by industry is the slow and cumbersome access decision-making process that does not recognise the benefits of safer and more productive vehicles.

The NHVR supports any advancement which enhances road safety, improves productivity and lessens the degradation of road assets. However, the law in its current form provides little clarity as to the accountabilities of each party in critical infrastructure safety areas, and no means of resolving disputes or incentivising government performance.

#### *Increased adoption of safer and more productive vehicles*

The Performance Based Standards (PBS) scheme was established in 2007 to improve heavy vehicle safety and productivity based on the principle of matching the right vehicle (performance of vehicle not prescriptive dimensions) to the right task.

PBS vehicles have been found to improve productivity by an average of 15 to 30 per cent and are involved in 46 per cent fewer major crashes per kilometre travelled, when compared with their conventional equivalent. With the road freight task predicted to increase over the next 25 years, governments must identify and implement initiatives now that will facilitate this growth in a manner that ensures safety. Given the safety and productivity benefits the PBS scheme provides, it is positioned as the ideal platform to meet the growing freight demand.

Having administered the scheme for five years, the NHVR has gained important learnings and identified key areas that if implemented would further enhance the PBS scheme, particularly in relation to removing the current prescriptive barriers to scheme uptake, while driving innovative vehicle design.

Critical to encouraging safer and more productive vehicles on the network is by ensuring they have guaranteed access.

Despite the safety and productivity benefits that PBS vehicles deliver, obtaining road access approval from multiple road managers is still a major hurdle to increased PBS vehicle uptake. This was confirmed by the NTC during the recent PBS Marketplace Project.

At present, only PBS truck and dog combinations are provided widespread network access under a notice which has resulted in a large number of these vehicles being commissioned, when compared to other types of innovative vehicles being commissioned under the scheme (for example; 1069 truck and dogs were approved in 2018, compared to 269 B-double approvals).

As outlined in the NHVR's submission to the NTC's *Easy Access to Suitable Routes* paper, the HVNL review should apply an envelope approach to network access, which groups similar vehicle characteristics into one class, rather than having multiple and unnecessary vehicle classes.

For example, a PBS Level 2A approved vehicle should be treated the same as the reference vehicle its performance has been compared to (26m B-double) for access purposes. Currently, the B-double has broad network access and the PBS combination has limited access.

This envelope approach would recognise the improved performance of PBS vehicles, rather than perpetuate the current state in which they are rejected because they are slightly different to conventional combinations.

Without an improved approach to network access that recognises the PBS scheme, the widespread economic and community benefits delivered by increasing the number of modern, safer and more productive vehicles on the road are lost. The success of PBS truck and dog combinations demonstrates that when access restrictions and uncertainty are removed, a safer and more efficient PBS combination becomes the first choice of vehicle for industry.

*Importance of continued government support for road infrastructure assessments*

The NHVR also acknowledges the importance of government investment into critical road infrastructure to meet the growing road freight task. A safe and efficient heavy vehicle industry requires access to key strategic road infrastructure networks that are suitable for the ever-growing heavy vehicle fleet and safer, more-productive PBS vehicles.

Recently the NHVR was the recipient of an \$8 million grant to work with local governments across Australia to assess key strategic road infrastructure assets, with a primary focus on bridges. This program will look at assessing the condition of local government infrastructure to understand its condition and determine what access can be finalised and what future upgrades would be required to enhance access of the heavy freight networks.

A coordinated effort is required between all levels of government to continue to support these funding arrangements, such as a dedicated annual fund for assessments as well as capital upgrades and maintenance. There will also need to be commitment from road managers that where prioritised and targeted funding is made available, there is an increased level of access as a result.

The success of supporting assessments and upgrades on local roads has already been demonstrated through the Department of State Growth project on OSOM networks and the Fixing Country Roads program in NSW.

**The NHVR thanks the Committee for the opportunity to provide this submission and would encourage the active promotion of positive reforms to better enable the NHVR's vision of a safe, efficient and productive heavy vehicle industry serving the needs of Australia.**