NHVR
National Heavy Vehicle Regulator

NHVR Submission

HVNL Consultation Regulatory Impact Statement

January 2021

Contents

Background

This HVNL Review and the final report from the Productivity Commission Inquiry into National Transport Regulatory Reform (the PC Report), coupled with more than six years of experience gained from the operation of the HVNL and a complementary national regulator, provides an important opportunity to pursue a more modern, flexible and effective regulatory system.

The creation of the Heavy Vehicle National Law (HVNL), which came into effect in 2012, was an important first step by governments, supported by the transport industry, in moving from a state-based regulatory system to a national one.

The HNVL established the National Heavy Vehicle Regulator (NHVR) to improve heavy vehicle safety and productivity, including by reducing the impact of state and territory borders and delivering a more consistent and efficient regulatory approach.

This reform, coupled with the commitment of governments, industry and the regulator, has facilitated the delivery of significant safety initiatives, the removal of many administrative barriers, and increases in the productivity and safety of vehicles and the networks available to them.

The efficient movement of freight and heavy vehicles and improving the productivity of the sector is critical to the ongoing success of the Australian economy.

The introduction of the HVNL and a national regulator was ground-breaking, but the law was largely based on existing state-based arrangements and the effort to harmonise was often at the expense of innovation and flexibility. Technology, the availability of data and the opportunity to adopt more flexible and responsive risk-based approaches, has evolved significantly since the current laws and supporting regulatory approaches were developed.

This review provides a unique opportunity to future-proof the HNVL, and create a modern and flexible law, enabling data-driven and risk-based regulation that recognises the safety focus and maturity of large parts of the transport industry.

By doing so, the NHVR will be able to more effectively tailor its approach to address the greatest risks and opportunities and maximise safety and productivity benefits.

Introduction

As a modern and intelligence-led regulator, the NHVR's priority is ensuring effective partnerships among industry, supply chain parties and government to pursue improved and innovative safety and productivity outcomes on Australian roads.

In the past 10 years, both the heavy vehicle industry and the supply chain have made a significant investment in improving safety practices, both through the adoption and effective implementation of safety management systems and technologies.

To keep driving positive outcomes, the structure of the new law and regulatory framework should continue to encourage and empower industry to improve safety within their business (shared responsibility model with government) and ensure the heavy vehicle task is viewed as a professional and credible employment option.

This approach was supported in the 2020 PC Report, which recognised that any regime of safety regulation that minimises compliance costs and facilitates innovation from industry can contribute to better safety outcomes and productivity growth.

Improved consistent outcomes must be a shared priority

Greater focus on how all levels of government work together in a modern, disciplined and consistent manner is critical to achieving better national outcomes. This includes improved recognition of the heavy vehicle industry as a service industry for Australian businesses and communities, with the flow on effects of heavy vehicle reform having wide-spread and significant effects on national and local economies.

Through the review process, there has been a strong focus on the negative impact of state-based derogations and the creation of confusing and multi-stage approval processes which restrict the economic effectiveness of national regulation.

Collective agreement and clearer delineation on the responsibilities of ministers and the regulator to deliver an effective and adaptable regulatory environment will be an essential part of the review process and, ultimately, the new law (see Chapter 5).

Modern regulation requires a principle-based approach

A principle-based legislative approach, which is forward looking and future proofed, with operational activities covered through regulations (as well as standards and codes of practice) will also be essential in delivering a successful and responsive regime (see Chapter 5).

In this respect, the NHVR supports a model that separates regulations into two distinct categories:

- national regulations that contain matters that responsible ministers want greater oversight of; and
- heavy vehicle regulations that the regulator has responsibility to manage, while still requiring appropriate oversight by responsible ministers.

Empower industry to invest in safety

The NHVR strongly supports supplementing the principles-based legislative approach with a risk-based assurance framework (multiple tier model) that pursues increased flexibility for operators who can demonstrate investment and innovation in improved safety outcomes (performance and assurance tiers), as well as certainty for operators seeking it (prescriptive tier), (see Chapter 7).

While some operators will choose to operate in a prescriptive regime, the model should be built to provide opportunities and encourage both small and large operators to progress to the performance and assurance tiers.

Real benefits need to consider reform of all heavy vehicle related processes

Ensuring the effectiveness of the road transport task in the future requires considering not only the HVNL, but also all related heavy vehicle systems and processes to ensure they are fit for purpose (see Chapter 7).

Improving the current systems will provide better safety outcomes while minimising duplication and additional administrative and financial costs.

Safety standards across industry will improve through strengthening the current licensing system to better focus on practical safety skills including fitness for duty and fatigue management. Similarly, ensuring registration systems recognise heavy vehicle businesses as professional entities will help provide greater oversight of operations and relationships among drivers, companies and vehicles.

These additional systems have been identified as key areas for consideration in this submission.

Fatigue and access must be priority

Prioritising fatigue and access reform will allow for significant improvements in safety and productivity. This review should focus on ensuring these critical areas are robustly addressed, which will require a commitment to deliver improved outcomes outside of the HVNL (see chapters 8 and 9).

The Regulatory Impact Statement's (RIS) approach to improving fatigue management and ensuring it is focused on providing flexibility to better manage safety risks, rather than merely counting hours, is strongly supported.

While fundamental improvements to reduce the reliance on access permits and open greater networks to safer and more productive vehicles is explored, this area should be considered more deeply in the review process. A willingness and commitment to deliver wholesale reform in this space is essential to improve economic outcomes.

Alternatively, a 'more of the same' approach, particularly in the access and fatigue management areas, would be a missed opportunity in delivering a safer and more productive road freight task.

The PC Report identifies key reform areas and a roadmap for improved productivity outcomes to assist the economy, including:

- expanding as of right access networks for Performance Based Standards (PBS) vehicles
- providing road managers with adequate resourcing
- increasing data sharing to support improved road access
- adopting a risk-based assessment of access permits.

Collectively ensure the concepts work on the road

Although the RIS highlights broad potential concepts for improving the HVNL, their success will be determined by the ability to practically apply them on the road.

Once clearer options are agreed in principle, the industry, the regulator and the police can provide practical insight into how the concepts will translate into effective outcomes.

Proposed legislative structure

The NHVR proposes three key changes to the current governance model to enable a forward looking and responsive approach to heavy vehicle regulation. These changes will help overcome the current perception that the HVNL is not capable of facilitating real time improvements with its inability to embrace safety technology (such as Fatigue and Distraction Detection Technology) being a prime example.

Key changes

1. Empower the NHVR to make regulations in relation to specific matters (with oversight by responsible ministers), alongside a consolidated set of national regulations.
2. Empower the NHVR to make standards and codes of practice.
3. Substantially consolidate the exemption powers in the HVNL.

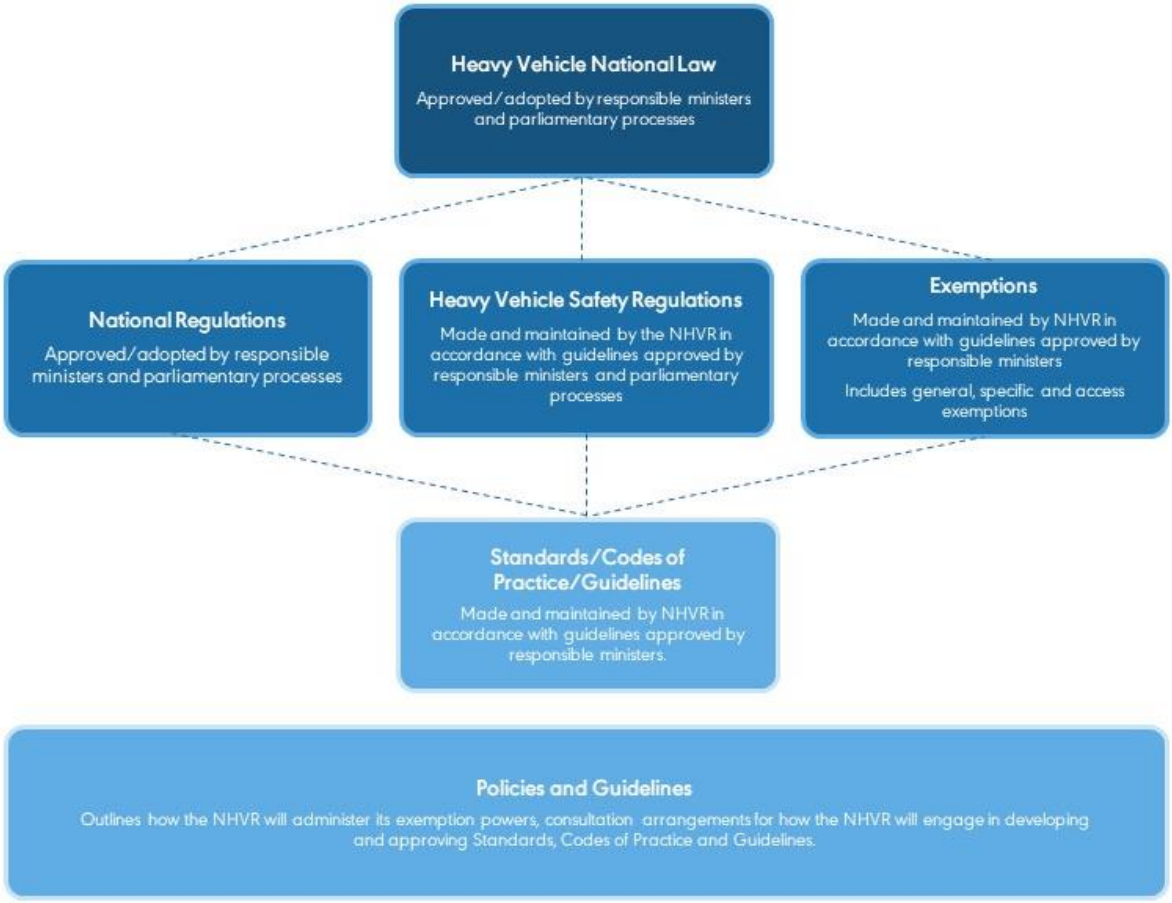

Diagram 1: Proposed legislative structure

Principle-based framework

An example of how a principle-based framework (outcome focused) could be structured in key policy areas is outlined below. The information included in the diagram includes the detail that would be contained in the legislation.

Diagram 2: Example of principles-based framework.

Chapter 4: Primary duties and responsibility

Key objective

1. The primary duties legislation is already risk based and does not require fundamental change.
2. The parties covered under the primary duties should be extended to include manufacturers and repairers, who have a direct impact on safety risks.
3. The primary duty could be expanded to parties who are not currently included in the Chain of Responsibility (CoR) so long as the capacity to influence heavy vehicle safety is required to be established.
4. Clarity regarding compliance and fitness to drive obligations should be improved through NHVR-developed codes of practice.

Overview

The primary duty represents an obligation by parties involved in the heavy vehicle transport task to eliminate or minimise potential harm or loss (risk) by doing all that is reasonably practicable. This approach and the recent amendments to the primary duties chapter of the HVNL (October 2018) supports a risk-based structure in line with the intent of the new law.

The current primary duty provisions impose an overarching and positive duty of care (including fitness to drive), consistent with the duty of care approach adopted in other national safety laws, such as the Model Work Health and Safety Act (Model WHS Act) on all current CoR parties.

The NHVR recommends strengthening the primary duties with some key changes (outlined in this submission); however, overall, the primary duties provisions and its risk-based approach remain broadly appropriate.

Clarify obligations of CoR parties

The PC Report recommends that the HVNL clarify the obligations of parties regulated under the primary duty. The recommendation suggests amendments to the law that empowers the NHVR to:

- publish 'acceptable means of compliance' with CoR laws for transport operators and other parties in the supply chain
- accredit other approaches to compliance, with the costs of accreditation to be borne by the regulated parties.

The NHVR supports providing operators and parties with additional guidance material to further clarify their obligations. Additional guidance will also help ensure unnecessary and costly requirements are not imposed on transport operators as a means for minimising potential third-party liability. The NHVR would provide this content in standards and codes of practice to ensure it remains relevant.

With respect to accrediting other approaches to compliance, the NHVR's proposed national assurance framework underpinned by a safety management systems approach (outlined in response to Chapter 7) should help promote confidence in the competence and capacity of operators to meet their safety duties. Audits represent a point in time, however, so it is essential to recognise that accreditation cannot be used as a defence in meeting primary duty obligations.

A robust and reliable national assurance framework should also help address the issues of additional accreditation requirements by third parties. The NHVR has received anecdotal advice from some third parties who have stated that a single regulator approved model would satisfy the majority (if not all) of their requirements. Further consultation with third parties to ensure their requirements are appropriately captured will help achieve this outcome.

Extend primary duties legislation to include manufacturers and repairers

The principle change supported by the NHVR with respect to primary duties is the inclusion of heavy vehicle manufacturers and repairers as a duty holder. This will help ensure heavy vehicles are constructed to the highest safety standards and that heavy vehicle drivers have a safe and reliable work environment. Case studies below provide further detail.

Case studies

1. In 2019, the NHVR investigated a series of truck fires in order to identify the causal factors behind the incidents. With the cooperation of the owners of the trucks that had caught on fire, the NHVR was able to liaise with manufacturers in a vehicle recall.

   Despite the obvious connection between heavy vehicle maintenance and vehicle standards at the point of sale, and road safety, the NHVR had limited powers to obtain this outcome if manufacturers had not been cooperative.

   This risk could have been potentially mitigated or addressed more effectively if a duty to provide safe vehicles and componentry was included in the HVNL.

2. A fatal truck crash in 2014 was found to have been caused by the truck's faulty brakes. During the investigation, it became apparent that the operator had relied on an independent repairer for maintenance work.

   The repairer had been invoicing for work conducted (including brake adjustment), however, had allegedly not been undertaking the repairs (or undertaking them properly). The NHVR has no obvious means of enforcing compliance and ensuring safety in this scenario and so cannot be confident the same outcome will not be repeated.

   This could be mitigated or at least prosecution undertaken if repairers were included as a party in the HVNL.

Consultation RIS options

	RIS option		NHVR position
4.1	Extend application of the primary duty to parties who influence the safety of transport activities	**Support in principle**	• The NHVR supports expanding the primary duty to parties who influence the safety of transport activities, only if the requirement to prove the capacity to influence heavy vehicle safety is demonstrated.
4.1b	Add specified parties to the defined list of parties in the CoR	**Support**	• The NHVR supports the inclusion of heavy vehicle manufacturers and repairers in the CoR, because they have a direct impact on safety risk.
4.2	Establish a separate driver duty (replicates worker duty under WHS Laws)	**Do not support**	• The current primary duty in section 26C already captures drivers through requirements for driver competency and fitness to work. • Driver prosecutions in jurisdictions transitioned to the regulator account for almost 90 per cent of all HVNL prosecutions conducted. In the model WHS jurisdictions, less than 3% of prosecutions are for duty holders under section 28 of the Model WHS Act ('workers', the nearest equivalent offence to that proposed). The low prosecution rate contrasts with the very high number of prescriptive HVNL offences, road rules and criminal law offences drivers are additionally already exposed to. There is no evidence base that a new provision is required.
4.3	Applying primary duty (s 26c) to drivers	**Do not support**	• The CoR provisions were introduced because drivers did not have sufficient influence and control over the way the vehicle was loaded, condition of the vehicle or their fatigue therefore there was a need to acknowledge that "others" had greater control or influence. • As outlined in option 4.2, drivers are already significantly policed and face serious penalties for breaching road rules or criminal law. There is no evidence that an additional penalty will improve their behaviour.
4.4	Amend primary duty to clarify requirements relating to driver competency and driver fitness to work	**Support with amendments**	• The current primary duty in section 26c includes driver competency and driver fitness to work. • In clarifying the primary duty, there needs to be an equal focus on drivers and businesses in ensuring shared responsibility for fitness to drive. This includes ensuring drivers have the explicit right to stop if they are not fit for duty. • Codes of practice developed by the regulator will provide a more practical way of clarifying compliance with the duty than legislative amendment.

Chapter 5: Regulatory tools

Key objectives

1. Reduce the complexity of the HVNL by adopting a principle-based approach, ensuring responsiveness to industry through greater use of regulations, standards and codes of practice (made and approved by the NHVR). (See Diagram 1, page 6.)
2. Introduce a two-tier regulation framework (national regulations and heavy vehicle regulations).
3. Ensure the legislation expressly recognises the formal data sharing arrangements among the states/territories, the police and the regulator, including identifying the NHVR as a law enforcement agency.

Overview

Primary legislation principle-based and future proofed

Fundamental to the new law is that it provides a modern legislative base that can adapt and foster the evolving needs of the heavy vehicle industry and the road transport task.

The heavy vehicle industry continues to find new and innovative ways to deliver improved safety and productivity outcomes. Requiring changes to legislation (and regulation in some cases) to support these new approaches is not sustainable for the parliamentary process (which can often take two to three years).

Delivering an effective road transport task requires a fundamental change to the primary legislation so that it outlines the desired outcomes (requiring minimal change) and provides the controls and procedures to achieve it in regulations (further supported by standards and codes of practice).

Establishing two-tier regulation framework

Establishing two sets of regulations – one to deal with matters over which responsible ministers want greater oversight and one for which the regulator is best placed to manage in order to provide certainty in relation to operational policy and service delivery matters (processes that lend themselves to changes in the environment, i.e. emerging technologies) will enable effective regulatory responsiveness.

In this respect, 'national' regulations would be approved and adopted by responsible ministers through relevant parliamentary processes, while 'heavy vehicle' regulations would be made and maintained by the NHVR (the NHVR Board) in accordance with guidelines approved by responsible ministers. Responsible ministers will still have oversight of heavy vehicle regulations as they will be tabled in Parliament (Queensland Parliament as the HVNL host state) and subject to disallowance.

This approach would allow for the HVNL to provide a high-level framework for principle-based, performance-based and prescriptive regulation. The details of these schemes would then be set out in the regulations, which would in turn apply or require compliance with administrative instruments such as standards and codes of practice to be developed and approved by the regulator, in line with the intent of the regulation. This 'tiered' approach is supported by the PC Report which highlighted effective safety regulation requires the capability of regulators to apply a rigorous and outcomes-based approach to safety, including removing excessive prescription from regulation.

Example of principle-based framework

Outlined in Diagram 2, page 7, is an example of how several different policy areas would fit within a principle-based legislative structure.

It demonstrates how the overarching intent is included in primary legislation through to the detail contained in standards and codes.

In the fatigue space, the proposed model includes the requirement for drivers not to drive while fatigued and the absolute authority for drivers to stop if they are not fit for the task in the primary legislation. The regulation specifies outer limits and the standards covering fatigue risk management requirements (i.e. regulator approved schedules).

Importance of national development of standards and codes of practice

The NHVR is of the view that as the regulator it should provide the central role of the standard-setting body and lead the development of standards and codes of practice to ensure consistency, quality and accountability.

The legal structure, framework and governance settings for the standards and codes of practice would be agreed by responsible ministers. More specifically, appropriate oversight of the development and approval process could be provided through ministerially approved guidelines (including consultation requirements with industry and government) using those contained in the Model WHS Act as a model.

The NHVR does not support the development of these instruments by other agencies as proposed in the RIS. Allowing universal access to the development of documents of quasi regulatory effect will require a high degree of supervision/support by the NHVR to ensure quality at an instrument level and ongoing coherence in the regulatory framework.

There is also no clear rationale for how a universal approach supports the intent of national risk-based and responsive regulation. It would unfortunately create continued diminished authority of the regulator's role through derogations. Proponents are unlikely to have access to national data or an interest in obtaining efficiency/consistency as a higher order

outcome, leading to proliferation of functionally or geographically constrained proposals

In saying that, there may be merit for road authorities to work cooperatively to improve productivity outcomes as proponents of access codes of practice, but this avenue would need to be consistent with the final division of responsibilities in the relevant access chapter.

It would be more appropriate for agencies seeking development of heavy vehicle related standards and codes of practice to be proposed to the regulator and worked through in a collaborative manner.

The NHVR has relevant expertise to develop standards and codes of practice

Over the last six years, the NHVR has demonstrated the technical and regulatory expertise to identify heavy vehicle safety risk areas and produce standards (and codes of practice with industry) to address these risks to a high quality.

For example, the regulations governing heavy vehicle standards were written for normal road freight vehicles; however, these types of vehicles only represent one part of the industry. For other vehicles, such as agricultural and construction equipment, they are required to obtain exemptions. The NHVR has published multiple exemptions to the 140 sections of vehicle standards that disallow up to 77 per cent of these sections (which are not practical in today's operations) and applies alternate standards as safety conditions in their place.

The efficiency of the regulatory structure would be improved by enabling the NHVR to publish heavy vehicle standards in the first place. This would allow the NHVR to produce standards that articulate the minimum standards operators are to comply with and remove the confusing process and workarounds currently in place.

Likewise, the NHVR receives requests for the development of codes of practice from industry; however, is unable to develop them. The NHVR, if provided the authority, would be able to better assist industry in their development and, as outlined above, would ensure consistency and quality across these instruments as well as broader coverage and delivery at a lower cost.

Removal of derogations

A key area highlighted throughout the review process and in the PC Report is how the capacity to deliver risk-based regulation is, in many cases, significantly hampered by derogations from the national laws. Responses to the review issues papers identified the removal of derogations as the one key area that would deliver the greatest efficiency gains in the new law.

The PC Report identified further work is required by governments to fully realise the benefits of national systems of safety regulation. The report concluded that it is essential to remove derogations that result in additional compliance costs that cannot be justified on safety grounds by evidence. It further recommended that the Transport and Infrastructure Council (now the Infrastructure Transport Ministers Meeting) should re-affirm the principle of consistent national transport safety regulation and the members of the Council should commit to removing material derogations from the Heavy Vehicle National Law (and Rail Safety National Law).

Formal data sharing arrangements

To continue to strengthen the delivery of national (and risk-based) approaches to safety, the ministerially endorsed Safety and Compliance Regulatory Platform (the Platform) could be significantly enhanced through explicit formalised data sharing arrangements provided through a provision in the legislation.

The NHVR and state and territory governments have made a significant investment in establishing the Platform, which collects and analyses data from a number of sources to produce a comprehensive profile of individual operations and industry sectors enabling the regulator to better target the greatest safety risk areas.

The states and territories currently share registration data fields (that feed into the Platform) with the regulator through varying MoU's and data-sharing agreements, with additional data feeds coming from the National Safety Camera Network, the NHVR Portal and other data collected in a more ad-hoc fashion.

This approach and the subsequent safety outcomes would be significantly enhanced by identifying the type and depth of data required for effective risk-based regulation and ensuring it is provided in a consistent, comprehensive and timely manner.

Critical for regulator to have access to crash data

This data includes heavy vehicle crash information where currently different state-based arrangements exist and there aren't any consistent formal agreements for sharing this data with the regulator. The NHVR relies heavily on the process of collecting information through online media reports, which focus predominantly on traffic conditions and lacks detail the regulator needs. For example, the reports don't provide details of the heavy vehicle involved, the party at fault or specific details on the cause of the incident in any structured manner or when incidents occur.

By including heavy vehicle crash statistics in the Platform, it provides a valuable opportunity to better address crash causal factors before they manifest on the roads. For example, this would improve the understanding of the relationship between infringements, defects and crashes to enable a targeted focus and help use compliance tools in a more strategic manner to address culture and behaviours (rather than enforce sanctions).

Collecting national crash data is supported in the PC Report, which recommended that the Transport and Infrastructure Council (now Infrastructure Transport Ministers Meeting) should direct the NHVR to collect data on key safety risks and outcomes and publish the data each year in a similar form to the Office of the National Rail Safety Regulator's annual Rail Safety Report.

The NHVR supports this recommendation, which will be dependent on the regulator having the appropriate authority to collect the required crash data.

Consultation RIS options

	RIS option		NHVR position
New NHVR option: Introduce two-tier regulation framework			
Introduce a national regulation (adopted by responsible ministers) and a heavy vehicle regulation (made by the NHVR Board)		**Support**	• The NHVR proposes a new option that establishes a two-tier regulation framework to deal with matters for which responsible ministers approve and one focused on heavy vehicle regulation for which the NHVR Board approves. • This would enable the administrative instruments in terms of standards and codes of practice to be made in line with the intent of the regulations.
5.1 5.3	Establish a regulator code of practice mechanism in the HVNL Establish a safety standards mechanism in the HVNL	**Support with amendments**	• CoPs and standards should be a key part of the regulatory process with the regulator provided the authority to produce them to ensure consistency/quality and ensure they are produced in a timely manner with broad coverage and subject to appropriate consultation based on guidelines approved by responsible ministers. • The NHVR is of the view that a central and coordinated approach for the development of standards and codes is required to ensure consistency and considers their development by multiple agencies will result in a fragmentation of the regulatory framework and reduction of accountability of the NHVR. It is also inconsistent with the objects of the HVNL and intent of the underpinning reforms.
5.3	Establish a remote area zone	**Support**	• The NHVR agrees that operations in remote areas pose different safety risks than in urban areas and should have different requirements for addressing safety risks.
5.4	Expressly enable sharing of data with the NHVR	**Support**	• The NHVR supports sharing data and information will help the regulator to deliver intelligence-led, risk-based compliance activities, targeting the greatest safety risk. • To effectively target enforcement resources, the new HVNL should include a provision that allows the sharing of data by other agencies, industry and the NHVR. • Data sharing would be aided by the regulator being expressly defined in the HVNL as a law enforcement agency.

Chapter 6: Technology and data

Key objectives

1. Governments to leverage the investment industry has made in technology and partner to achieve desired outcomes.
2. Provide authority for the regulator to establish and maintain national performance standards for the use of technology and data (between governments and between governments and industry) for safety compliance and enforcement activities.
3. Establish agreed national performance standards for the use of telematics data (rather than requiring specific telematics applications); ensuring consistency in the requirement of data for state-based road management purposes.
4. Ensure the legislation is neutral with respect to technology systems and data assurance.

Overview

Technology and data are changing the way the heavy vehicle industry and governments operate. Ensuring success longer term requires industry to see how technology and sharing of data translates into safety and productivity improvements in their business, such as increased network access and more flexibility to reduce regulatory burden.

Recognising the significant investment industry has made in technology solutions, to meet their individual and often complex business, needs should be the start point when identifying ways to deliver better outcomes.

The NHVR is of the view that the HVNL should provide the overarching provision for the use of technology and data (through performance standards) to better regulate and improve safety and productivity outcomes; however, it should be 'technology neutral' to allow emerging technologies that embrace innovation over time (and not compromise market opportunities).

Importantly, when technology is adopted, enforcement agencies must ensure these transport businesses are not perceived to be a 'spotlight' and targeted simply because they have data, which has allegedly previously been the case. Increased transparency between industry and government should be seen to translate into increased safety, because it is easier to work in partnership to manage improved safety outcomes.

Key advancements in safety technology, such as Fatigue and Distraction Detection Technology are now recognised as game changers by industry. Similarly, the regulator and governments have placed significant priority on investing in and using data-sharing platforms to deliver a modern and risk-based approach to regulation.

For NHVR to keep improving its delivery of this modern risk-based approach, it is essential that it is able to set the performance outcomes for technology and data relating to safety and compliance outcomes. Similarly, to ensure a robust as well as agile compliance framework, the regulator must be able to access compliance data in real time.

Use of technology and data for risk-based regulation

Regulator to set standards – technology provider to meet them (and be held accountable)

The RIS has a strong focus on establishing an authority to certify technology and data assurance for regulatory and road management purposes.

The NHVR sees little (if any) benefit in creating a separate authority under the law, which will only create additional costs and administrative complexity without improving outcomes for the heavy vehicle industry.

The proposed role of the 'technology and data certifier', as outlined in the RIS, is the role of the technology provider. It is important that technology providers are held accountable for ensuring their devices/applications meet the required standards to be used as a regulatory system.

If additional layers are created, the accountability is shifted (dispersed) and the body responsible for managing the risk is not held accountable. As per arrangements with other parties in the CoR, the regulator should set the standards and require the provider to certify their systems meet the standards. If there are any issues, then these should be pursued though CoR provisions.

Under this model, the NHVR is best placed to establish the regulatory requirements (standards) for technology devices or applications. The technology provider then demonstrates (provides relevant evidence) how their devices/applications meet these regulatory standards.

The regulator would provide an oversight function both through CoR legislation and would undertake random audits or targeted ones if issues are detected.

The collection, storage and dissemination of data from these approved devices would be provided through clear data-sharing arrangements. It is up to the technology provider and the user (heavy vehicle operator) to ensure the device/application is maintained in line with any regulatory changes.

It is essential that we don't establish more administrative review systems for the sake of it, with little value (i.e. the access permitting system). The PBS Scheme is a perfect example of too many approval layers; the proposal in the RIS to enable manufacturers to self-certify vehicle builds seeks to reduce these

layers. This is the same concept that should be pursued in the technology and data space.

Regulator requires authority to use technology for risk-based regulation

Providing the ability for the regulator to set standards will also ensure consistent alignment between the regulatory outcomes desired and technology and data requirements. Without this alignment, there is a risk that technology investment will have limited improvements on safety or productivity outcomes.

An example can be seen within the IAP model, where there has been a significant cost borne on industry to meet the IAP requirements with little to no enforcement outcomes (i.e. prosecutions) from the data showing non-compliances.

There needs to be a commitment from all parties that the technology and data requirements are scaled to address the risks being managed or outcomes being achieved.

Similarly, the proposed technology certifier role outlined in the RIS appears to provide the certifier with the ability to determine the risk-based intelligence-led guidance for the NHVR and other government agencies.

This is more than providing assurance or certification of technology devices and will have significant (and inappropriate) influence in the way the regulator carries out its duties (e.g. targeted enforcement).

It is essential that the regulator has the authority in legislation to use a range of compliance and enforcement tools to deliver an improved safety outcome proportionate to risk; this requires determining when technology and data sharing is required (i.e. for habitual offenders and high safety risks where greater oversight is needed).

Collection and storage of data

The regulator, as the responsible body for heavy vehicle safety regulation, requires oversight and timely access to safety and compliance data to address safety risks in an agile and responsive manner.

This is particularly the case for fatigue safety technologies such as the Electronic Work Diary (EWD) and Fatigue and Distraction Detection Technology (FDDT) where the NHVR is responsible for approving fatigue schedules and managing their implementation and compliance with transport operators.

The Platform (funded by responsible ministers) was established in 2018 as the central system to store and analyse regulatory data for safety purposes (outlined on page 12). It is already delivering successful safety outcomes and as outlined earlier, it is unnecessary (and inappropriate from a cost perspective) to add an extra layer of governance to the current and robust system.

It is also already safeguarded to ensure the appropriate privacy protections are in place to provide assurance to operators.

The Platform is linked to tools that are helping deliver a risk-based approach to regulation, including the Regulatory Compliance Mobility Solution (RCMS) which provides authorised officers with access to individual operator information on the roadside as well as enabling them to feed outcomes of intercepts back to the Platform in a consistent and efficient manner.

The NHVR continues to demonstrate to industry that it is focused on addressing the greatest safety risks and is adopting and seeking changes through this review process to improve the ability for industry to better manage their own safety risks. The regulator is not interested (and it is indeed counter-productive) to use data collected through regulatory technology for minor breaches when high-risk operations are the key target.

The NHVR's National Regulatory Model outlines the regulator's approach to compliance and enforcement whereby the regulator is focused on enabling the effective use of compliance and enforcement tools to recognise safe and/or low risk operators (by keeping them moving) and ensuring that unsafe/high-risk operators are dealt with appropriately.

NHVR technology to support freight investment

Through the Platform, the NHVR has the technology capability to collect and store heavy vehicle information and share it with industry and governments in a central interface (the NHVR Portal). The Portal has been used by industry for several years for access permitting and route planning. The National Heavy Vehicle Accreditation Scheme (NHVAS) was the most recent service added to the Portal; and the PBS Scheme will be made available to industry in 2021.

The Portal is starting to provide industry with the ability to undertake all regulatory services in one central location, supporting the 'one-stop shop' concept that was an integral part of the initial establishment of the regulator.

Another key portal initiative underway is the NHVR Spatial Mapping Program (Geospatial map – RIS option 9.2c) that will provide a single source of truth relating to network access for industry (removing the need for industry to access multiple state/territory maps). The program will receive data from several sources (through the Platform) and display it in a transparent way. This includes infrastructure condition information (from the Strategic Local Government Asset Assessment Program), heavy vehicle rest areas, locations of distribution centres and ports. Basically, any data of relevance to industry can be displayed in the national spatial map.

The NHVR supports the related concept of the Freight Data Hub (identified in the RIS and the PC Report) in delivering a comprehensive overview of freight and supply chain relationships. It is also of the view that the Hub and the Platform should be used together to create a powerful and single source of freight information for the heavy vehicle industry, supply chain parties and government.

It should be noted that the NHVR is less concerned with storing freight information, than on ensuring there is one comprehensive and consistent source of information for industry to reduce the need to access data in multiple locations. As additional information is collected over time, data held in multiple locations will likely be inconsistent.

Use of telematics data

The PC Report identified that governments should prioritise the use of data that provides the greatest potential in improving productivity in the transport sector.

The technology to support this outcome, and possibly the one that has sparked the most interest and debate for industry and governments, is the use and application of telematics data.

Through the development of the NHVR's Heavy Vehicle Productivity Plan, road managers advised that they would be more inclined to increase network access if they had greater oversight of movements on their networks.

While most medium to large road transport companies have telematics systems installed in their vehicles (approximately 40,000 vehicles) few of these companies (around 4,000) have seen the value in investing in telematics devices that are mandated for certain regulatory purposes (e.g. IAP).

This outcome is largely the result of the experience many operators report they have had with government attempts to impose technology solutions.

For this reason, it is essential that the appropriate national governance arrangements are established, including clear policies that articulate the purposes for which telematics is collected and, how it is stored, while also ensuring it is applied consistently (through national performance standards).

National performance standards are key

The RIS identifies jurisdictions, police agencies and the regulator as the authorities with the ability to decide the policy settings for the use of technology and data. This approach will, however, perpetuate the inconsistent application and multiple rule sets used across states and territories (one of the most cited issues with IAP).

There has been a move by some states and territories in using lower-level assurance telematics applications such as TMA and RIM, which is positive. The use of these systems, however, is still inconsistent and the advent of these new applications has seen an increase in their application to vehicles where it was not previously required. Without a clear approach to the intended outcome, operators will continue to be required to invest in multiple systems, which increases costs and burden.

Additionally, industry operators have reported they will use these applications simply because it is "better than the only alternative", which is IAP.

A more appealing and cost-effective option for industry is having performance standards by which their own systems (require they meet a standard) could be used. For low level assurance requirements, this could be a self-assessment undertaken by the operator and provided to the regulator.

Consultation RIS options

	RIS option		NHVR's position
New NHVR option: Authority for regulator to set minimum performance standards for technology and data use			
Provide authority for regulator to set minimum performance standards		**Support**	• The regulator is responsible for national heavy vehicle safety. It is therefore essential that the NHVR has authority to set national performance standards (outcomes) for technology and data use relating to safety and compliance purposes. • Technology providers would then demonstrate how their systems meet these standards – enabling industry to use technology and devices that suit their business needs.
6.1	Establish an overarching technology and data certifier under the HVNL.	**Do not support**	• The role of the regulator is to be the standard-setting body; this applies with the regulatory standards required for technology device and applications. • The certification of technology devices and applications should be the responsibility of the technology provider and any issues pursued through CoR legislation. • The RIS does not acknowledge the NHVR's current policy, application suite, platforms or rich data stores already obtained under MoU. It suggests TCA has an existing platform able to house, support and provide as a central controlled store of all heavy vehicle information the NHVR requires.
6.2a	Ability to carry and produce electronic documentation.	**Support**	• The NHVR supports this option. With all permits now being issued by the NHVR, the same permits are available to NHVR safety and compliance officers and drivers via the NHVR Portal. • This can already be performed through the NHVR Portal. A more interactive version will be enabled through implementation of the 'live permit data in truck' initiative underway.
6.2b	Documentation to be produced in specified period.	**Support with amendments**	• As above – this can be resolved by having access to the NHVR Portal and transaction data.

Chapter 7: Assurance and accreditation

Key objectives

1. Create a risk-based (three-tier) single national assurance framework (RIS option 7.3) recognised in legislation. The framework should be underpinned by an SMS approach and supported by national accreditation and audit standards.
2. Ensure the assurance framework encourages and empowers industry investment in safety, while ensuring smaller operators can progress to the higher safety tiers (refer to Diagram 3, page 21).
3. Adopt a modular approach within the framework for operators to access increased flexibility, provided through regulator approved schedules.
4. Review existing systems and frameworks (rather than creating new enrolment and licensing systems) to improve safety and collect enhanced heavy vehicle business information.

Overview

The delivery of a successful risk-based assurance framework is critical to delivering meaningful reform. By ensuring the right flexibility is in place to drive industry investment and innovation in safety, ownership moves to a shared responsibility model (between government and industry) that is targeted at collectively pursuing genuine positive safety outcomes and benefits (ideal state).

This approach needs to be supported by a single framework that enables the desired regulatory flexibility and ensures a robust and streamlined accreditation and auditing standard (which is accepted by third parties) for transport operators.

The risk-based approach must also be established to encourage mutual recognition with regional environments (and reduce duplication and costs for industry), such as Western Australia and Northern Territory that do not require the same urban risk controls as other jurisdictions.

Three-tier assurance framework

The NHVR outlines its proposed approach to a national three-tier assurance framework in Diagram 3, page 21, which is underpinned by the principles of being flexible, achievable, providing certainty and ensuring it is risk based.

The framework includes prescriptive, performance and assurance tiers. It focuses on encouraging and empowering industry to invest in safety by providing a clear and achievable path for operators to progress/advance through the tiers (from prescriptive to assurance), providing increasing flexibility for improved safety practices and transparency (with little flexibility in the prescriptive tier).

The RIS proposes the opposite of this approach and provides more flexibility for the prescriptive tier. While the NHVR supports simplification for this tier, the regulator believes that increased flexibility should be provided as an outcome of increased safety investment. If too much flexibility is provided in the prescriptive tier, it diminishes the benefits that encourage safety investment. Participants in the performance and assurance tiers would be required to develop an agreed approach to safety management and sharing of information with the regulator.

Providing flexibility for improved safety behaviours is supported by a significant body of research that shows that safety culture thrives when workers know the appropriate safety behaviours that lead to rewards and there are few rewards for not displaying them.

In line with this, the NHVR would focus on putting in place appropriate safeguards in the top safety tiers and apply appropriate restrictions to flexibility if a high safety risk is perceived. With the prescriptive tier viewed as having the least transparency, this tier would see most of the regulator's targeted enforcement efforts.

The NHVR has proposed a starting model in Diagram 3 as well as an example of how this model could potentially work in the fatigue space in Diagram 4 (page 25).

Management of national assurance framework

The NHVR is of the view that the most successful model will provide the regulator with responsibility for managing the assurance framework under an enhanced single regulatory certification scheme (or enhanced NHVAS), RIS option 7.3.

This would provide a standardised and consistent approach to accreditation and ensure robust oversight of compliance with national accreditation and audit standards that are recognised in legislation.

This approach will provide the most regulatory recognition for industry and assure governments and third parties that the accreditation and audit standards are being managed in a robust manner.

It is widely agreed that an enhanced NHVAS model may seek to harmonise with other industry and regulatory programs that cater for specialised (high risk) capabilities or specific heavy vehicle industries or transport activities. This can be achieved through greater collaboration and co-ordination with other program providers to reduce the current duplication imposed on industry.

Unlike the current NHVAS scheme, the regulator would have greater authority to ensure the standards are maintained and improved in a timely way in line with changes in the regulatory environment.

There needs to be a clear pathway for operators in existing accreditation schemes to transition to the new model to ensure their current investment is recognised and they can continue operating their business with limited disruption.

Adoption by parties in the supply chain

One of the key benefits of this approach is that it would help reduce the multiple accreditation requirements placed on operators by third parties. Several third parties (transport, logistics and distribution) have advised the regulator that they would adopt a single national assurance framework (if it was available) and would not require separate auditing regimes of the transport businesses they contract.

Discussions with third parties would need to be undertaken to ensure their requirements are appropriately covered and to reduce administrative burden on operators.

Underpinned by SMS approach

The assurance framework should be underpinned by operators having a Safety Management Systems (SMS) that can be updated based on changes in safety risks and trends.

This approach will seek to drive uptake of robust SMS approaches (minimum safety standards) through current and existing modules that build on existing links to obligations (under the primary duty) that are explicitly framed around risk management.

The NHVR is of the view that all operations should have established safety management systems, suited to the size and complexity of business operations. As identified in the proposed legislative structure (Diagram 1, page 6), this requirement could be met by providing industry with different Codes of Practice relevant to business size and operation (which, if met, would provide deemed compliance with the SMS requirement). This option would also address the key premise of the perceived value of an operator licensing approach, without the significant costs to industry and governments, as outlined in the RIS.

The NHVR's recent Industry Safety Survey identified that from 4,000 surveyed operators, 62 per cent of industry have a basic SMS in place and report they are an effective means to managing hazards and safety risks.

Assisting industry to meet assurance framework requirements

As the proposed framework requires industry to invest in SMS and undergo an auditing regime, continuing to provide guidance and support to industry (e.g. SMS templates that industry can adopt and build on to meet their individual business needs) will be an ongoing focus for the regulator.

Encouraging increased industry uptake of an assurance framework will also require consideration of alternative and cost-effective auditing regimes to ensure the administration requirements are practical and workable (with a safety outcome focus) for industry. This should build on the remote audit regime established for NHVAS through the COVID pandemic as well as consideration of self-assessment and reporting.

The audit frequency could also be considered (i.e. every 2 years) or extended based on fleet size.

The NHVR sees industry schemes or associations playing an important role in this approach by providing a service to assist operators in meeting their safety management responsibilities. This would include providing pre-audit support, education, advice and other programs consistent with industry needs.

Mutual recognition

The NHVR is seeking mutual recognition with WA government heavy vehicle licensing and accreditation programs. This policy option is being progressed by the NHVR outside of the RIS process, recommending administrative arrangements be implemented to reduce the financial and administrative burden for operators working in multiple jurisdictions.

Improve current registration systems and licensing training

The concepts of operator enrolment and licensing have been key areas of interest throughout the review process. The NHVR is of the view that rather than creating additional systems (and layers), investment would be better targeted at improving current systems to ensure they are equipped to manage a modern approach to road transport regulation.

Improvements to registration

Improvements to the current state-based registration systems – to separate heavy vehicles from light vehicles and better recognise heavy vehicle businesses as professional entities – will improve the oversight of the national fleet (improve the flow of information between the regulator and industry). It will also remove the need for additional systems/industry requirements relating to operator enrolment.

While the regulator can obtain certain levels of visibility over operators who have accessed regulatory services, the NHVR does not have an effective means to identify those who have not accessed them or are recalcitrant in providing visibility over their operations.

Increased information such as reason for operation, links to other company registration and other business information considered relevant could be easily captured through a renewed registration system.

Systems upgrades already required

With the advent of autonomous and connected vehicles, significant upgrades to state-based registration systems will be required to cater to these new vehicles.

The NHVR understands that upgrades to registration systems for the purpose of autonomous vehicles are likely to cost the Australian community close to $1 billion.

Before making any investments of this scale, the HVNL Review provides the opportunity to consider these upgrades in a more holistic and comprehensive manner, including an assessment of

how registration can work more effectively to deliver a modern and efficient regulatory approach.

National registration should be part of the mix

As outlined previously, the states and territories and the NHVR have invested significantly in the establishment of the Safety and Compliance Regulatory Platform.

The Platform provides the base from which to build a modern single heavy vehicle registration system that is built for purpose with a business to business focus and could facilitate future reform. This supports findings (HK Report) that industry strongly desires timelier and more integrated information, along with increased availability of online services and payment options.

A Houston Kemp cost benefit analysis of a national registration scheme (undertaken in 2016) also identified safety benefits of national registration. The analysis highlighted that national registration would allow better identification of safety risks and trends and improve the rigour and efficiency of other regulatory services (assessment of access permits and accreditation) as well as productivity efficiencies for industry through a national and centralised service model (including one interface and support centre).

Several national registration options could be pursued. The most practical option would likely include establishing a national interface that enables industry to do business in one place, with the states/territories still managing the back-end transaction function. The appropriate registration revenue of any national registration system would continue to flow through to the states/territories.

It is timely to consider all these options now ahead of developing additional systems for HVNL review purposes or autonomous vehicle state-based system upgrades.

Based on Houston Kemp modelling, a move to a national based system will still be more cost effective than changes to current registration systems to cater for autonomous vehicles. Also, going forward, additional updates will require changes to only one system rather than multiple systems. This is particularly important as we consider the introduction of direct heavy vehicle road charging.

Upgrades to national licensing framework

Similarly, through licensing framework improvements that move away from a time served approach to focusing on practical skills training and safety management competencies, safety standards across industry will lift.

This would require drivers, when seeking their licence, to meet a minimum set of core driving skills including fatigue management.

The NHVR is of the view that a competency-based approach would also help improve professionalism and address current and predicted driver shortages, which will only worsen as the freight task increases. The Australian Government forecasts heavy vehicle traffic will grow by around 50 per cent by 2030. This equates to an extra 50,000 qualified and experienced drivers.

Ensuring truck driving is a viable employment option for young school leavers will also build a more professional workforce into the future.

Note: To ensure the costs of training are not prohibitive, the training regime and required safety competencies may initially need funding support by government. Additionally, training would also need to be supported by robust auditing of regulator-approved training providers.

A review of the Licensing Framework has recently been initiated by Austroads, which is focused on strengthening national heavy vehicle licence training and assessment standards. The review will also consider licence class progression arrangements. The project is due to be completed by mid-2022, which provides a critical opportunity for alignment between the reviews.

Linking licensing and registration

The benefits of national systems will also come through the link between heavy vehicle licensing and registration – whereby the relationship among a licence, a company and a vehicle can be demonstrated.

It will ensure any safety issues can be addressed in a timely manner through advising the operator of any infringements or incidents involving their vehicles, within appropriate privacy settings. This is already being progressed in some states and territories – notably the NSW Government's Heavy Vehicle Operator Safety Information Program is recognised, by many heavy vehicle operators, as an effective safety tool.

Recommended assurance framework

Three-tier approach

The NHVR has identified a three-tier assurance framework that encourages industry to continue to improve and invest in safety. The highest safety risk is in the prescriptive tier because this this is where regulators have the least transparency of operations. The model is designed to provide a pathway for operators to move from the prescriptive regime to the higher safety tiers by ensuring the transition from prescriptive to performance is achievable.

	Tier 1: PRESCRIPTIVE Basic compliance approach	**Tier 2: PERFORMANCE** Operator Certification Modular	**Tier 3: ASSURANCE** Operator Safety Management System
	High safety risk (least transparent)	**Medium safety risk**	**Low safety risk (highly transparent)**
REGULATORY SETTINGS	• Improved oversight of industry captured through 'national registration system' • Improved driver skills focused on competency units linked to licensing	• Requirements from Tier One • Single regulatory certification scheme (Enhanced NHVAS model), underpinned by SMS approach	• Requirements from Tier One • Single regulatory certification scheme (Enhanced NHVAS model) • Advanced SMS aligned with emerging safety research and safety technologies
REQUIREMENTS	• Prescriptive requirements provided in primary legislation	• Audit process for compliance with modules	• Regular sharing of agreed information between operator and regulator
FLEXIBILITY	• Simplicity and certainty with legal requirements	• Increased flexibility (modular approach) aligned to industry sector needs.	• Highly flexible (modular approach) aligned to specific business tasks
COMPLIANCE	• Increased on-road compliance checking	• Auditing performance • Reduced risk rating for on-road compliance checking	• Proactive account management by regulator to address compliance (data monitoring) • Reduced risk rating for on-road compliance checking • Auditing performance
LONG TERM INDUSTRY GOAL	• 30 per cent (50 per cent of regulatory effort)	• 50 per cent (45 per cent of regulatory effort)	• 20 per cent (5 per cent of regulatory effort)
	Encourage move from prescriptive to performance		Empower innovation from industry leaders

Diagram 3: NHVR proposed assurance framework.

Productivity Commission Report Reference

A tier-based model is supported by the PC Report, which identified that he HVNL should be amended to provide the NHVR with sufficient powers to give effect to a tier system, in which relatively prescriptive regulation operates beside outcomes-based options.

The amendments should establish clear roles and responsibilities for the NHVR, including adequate discretion, decision-making frameworks, and requirements for monitoring, compliance and enforcement activity. The system would need to reflect the varied preferences and capabilities of businesses, so businesses seeking:

- certainty or simplicity can rely on prescriptive regulation (to be streamlined)
- flexibility to operate outside of prescriptive regulation, while meeting agreed safety outcomes, can seek assurance from the regulator.

The NHVR should expand its use of assurance model/s to allow businesses to seek flexibility on individual aspects of their operations or more substantially across their operations. The design should recognise that some businesses will be able to design comprehensive safety management systems, while others will benefit from pre-approved 'off-the-shelf' solutions.

To the extent possible, the assurance model/s should avoid subjecting businesses to duplicative audit processes. In order to give effect to this recommendation, legislative change would be required from all governments that are signatory to the HVNL. This process should be led by the Australian Government through the Transport and Infrastructure Council. The NHVR's expanded capabilities would also require adequate resourcing.

Consultation RIS options

	RIS option		NHVR's position
7.1	a. Voluntary operator enrolment b. Mandatory enrolment c. Operator licensing (all operators) d. Operator licensing (high risk operations)	**See alternative options**	• The NHVR is of the view that all options relating to 7.1 would be better addressed through a review of the current registration and licensing systems, as outlined.
7.2	No regulatory assurance framework	**Do not support**	• The NHVR is of the view that this option would have a negative impact on safety because it does not allow recognition of industry's investment in safety through regulatory flexibility. • This option would also result in reduced regulatory oversight and result in an increase in compliance checks on the roadside, which significantly departs from the intelligence led risk-based approach being pursued.
7.3	Enhanced single regulatory certification scheme	**Support in principle**	• Having an enhanced single regulatory scheme, combined with the compliance and intelligence data sharing of governments, can provide assurance without the overheads of Option 7.4. • This model would align with emerging research and safety technologies to future-proof advances in safety management. • The NHVR supports mutual recognition between the NHVAS and WAHVA. This is a policy option outside the RIS being progressed by the NHVR, recommending administrative arrangements be implemented to reduce the financial and administrative burden for operators working in multiple jurisdictions
7.4	Multiple regulatory certification schemes	**Do not support**	• The NHVR has concerns with a distributed regulatory certification model, particularly in relation to the constraints of compliance data sharing with third parties. • The NHVR considers the impacts of oversight of scheme owners/administrators may be significant due to the duplication required. • Having an enhanced single regulatory certification scheme, combined with compliance and intelligence data sharing of governments, can provide assurance without the overheads of a distributed regulatory certification model. • The National Accreditation Review Working Group examined a model for multiple regulatory certification schemes and made recommendations regarding the need for critical requirements to be defined for scheme owners/administrators, including independence from industry associations and major consignors. • The NHVR's position is that industry schemes or associations have a role in supporting the uptake of regulatory assurance schemes and implementation of safety management systems, through education and tools, pre-audit preparation and other services.

Chapter 8: Fatigue

Key objectives

1. Provide increased flexibility to enable drivers to rest when they are fatigued (through regulator approved schedules).
2. Provide a clear and agreed authority for drivers to stop when they are not fit to drive.
3. Recognise safety technologies, including fatigue and distraction detection technology (FDDT) to help manage fatigue safety risks.

Overview

For many years, industry and governments have been faced with the challenge of how to address the subjective element of fatigue from a regulatory perspective (because fatigue is unique to individuals).

Current regulatory frameworks focus almost exclusively on managing or counting hours of work in order to mitigate fatigue/distraction related risk ('one size fits all' approach). It is now widely agreed, however, that it is not an effective means in properly managing fatigue safety risk and we need to collectively manage individual driver fatigue relating to fitness to drive. This view is supported by the fact that 95 per cent of fatigue work diary compliance checks are approved and very few major fatigue breaches have been prosecuted through the court system.

There are several tools that can help better manage individual driver fatigue safety risks, including fatigue training and recognising the use of fatigue and distraction safety technology in the regulatory framework.

This approach was supported at joint NHVR and industry fatigue safety forums held over the last two years. These forums also identified that any fatigue regime needs to be underpinned by the strong principle of not driving when fatigued, which is a shared responsibility between the driver and operator and importantly needs to include a clear and agreed 'authority to stop' for the driver.

Empowering drivers to manage fatigue

A key way to focus on driver fatigue safety risks is through fatigue risk management standards, which means having systems and procedures to ensure that fatigue related safety risks – associated with the type of heavy vehicle work and work context – are effectively managed.

For this reason, the NHVR is focused on encouraging professional operators to progress from the prescriptive tier (prescribed work and rest hours) to the performance and assurance tiers where they are operating under regulator-approved fatigue schedules.

For a performance-based (tier two) operator, this would align to a national fatigue risk safety management standard. For assurance operators, this would align closer to individual operator standards based on driver and work context (both approved by the regulator).

An example of a proposed three-tier approach to fatigue is provided at Diagram 4. The NHVR supports simplified record keeping within the new structure for all operators; however, to encourage increased investment in safety, we believe flexibility should be provided only in the second and third tiers. The proposal builds on the current Basic Fatigue Management and Advanced Fatigue Management regimes, with a more robust focus on data sharing (use of safety technology) with the regulator and less prescription (relating to AFM).

Further, as outlined in response to the specific RIS options, the NHVR supports some of the amendments for the prescriptive tier, however does not support the removal of night rest breaks.

In line with Chapter 4, it should be essential that all drivers (including in the prescriptive regime) undergo fatigue training. Training should be completed as a required competency through the national heavy vehicle licensing framework.

Technology is important for flexibility

In a recent NHVR safety study of more than 80 operators and drivers who use fatigue and distraction detection technology, the support for the technology as a game changer was unanimous.

Increased flexibility within work and hours in the new HVNL should recognise the use of this technology (as well as the recent introduction of Electronic Work Diaries) as key to delivering improved fatigue safety outcomes.

The obvious benefits of this technology are to alert drivers to the imminent fatigue risk, but the technology provides other significant safety benefits including enabling operators and drivers to identify potential fatigue patterns and adjust schedules appropriately.

The technology also helps to better understand the actual cause of incidents which is currently a struggle for industry and governments. FDDT outputs have already helped identify that most events previously linked to fatigue are caused by distraction (on a scale of 4:1).

The NHVR considers an improved focus on fatigue safety will greatly assist in reducing driver anxiety borne by the inflexible-hours regime and the current inability to stop when tired. Research clearly tells us that mental health is an increasingly concerning issue for all Australians and we should be doing whatever possible to minimise mental health safety risks on our roads.

Productivity Commission Report Reference

The NHVR's approach is supported by the PC Report, which recommended that the Transport and Infrastructure Council (now IITM) should endorse the Heavy Vehicle National Law amendments that promote a risk-based approach to fatigue management regulation for heavy vehicles.

The amendments to the Heavy Vehicle National Law should remove detailed fatigue management requirements from legislation and empower the National Heavy Vehicle Regulator to:

- publish 'acceptable means of compliance' with fatigue management regulations
- set outer limits on driving hours
- provide concessions from prescribed aspects of fatigue management regulation, where the National Heavy Vehicle Regulator is satisfied that more effective systems of fatigue management are in place.

Three-tier framework – Fatigue

The below table outlines an example of a proposed three-tier assurance framework for fatigue. The aim of the framework is to ensure that all operators have access to safe work and rest limits and to encourage progression from one tier to the next. The better an operator's ability to manage the fatigue risks in their operations through controls and countermeasures, the less prescription they manage.

EXAMPLE ONLY:

	Tier 1: Prescriptive Basic Compliance Approach **High safety risk (least transparent)**	**Tier 2: Performance** Operator Certification Modular **Medium safety risk**	**Tier 3: Assurance** Operator Safety Management System **Low safety risk (highly transparent)**
	More restrictive than current standard hours to encourage investment in safety.	*More robust than current Basic Fatigue Management regime.*	*Removes prescriptive barriers in accessing current Advanced Fatigue Management regime.*
	FATIGUE TRAINING REQUIRED FOR ALL TIERS		
Regulatory Setting	• Work and rest rules prescribed in legislation: o 13 hours work opportunity o 12 hours work in 24 hour period o 7 hours sleep opportunity o 4 hours work in a row o 5 consecutive days work o 3 nights work in 7 day period	• Outer limits prescribed in legislation: o 17 hours work opportunity o 14 hours work in 24 hour period o 7 hours sleep opportunity • Schedule drivers work and rest within prescribed outer limits	• Outer limits prescribed in legislation: o 17 hours work opportunity o 7 hours sleep opportunity • Schedule drivers work and rest within prescribed outer limits
Requirements	• Comply with prescribed work and rest limits • Written Work Diary or Electronic Work Diary	• Fatigue schedules approved by NHVR • Fatigue risk management system implemented **– based on national standard** • Electronic Work Diary or Fatigue and Distraction Detection Technology (periodic exception reports to the NHVR)	• Fatigue schedules approved by the NHVR • Fatigue risk management system implemented **– based on individual operators controls and countermeasures** • Alternative record keeping arrangements agreed with the NHVR
Flexibility	• Limited flexibility • Risk trading of hours requires use of EWD	• Moderately flexible • Increased access to additional working hours • Flexibility to manage rest breaks based on risk	• Highly flexible • Increased access to additional working hours • Flexibility to manage rest breaks based on risk • Self-clearing of minor offences

Diagram 4: Example of three-tier framework for fatigue.

Consultation RIS options

	RIS option		NHVR's position
8.1a	Making counting time simpler	**Support in principle**	• The NHVR agrees that this option is simpler and therefore commercially attractive; however, the NHVR does not support the following elements to this option (for the Tier 1, prescriptive operator). – Removal of short rest requirements (which are essential to avoid monotony effects of continuous time on task). The NHVR understands that industry support rest breaks as a positive safety behaviour but holds concern with the recording of time because drivers should be able to record what they actually do, rather than an arbitrary 15-minute break. Data suggests that a change of task or break of up to 10 minutes should be sufficient to delay the onset of fatigue. – Removing night rest breaks (which is essential for effective sleep and could result in drivers commencing work while impaired by fatigue). – Split rest break – there is no evidence that it is safe without additional countermeasures.
8.1b	Reclassifying time using a "rest reference"	**Do not support**	• The NHVR considers there is significant capacity for unsafe activities to be permitted, notably: – risk of increased night work – cumulative fatigue – dis-synchronicity with circadian rhythm.
8.2	Change Tier 2 (Performance) and Tier 3 (Assurance) Framework	**Support with amendments**	• The NHVR supports a three-tier model which provides operators increased flexibility by way of choosing between prescriptive (Tier 1), performance – based (Tier 2) and safety assurance (Tier 3).
8.3a	Change driver definition	**Do not support**	• The RIS explores the scope of positive fatigue management requirements in the new law. This includes options to adopt a driver-based definition, extend fatigue duties to a wider definition of heavy vehicles or combining both of these factors. • The NHVR is not aware of any empirical evidence that would support this option and is of the view that changes would have little impact on fatigue safety outcomes as heavy vehicle users are effectively compelled to implement driver fatigue risk management measures for all drivers/vehicles under CoR requirements. • Without hours-based measures (that is, work and rest limits and record keeping) or biological-based measures (such as fatigue monitoring), it would be very difficult for parties in the CoR to demonstrate that they had taken all practicable steps if needed as a defence.
8.3b	Widen the scope of regulated vehicles	**Support in principle**	• The expansion of fatigue requirements to 4.5 tonnes and above is supported; however, the proposed rules for vehicles less than 12 tonne require more clarity to ensure they are not too burdensome and work for the different industry sectors that will be captured. • The NHVR believes that the nature of operations undertaken by vehicles less than 12 tonnes is very different to operations undertaken by vehicles more than 12 tonne. It cannot be assumed that one set of prescriptive rules is suitable for all vehicles. • To determine the appropriate rules for drivers of vehicles less than 12 tonne, the NHVR suggests an investigation is undertaken (as

	RIS option		NHVR's position
			part of the review process) to understand the fatigue risk profile of operations involving these vehicles.
8.3c	Combination of specific drivers and specific vehicles	**Do not support**	• Refer to the NHVR's response to RIS option 8.3a as above.
8.4	Principle-based record keeping	**Support with amendments**	• The NHVR supports the simplification of record-keeping requirements, but the NHVR believes minimum requirements should be applied. • In this arrangement, operators could customise work diaries to suit their business needs (i.e. include daily checks) if they include mandatory sections (e.g. instructions, graphical grid for compliance). The regulator would approve the record before it goes into production. • This model would not require drivers to include duplicative information on every page.
8.5	Mandate electronic records	**Support with amendments**	• The NHVR considers EWDs should remain a voluntary alternative to a written work diary (except when risk trading hours) for operators in Tier 1 (prescriptive hours). • Operators in Tier 2 (performance-based) and Tier 3 (safety assurance) would be required to use EWDs or FDDTs.
8.6	National health assessment standard	**Support**	• The NHVR notes industry concerns that the Assessing Fitness to Drive (AFTD) standard does not align with crash risk and requires revision. • The NHVR is currently working with the NTC to update the AFTD standard.
8.7	Right to stop if deemed not fit for duty	**Support**	• The NHVR supports providing drivers with the authority to stop driving when they deem themselves no longer fit to complete allocated duties due to fatigue impairment or deteriorating health.
8.8	Driver self-assessment and declaration of fitness to work	**Support**	• The new HVNL should set driver fitness as a minimum safety standard. This would require: – mandatory fatigue knowledge and awareness training for all drivers – obligation for drivers to not drive while impaired by fatigue – absolute authority for drivers to stop to prevent driving while impaired by fatigue – shared responsibility for drivers to be fit for duty • The RIS overestimates the costs associated with this option. It does not factor in costs currently required for meeting the primary safety duty and state and territory licensing requirements.

Chapter 9: Access

Key objectives

1. Substantially reduce the number and resourcing effort invested in low risk access decisions where over 90 per cent of permits are approved.
2. Better partner with road managers to refocus this resource on identifying and managing high-risk vehicle movements.
3. Reduce turnaround times for low risk access applications (same – or better performing – combination on same route) by providing the regulator with authority to categorise applications by risk (RIS option 9.2a).
4. More effectively recognise the performance of heavy vehicles on the road (considering length, mass and height) by assessing risk profiles (i.e. technical performance standard rather than prescriptive regulation).

Overview

Fundamental to the law review for industry is a commitment that wholesale improvements will be made to the current access permitting system, which is heavily prescriptive and is not structured to pursue improved safety, productivity and efficiency outcomes.

Reviewing the facts in this area demonstrates the prescriptive – and lack of outcome focused – approach:

- more than 94 per cent of new permits and 99 per cent of permit renewals (out of approximately 40,000 of each category) were approved in the last 12 months
- permit response timeframes can take 28 days or longer (which is not workable for many small operators and they opt out)
- simplification in the way access is granted/facilitated through road managers could allow the NHVR to redirect resources to focus on improved productivity outcomes.

This review provides the opportunity for governments to take a leadership role and deliver a modern, workable and sustainable access regime for the future of the country's road transport task, our communities and the economy.

Deliver a modern access regime

The NHVR envisions a modern access regime where permits are required only for 'high risk' movements, and the regime is premised on advising industry 'where they can't go' rather than 'where they can go'. Under this regime, transparency of infrastructure capability (including clear 'no go' zones) would be provided to help both road managers and industry better manage and deliver an efficient freight task.

This approach would remove the need for permits through increased knowledge of infrastructure, and where it is deemed that permits are required, they should only be for movements considered high risk.

Importantly, this approach supports a shared responsibility model by transport operators and local governments, requiring road managers to understand the condition of their infrastructure and industry to self-assess whether their vehicle can travel on the network, based on infrastructure capability.

Through the Strategic Local Government Asset Assessment Program (SLGAAP), where the NHVR is assisting local road managers to assess the condition of their infrastructure, we are moving towards delivering this approach. This will be supported by the creation of a national infrastructure dataset which will feed into the NHVR's national spatial map (geospatial map) that provides a transparent and single source of truth of approved networks and infrastructure capability.

The NHVR considers this approach needs to be actively pursued by all levels of government and industry. In response to this chapter, the NHVR has also proposed initiatives that will help improve the efficiency of the road transport task in the interim.

Broaden ability to make access system more flexible

To help make the access process more flexible, the current triggers for road manager consent should be reviewed to focus on adopting a risk-based approach to road manager consent/consultation (rather than an all or nothing approach as currently exists).

Under a risk-based access regime, the NHVR may be authorised to make and use risk assessments in managing heavy vehicle access. The NHVR does not propose to diminish the authority of road managers in consenting to heavy vehicle road access. Alternatively, the NHVR would take a more proactive role in working with road managers, particularly by categorising access cases by risk. This would support road managers by better informing them of the key risks they need to focus on in determining whether to consent to access.

The assessment would be done based on an 'envelope' approach. This approach represents a heavy vehicle type, or characteristic to which a road manager has previously consented to access on a given road. The NHVR would use that consent as a precedent in assessing other heavy vehicle types with characteristics within the precedent's 'envelope' as low risk access propositions. The NHVR (through the NHVR Portal) can quickly establish previous movements to determine whether an

application is of a similar or lower risk than a previously granted approval.

Due to the improved transparency provided through the NHVR Portal, all road managers would be able to review what applications have been approved and refused.

This would foster a more strategic approach in moving routes to gazetted networks (where appropriate). Importantly, it would reduce turnaround times and remove pressure from road managers, allowing them to better focus on access requests that are considered as higher risk.

This approach was supported in the PC Report, which identified that the NHVR should negotiate with individual road managers to facilitate a risk-based assessment of permits, using information from previous access permit approvals on each route. It further identified that this information should be used to construct more flexible pre-approved permit arrangements with road managers.

Risk-based process should lead to more gazetted networks

Notices (or gazetted networks) are the most efficient means for providing access. They require only a single consent from relevant road managers that lasts for the notice duration (typically five years) and provides immediate access to any heavy vehicle operator complying with the notice conditions without needing a permit.

There is scope to rapidly increase the number of gazetted routes and reduce the need for permit applications.

An achievable improvement in the short term is for the NHVR, state authorities and road managers to continue to support the implementation of a program of low-risk heavy vehicle access enhancements. This would mean gazetting low-risk, currently permit-based heavy vehicle access movements so that they may operate under notice.

Examples of these movements include:

- a large number of low risk, class 1 (OSOM) heavy vehicle movements currently operating under permit but with a history of near-uniform access approval
- the development of a PBS Level 2A notice to operate on existing B-double networks
- an increase in PBS Level B road networks (which incorporate the same performance/ safety standards as for PBS Level A heavy vehicles and networks - but provide an incremental increase in vehicle length limit).

Productivity Commission Report Reference

The Council of Australian Governments should direct road managers (including the state road authorities) to work with the National Heavy Vehicle Regulator to expand key freight routes covered by notices, allowing as-of-right access for larger vehicle types.

The focus of this work should include expanding gazetted access networks for: vehicles approved through the Performance-Based Standards (PBS) scheme (including PBS B-doubles, A-doubles and B-triples), at least to match the networks for the equivalent non-PBS vehicles as well as types of vehicles for which permit applications are almost universally approved.

Road managers should upgrade road infrastructure to allow heavy vehicle access where the benefits exceed the costs. Where road network constraints prevent heavy vehicle access, road managers should ensure that there are adequate truck stops and logistics centres to allow larger vehicles to be broken down into smaller combinations.

Reduced turnaround time for consents

The NHVR is of the view that ideally a number should not need to be applied to timeframes because permits would only be required for high risk operations and this should be managed in a more direct and transparent way between road managers and operators.

However, if a timeframe is required it should be reduced from 28 days to 14 days to provide increased certainty for industry.

Improved information collection rather than reliance on permits

For large companies, that have good and constant contracts, the access system is an essential cost of doing business. For operators performing ad-hoc transport tasks (i.e. customer requests load to move now), the system is not sustainable.

The high percentage of permit approvals indicates that we need to find alternative and more timely ways of gaining access to the information permits provide road managers.

As outlined in Chapter 6, road managers have an increasing interest to be able to access information about vehicle movements on their infrastructure; however, this application needs to be considered in a consistent manner based on performance standards (see below).

Improved access under a risk-based model

The risk-based model supported by the NHVR in Diagram 3 provides flexibility to operators who demonstrate an increased investment in safety practices and technologies. For the top two safety tiers who demonstrate an increased investment, productivity efficiencies should flow and these could be linked to data sharing arrangements.

For example, the performance tier operators (Tier 2) could share de-identified movement data to road managers and access increased masses, increased network access and an increased permit duration period of five years (where permits are required).

Note: Road managers would still have authority to remove the permit if an issue was detected.

The NHVR considers that for the assurance tier operators (Tier 3), access should move to an 'as of right' arrangement with identified no go zones and no requirement for permits. This is because increased and identifiable data sharing arrangements would be in place between these operators and road managers.

Recognise performance of vehicle, rather than rely on prescription

Vehicle road infrastructure risk varies with factors better suited to a technical standard (i.e. rollover, swept path criteria rather than 'pigeon holing' vehicles into prescriptive dimension class systems).

Standards would be developed around the performance criteria currently applied to Performance Based Standards (PBS) vehicles (particularly swept path requirements) and findings from current ARRB/NHVR research assessing electronic roll stability in mitigating heavy vehicle rollovers.

This change would allow a move from prescriptive height and length limits and enable operators to build vehicles to suit their business needs (and increase safety and productivity) without creating any additional infrastructure risk to road managers.

This concept supports an envelope approach to assessing a vehicle's access on the network, where other heavy vehicle types with characteristics that fit within the envelope of a combination approved prior would receive the same approval. For example, right now a 9-axle PBS approved truck-trailer combination can safely operate within the envelope of a 9-axle B-double. Where the B-double has broad road access, the truck-trailer has less. The access could be safely expanded for this combination providing improved efficiency.

Ultimately, the NHVR would be in a position to provide a swept path calculator (built into the geospatial map) that would enable operators to input their vehicle details and receive notification of whether it meets its swept path and rollover requirements to access particular networks.

This option also ensures heavy vehicles that better suit the general fleet are moved out of PBS and the scheme enabling an increased focus on innovative combinations (See Chapter 10).

Update Australian Bridge Assessment Standards to reflect current research

The SLGAAP is already starting to provide important insights into infrastructure assessment standards, particularly how risk mitigation methods (reduced speed, single vehicle travel over bridge) can improve access outcomes. As part of SLGAAP, recent assessments of more than 100 bridges showed that when conditions are applied, 90 per cent of assessments that would usually be rejected are returned as approved (or identified the vehicles that could safely travel on the infrastructure).

This new research should be used to help with improved access decision making. Importantly, it should be reflected in infrastructure assessments and guidelines, including the Australian Bridge Assessment Standards, which is used by most local road managers.

A shared risk-based approach to productivity outcomes

In introducing a risk-based approach for industry, the NHVR is of the view that a similar opportunity for road managers would also deliver valuable benefits and deliver improved outcomes for councils.

The concept of a risk-based model could assist in providing incentives for road managers to provide more favourable access decisions. The concept of a 'Route Smart' or 'Truck Friendly' road manager, whereby road managers are focused on improved outcomes such as increasing access to higher productivity vehicles, providing adequate heavy vehicle rest areas and facilities and gazetting networks, would be seen as a high-performing road manager (i.e. Tier 3 road manager).

In line with the model adopted for industry, the councils considered as high performing would receive increased incentives such as priority federal and state government funding for key freight infrastructure.

Consultation RIS options

	RIS option		NHVR's position
9.1	Changes to general access		
9.1a	Increase in GML to CML for all operators	**Support in principle**	• An increase to CML would be beneficial for the economy. • The NHVR notes that road managers may consider analysing the road network capability to broadly apply CML. • Increased productivity benefits would need to be considered for operators investing in improved safety (Tier 2 and Tier 3)
9.1b	Increase in GML to CML – enrolment in NHVAS	**Do not support**	• Further work on what a risk-based assurance framework looks like is required to be able to comment on this option. • Increased productivity benefits would need to be considered for operators investing in improved safety (Tier 2 and Tier 3)
9.1c	Increase in GML to CML – OBM enrolment	**Do not support**	• The proposed regulatory control of on-board mass (OBM) enrolment is disproportionate to the change in mass.
9.1d	Increase in allowable vehicle length		
	- Option 1: All vehicles	**Support with amendments**	• Increase in length to 20 metres is supported provided that the vehicle complies with a performance standard (swept path) administered by the NHVR. • This enables a consistent and practical approach to be applied to all vehicles.
	- Option 2: Vehicles with safety features	**Do not support**	• It would be difficult to justify the requirement for safety features with the proposed length limit increase. • Requiring longer (20m) combinations to be fitted with safety features may increase their safety by some measures – but not those associated with their capacity to 'fit' on the network.
	- Option 3: Increase in allowable vehicle length for some vehicles RAVs for additional space for the sleeper cabin	**Support in principle**	• This is supported with the understanding that the initiative may improve driver welfare (sleep quality). • The NHVR requires more detail on how the extra 1 metre would apply across the fleet. • The option should also take into account access broader than remote areas to accommodate last mile deliveries beyond the remote areas classification.
	New NHVR option: Increased vehicle height		
	- Allow heavy vehicles to operate without route restrictions at a height limit of 4.6m – subject to meeting performance standards developed and administered by the NHVR.	**Support**	• The HVNL already allows heavy vehicles to operate at up to 4.6m – subject to meeting prescribed conditions aimed at mitigating rollover risk. The conditions; however, are overly restrictive, not risk-based and preclude participation by a large proportion of operators servicing freight tasks associated with 4.6m high transport (i.e. container transport). • The NHVR proposes that a better (risk based) option would be for conditions to refer to a performance standard administered by the NHVR. That standard would be developed around findings from ARRB rollover research currently underway. • This would be developed in conjunction with 7.1d (option 1).
9.1e	Introduction of 'enhanced general access category' with more weight, length and height for vehicles with	**Do not support**	• The NHVR considers CML heavy vehicles as low-risk from a mass compliance perspective. • The value and purpose of requiring heavy vehicles to be fitted with an OBM system would be a significant cost to industry to

RIS option			NHVR's position
	increased safety features and OBM		operate on networks that currently could accommodate these masses and dimensions.
9.2	Permits and authorisation processes		
9.2a	Recognise precedent and expand expedited process for equivalent/lower risk applications	**Support**	• The NHVR supports this option as it will result in a reduction of permit timeframes. • This option should also apply to obtaining road manager consent for notices.
9.2b	Allow for opt-in road manager delegation	**Support**	• The NHVR supports the ability for road managers to delegate their access decision-making powers. • However, a delegation arrangement may add some complexities and confusion to the road manager consent process.
9.2c	Geospatial map given authority in the law	**Support**	• The NHVR supports this option of providing a real-time 'single source of truth' for industry in the form of a geospatial map. • A geospatial map provides industry with a level of certainty about access and facilitates faster handling of repeat and low risk permits.
9.2d	A risk-based approach to vehicle classes		
	Option 1 Freight and passenger, OSOM	**Support**	• The NHVR supports this option because it reduces the complexities with industry and road managers in understanding the different types of vehicle classes. It also reduces the administration of notices and permits for the NHVR. • This option will allow envelopes to be developed for each category. The NHVR can use an envelope approach in developing networks.
	Option 2 Existing authorisation category, exemption categories	**Do not support**	• See above.
9.2e	Amendment to third party consent requirements		
	Option 1 Remove third party consents	**Support**	• The principle that the NHVR is obligated to wait for third party consent to approve access is not supported. • Obligations under another law of a jurisdiction are complex to administer and maintain on a national level.
	Option 2 Capture third parties in access decision making	**Do not support**	• This option would considerably blow out times for consent decisions. • While this option is not supported by the NHVR for practical reasons, Option 2 could be a workable option if third parties were: – diligent in registering all their assets with the NHVR and maintaining that register – responsive to access requests in a timely and effective manner. • Currently, the NHVR has significant difficulties receiving timely third-party consents. The RIS needs to provide further information about how third parties would be compelled to comply. • Many third parties have limited exposure to heavy vehicle access and accountability for access outcomes. There is ample evidence of likely problems arising from implementing a consent framework capturing third parties based on the current model that applies to road managers under the HVNL.

RIS option			NHVR's position
			• The RIS does not reveal any consultation with third parties to gain feedback on their views.
9.2f	Amendment to access decision criteria to allow access decisions to include whole-of-network impacts and strategic network management	**Do not support**	• This option does not support the HVNL objective to 'promote industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles'. • The NHVR acknowledges that governments have objectives to promote greater use of rail freight. However, blocking (otherwise safe and appropriate) heavy vehicle access would directly contradict the HVNL and this RIS's objectives. • The NHVR considers that an option to consider the benefits of improving the entire freight task by utilising higher productivity vehicles should be considered instead of the individual vehicle. • Road managers can more strategically manage whole-of-network impacts by developing networks to manage demand, rather than attempting to achieve that by restricting access. (i.e. inform operators where they can go, rather than trying to achieve that by process of elimination – refusing access to other roads).
9.3	Timeframes and reviews		
9.3a	Statutory timeframe, deemed referral and refusal for nil response		
	Option 1 28-day statutory timeframe Option 2 Varying timeframes for different vehicle categories	**Partial support**	• The NHVR believes option 1 would potentially contribute to improvements in the road manager consent framework. The NHVR recommends, however, the timeframe be 14 days. • The NHVR does not support the option of having two statutory timeframes (28-day or 7-day) dependent on the vehicle category (including deemed refusal for a nil response).
9.3b	External review of access decisions		
	Option 1 Independent review panel	**Do not support**	• The costs of administering an independent review panel would exceed the benefits – if, as proposed, the panel's findings were not binding. It is likely that applicants would neglect the option to have adverse decisions reviewed if the decision would likely stand anyway.
	Option 2 Referral to an existing tribunal or court	**Support**	• The NHVR supports this option for an existing tribunal or court to make a binding decision on disputed road manager responses.
New NHVR option – authority to provide deemed approval and grant consent			
	The NHVR provided authority to approve low risk access applications	**Support**	• There are many circumstances in which existing consent on a road is substantially the same or similar to a previous request. This means the NHVR can sometimes assess a request as posing no, or negligible risk – without having detailed knowledge of the road infrastructure. • This would significantly reduce permit timeframes and move these applications to pre-approvals and ultimately notices.
	The NHVR granted authority to determine consent if road managers do not respond in time	**Support**	• Under this option, road managers are given 7 days to respond to the NHVR's consent requests with a statement of intent – to give or refuse consent immediately, or to clarify their need for up to 14 days (under NHVR-proposed timeframes) to respond. • If a road manager fails to respond, the NHVR should have authority to determine consent.
9.4	Move access decision making process from	**Support**	• The NHVR supports the access decision-making process moving from the primary legislation to regulation and standards. This

RIS option			NHVR's position
	primary legislation to regulations or standards		action will reduce timeframes when amendments to access requirements are essential to support access regime improvements.
9.5	Pilots and escorts		
9.5a	National Operational Accreditation Scheme (single-tier pilot approach)	**Further work required**	• Providing the NHVR with the authority to establish assurance schemes would enable such a scheme to be developed (among others). • Addressing the recommendations from the OSOM review will assist in developing a scheme, including implementing harmonised national standards, harmonising inconsistencies around accreditation for pilot driver and simplifying the consent process. • The NHVR acknowledges the completed policy regarding how a national pilot and escort vehicle driver accreditation scheme would be established.
9.5b	National Operational Accreditation Scheme (dual-tier pilot approach)		

Chapter 10: Safer vehicle design

Key objectives

1. Deliver guaranteed access for safer and more productive vehicles through policy changes.
2. Transition mature vehicles from the PBS fleet to the 'as of right' fleet, enabling an increased focus on innovation.
3. Streamline approval processes and make PBS design templates available to industry

Overview

The safety and productivity benefits of Performance Based Standards (PBS) vehicles are well documented. PBS vehicles are involved in 46 per cent fewer crashes per kilometre travelled when compared with their conventional equivalent and deliver productivity improvements by 15 to 30 per cent.

These vehicles also have a considerably younger median age of less than four years – compared with more than 12 years for the national fleet. They deliver substantial environmental and community benefits, including savings of an estimated 173 million litres of fuel and approximately $107 million in road maintenance expenses in 2018.

Despite the positive benefits these vehicles provide, the system still perceives PBS vehicles as 'high risk' and they are subject to a slow and cumbersome vehicle and access approval process. This is a barrier for many operators, and it creates reluctance by some to make the investment in PBS for fear their combination could sit idle.

Governments have a collective responsibility to ensure the national and local policy settings better support the uptake of safer and more productive vehicles. This means removing the 'high risk' perception and demonstrating we are serious about encouraging the increased adoption of modern, safer and innovative vehicles in the national fleet.

Guaranteed access for PBS needs to be a priority:

Having administered the PBS Scheme since 2013, the NHVR has first-hand knowledge of the network access challenges faced by operators.

The NHVR is of the opinion that PBS vehicles should be managed in the same manner as other restricted access vehicles such as B-doubles and road trains (or general access vehicles where appropriate). This would allow technical standards for their construction and configuration to be stipulated, and road networks to be gazetted to provide guaranteed access.

Key changes can be made now, outside of the law, to improve PBS access. This includes immediately expanding PBS road networks to at least those roads under which corresponding, non-PBS heavy vehicles can already operate under notice.

Ideally, as outlined in response to Chapter 9, network access for PBS vehicles (and other heavy vehicles) should be based on a performance standard (e.g. swept path, rollover) rather than prescriptive limits.

Streamline PBS vehicle administration and approval processes

The multiple approval processes for the PBS Scheme creates unnecessary administrative complexities and delays in getting safer vehicles on the road.

The NHVR supports the proposal to enable manufacturers to self-certify that a vehicle complies with PBS standards. Self-certifying will reduce the turnaround time for vehicle approvals and ensure the system is more efficient for industry.

Likewise, approving access in the design phase (ensuring the performance of the vehicle is the same in the build phase) will also improve approval timeframes.

These changes, combined with an increase in gazetted networks and moving mature designs to the as of right fleet, will provide significant efficiency benefits and ensure a larger proportion of the heavy vehicle task is being undertaken by safer and innovative vehicles.

These streamlined processes will become particularly important with the freight task expected to double by 2030.

Pre-approved designs and PBS Blueprints:

The NHVR supports creating PBS design templates or blueprints to encourage uptake of safer and more productive vehicles, while also increasing efficiency and reducing costs for operators.

This initiative would allow operators to use a regular approved off-the-shelf model and have vehicles built to specifications with associated and guaranteed access to the freight network.

Transition mature designs out of PBS

A fundamental reform option (which would address scheme issues relating to administration and access) is the transition of mature PBS designs (such as truck and dogs) out of the scheme and into the 'as of right' heavy vehicle fleet.

When originally established, the RIS provided that PBS would be a path for industry to innovate and develop the next generation of prescriptive heavy vehicle. PBS was to be the testing ground for design, from which mature and accepted designs would migrate from PBS to the general fleet. Since 2007, the transition from PBS to the general fleet has not occurred.

While operating a PBS vehicle has notable benefits in terms of safety and productivity, they also come with a notable investment of time and money. By requiring designs that are mature and relatively low risk to follow the full PBS approval

process represents an over regulation that should be addressed.

In terms of scale, truck and dog, prime mover-semitrailer and A-double combinations represent most of the PBS fleet and are very mature designs. In 2019, the NHVR approved 1,749 PBS combinations, 1,511 (86%) of which were these mature designs.

Transitioning these designs out of the PBS Scheme would likely increase the uptake of these safer and more productive vehicles. It would also allow the NHVR to focus on working with industry and jurisdictions to facilitate the design of the next generation of innovative vehicles.

Adopt a modular approach to PBS

The PBS scheme is currently structured to approve whole combinations rather than individual vehicle units. These approvals are specific and do not allow for simple fleet interchangeability (e.g. swapping compatible prime movers if a prime mover is unavailable), even when it poses no additional safety risk.

Enabling fleet interchangeability would provide increased flexibility and reduce costs and inconvenience to industry.

Expansion of specified PBS vehicles

In October 2018, the HVNL was amended to introduce the concept of a 'specified PBS vehicle'. Under these provisions, a Level 1 PBS vehicle that is not a bus and is not longer than 20m, receives general access to the road network at general mass limits.

When considering ways to provide PBS operators with flexibility in how they use their vehicles, consideration should be given to extending specified PBS vehicle provisions to common Level 2 vehicles. This extension would allow access to the equivalent prescriptive networks at standard masses for those networks without the need for permit.

Mass exceptions for PBS vehicles

Significant progress has been made in granting general network access to specified PBS vehicles; however, mass concessions were not extended to these vehicles.

The NHVR recommends that all existing mass concessions, such as one tonne mass transfer and concessional mass limits, are extended to specified PBS vehicles.

Allow exemptions for PBS designs with improved safety features

In several cases, the NHVR has dealt with design applications where, due to the inclusion of innovative features or components, an application has had other minor non-compliances that were outside the standards prescribed for the PBS Scheme. For example, a vehicle design that included innovative axle features to minimise pavement impacts such as scrubbing or to improve turning performance at low speed, has resulted in non-compliance with other requirements related to retractable axles or transition masses.

To allow for more efficient processing of applications for these innovative designs, the future law should allow a PBS approval to grant exemptions from other vehicle standards that are minor and inconsequential.

[1] *899 (51%) truck and dog combinations; 310 (18%) prime mover-semitrailer combinations; 302 (7%) A-Double combinations.*

Consultation RIS options

	RIS option		NHVR's position
10.1	Streamlining the PBS approval process		
	The NHVR is given the authority to assess and approve applications	**Support**	• The NHVR agrees that the PBS Review Panel (PRP) is not required to be involved in the operational aspects of the PBS Sheme. • The NHVR does, however, recognise and support the continued value the PRP adds to the process in ensuring the strategic goals of the scheme are met (i.e. better recognising safer and more productive vehicles on freight networks).
	Linking access permissions to design	**Support with amendments**	• Under the HVNL, there are currently no restrictions preventing an operator from applying for access when a design approval has been issued. • The common issues are that between the design and commissioning stage there are commonly minor design changes that result in the need for a new access consent to be sought. • When certifying a PBS vehicle that has slight variances, an assessor is required to ensure the vehicle meets the same on road performance standards as the original design. • Provided this RIS proposal recognises these minor variations, removing the need for new consent, this proposal may assist in reducing the idle time experienced by operators. • The refusal rates between design and vehicle approvals are low at less than 10 per cent (in 2019-20 90.1% of road manager consent requests for PBS vehicles were approved[2]).
	Manufacturers self-certify that the build is as per the design	**Support**	• The NHVR supports this approach in order to ensure an efficient PBS system and provide an adequate number of service providers to assist in the commissioning of PBS vehicles. • The NHVR is also investing in new ways to reduce the timeframes and costs associated with the certification process, including automating checking processes in the NHVR Portal.
	Type approval of component vehicles	**Support**	• The NHVR supports type approval of individual components or a modular approach to PBS to provide increased flexibility (as outlined in the submission). • This work would require new standards or a reform of the current standards.
	Allow transfer of approvals with sale of a PBS vehicle	**Support with amendments**	• The transfer of PBS vehicle ownership or operator name change on an existing approval can occur now. • In relation to access arrangements, where an entire PBS fleet operating under a single access permit is transferred, a transfer of the access permit can occur without the need to seek road manager consent. • When only part of the fleet is sold (for example, 5 of 50 vehicles), however, the new owner of the five vehicles would be required to apply for a new access permit even if the routes and masses are identical, for example. • The NHVR supports the transfer of PBS access arrangements when a partial or whole fleet is sold.

[2] 29,325 consent requests approved of a total 32,558.

	RIS option		NHVR's position
	Additional elements to be considered as part of this option	**Support**	• The NHVR supports the following elements proposed in the RIS to improve efficiency in the PBS Scheme, including the following – Remove the need for assessor and certifier applications to go to the PBS Review Panel – Remove the need for the Assessor Accreditation Rules to be approved by Ministers – Remove the need for the Vehicle Certification Rules to be approved by Ministers – Retain the need for the Standards and Assessment Rules to be approved by Ministers. • The current system does not promote a flexible approach or ability for the NHVR to rapidly action reform.
10.2	PBS technology standard	**Support**	• The NHVR supports the review of the PBS standards to allow for technology to be considered when undertaking a PBS assessment.
10.3	Increased vehicle width	**Do not support**	• This change needs to be considered through the ADR process rather than trying to shoehorn it into the PBS Scheme. The PBS Scheme is focused on vehicle innovation and this option does not align with the scheme's intent.

Chapter 11: Roadworthiness

Key objectives

1. Provision for regulator to deliver a national risk and evidence-based heavy vehicle inspection model.
2. Provision to recognise the National Heavy Vehicle Inspection Manual as a standard in identifying defective vehicles.
3. Reform exemption issuing powers to be risk-based to improve industry efficiency.

Overview

Ensuring that vehicles comply with the heavy vehicle standards is fundamental to heavy vehicle safety and therefore an essential part of the heavy vehicle regulatory regime.

Several improvements can be made to the vehicle standards requirements to better match the vehicle standard requirements to the operational reality on the road, while improving transparency.

Risk-based inspection scheme

The NHVR has been developing its reform roadmap for the transition from existing state-based vehicle inspection regimes to a nationally consistent risk and evidence-based approach.

Due to the number of variations in inspection approaches between states and territories (as outlined in the RIS), the development and progressive implementation of a single inspection framework is a significant reform task.

To support the NHVR in progressing this important reform in the most efficient manner, it is recommended that the regulator is provided the authority to prescribe vehicle inspection requirements and allow accreditation frameworks for third-party service providers to be made.

Improved recognition of the National Heavy Vehicle Inspection Manual

The National Heavy Vehicle Inspection Manual (NHVIM) is the NHVR's plain English guide about heavy vehicle faults that would result in a vehicle being considered defective.

The intent of the NHVIM was to provide industry, authorised officers and vehicle inspectors with simplified criteria, based on the prescribed standards set out in both the Australian Design Rules and the Heavy Vehicle (Vehicle Standards) National Regulation.

Despite the intent of the NHVIM, it is not currently recognised in the legislation, and as such cannot be referenced when determining a vehicle is defective.

The NHVR is of the opinion that recognising the NHVIM would continue to improve the transparency and effectiveness of managing non-compliant vehicles and provide operational efficiencies in detecting and prosecuting offences.

Require the use of self-clearing defects for non-safety cases

The 2018 amendments to the HVNL included a revised structure of the defect notice classification. This included the introduction of a self-clearing defect for non-compliances that did not pose a safety risk. These amendments adopted a more risk-based approach and improved regulator and operator efficiency.

While progress has been made on a risk-based approach to defect notices, the NHVR is of the opinion that offences relating to defective vehicles should also be reviewed.

Currently, it is an offence for a person to use or permit the use of a vehicle on a road that does not comply with the heavy vehicle standards and is subject to a single uniform penalty provision.

Given the focus on moving to more risk-based interventions, the NHVR recommends amending this offence to either provide a lesser penalty when the non-compliance does not pose a safety risk (similar to the approach taken for defect notices), or limiting the offence to only non-compliances that pose a safety risk.

Risk-based vehicle standards exemptions

The law currently places strict limitations on the circumstances in which the NHVR may consider a request for an exemption permit. These limitations restrict the NHVRs ability to allow the use of vehicles, that while not complying with the heavy vehicle standards, could operate safely subject to conditions.

The NHVR would support amendments to the law that adopted a risk-based approach to considering applications for exemption permits.

Consultation RIS options

	RIS option		NHVR's position
11.1	Standardised maintenance/roadworthiness assessment		
	Recognise the NHVIM expressly in the HVNL	**Support**	• The NHVR supports the option to prescribe the NHVIM because this would have a number of benefits for industry and would improve the efficiency of enforcement and prosecution for regulators.
	Require the use of self-clearing defects for non-safety cases	**Support**	• The NHVR notes the proposal to mandate the use of self-clearing defects for all non-safety related defects has already been implemented in the HVNL (see section 526).
	Where a defect does relate to safety, then an inspection for defect clearance would be required only to check whether the identified defect has been rectified, rather than a full inspection	**Support with amendments**	• The NHVR supports the intent of the option to limit the inspection requirements for minor and major defects of the components identified during the inspection as being defective because it shifts towards a more risk-based approach. • The NHVR, however, would like to see the initiative considered in the broader context of risk-based inspections.
11.2	Risk-based inspection scheme	**Support with amendments**	• This option outlines a proposal to move to a nationally consistent risk-based inspection system, a concept that is supported in principle by the NHVR. • To support the NHVR's development of a National Inspection Framework, the heavy vehicle regulations should provide for the establishment of a national inspection scheme and the accreditation of third-party service providers. • This would facilitate the NHVR to implement a national approach in the future, without the need for amendments to the primary legislation (but still subject to ministerial oversight through approval of new regulations).

NHVR
National Heavy Vehicle Regulator

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