

Industry Codes of Practice

Introduction



OVERVIEW

The Transport and Logistics industry is an intrinsic part of the Australian economy. The industry provides delivery of vital goods and services throughout Australia and includes road transportation, logistics, warehousing and stevedoring. New technology such as telematics, automated and semi-automated vehicles, safety equipment and data systems continue to change and shape the industry.

The *Heavy Vehicle National Law* (HVNL) is harmonised legislation regulates operations of vehicles over 4.5 tonnes gross vehicle mass in six Australian jurisdictions. The law is administered by the National Heavy Vehicle Regulator (NHVR). Under the law, the NHVR has four key objectives: promote public safety, manage the impact of heavy vehicles on the environment, road infrastructure and public amenity, promote industry productivity and efficiency and encourage productive, efficient, innovative and safe business practices.

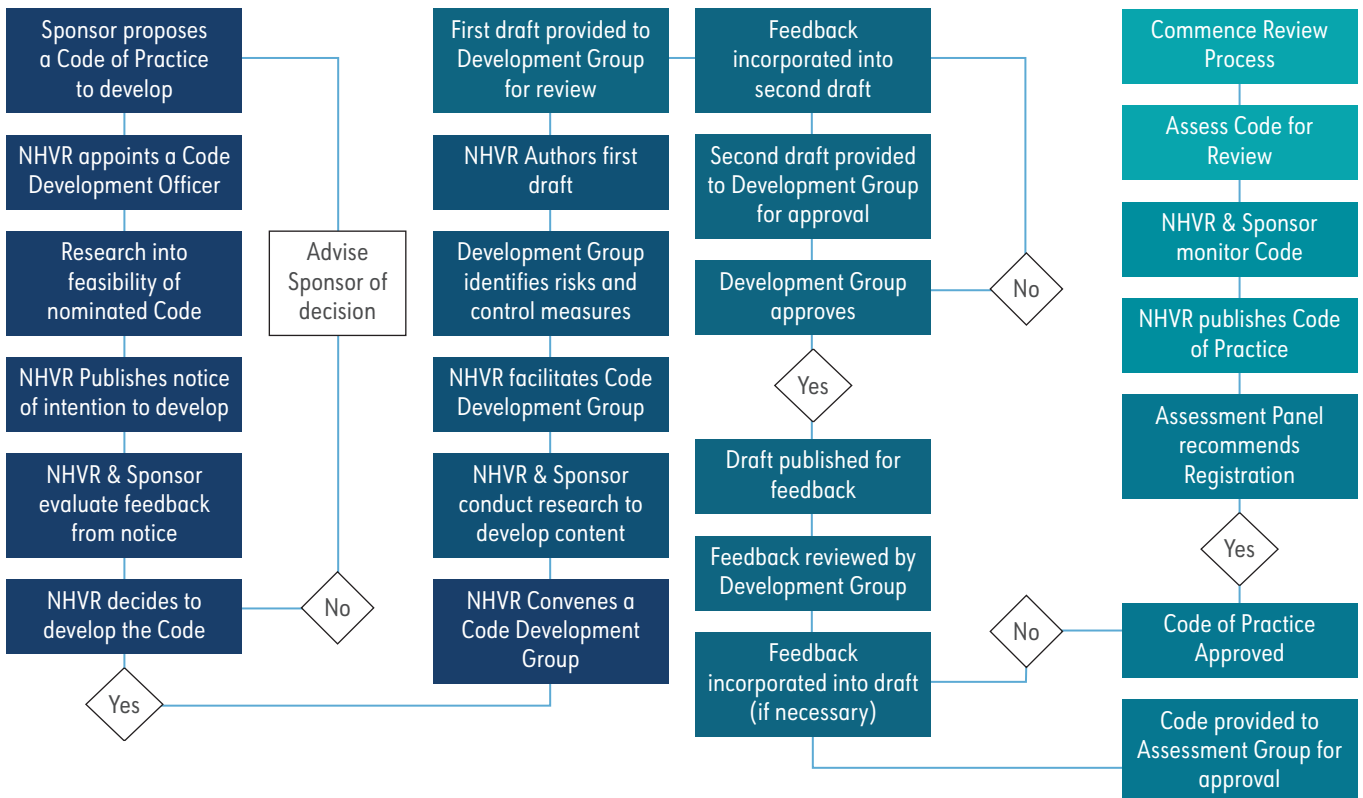
One of the means the NVHR employs to achieve these objectives is working closely with industry and all stakeholders to develop and register industry codes of practice

Purpose

Incorporating the skill and experience of industry participants, Industry Codes of Practice offer a means of translating the requirements of the law into a practical methodology incorporating good practice for the whole industry.

To meet the requirements for registration, an Industry Code of Practice must be high quality, applicable to the chosen sector, and adaptable for all participants in an industry, from an individual to a large corporation. The Code must also be based upon and support risk management, a methodology universally recognised as the most effective way to manage risks in safety-critical industries.

Through registration and publication, a code of practice becomes freely available to the industry as a whole and serves as a common point of reference for best practice. Codes may also foster shared responsibility. When each party in the chain is working to the same standards and expectations, this emphasises their mutual influence and obligations. Consistent expectations and practices may also improve efficiency in the industry and facilitate assurance.



What is a Registered Industry Code of Practice?

A *Registered Industry Code of Practice* (RICP) is one that has been developed in accordance with the Guidelines and assessed as qualifying for registration by the NHVR under section 706 of the *Heavy Vehicle National Law* (HVNL).

It must require and assist parties in the chain of responsibility to comply with the primary duty to ensure the safety of their transport activities so far as reasonably practicable.

A distinguishing feature of an RICP is its evidentiary role in court proceedings where a person or business has been charged with a breach of the primary duty.

Information in the RICP about hazards, risks and controls may be used as evidence of what a defendant knew or ought to have known about a safety issue. This is one part of how a court determines whether the person has done everything that is reasonably practicable to eliminate or minimise a risk to public safety (s632A).

A court won't conclude that because an RICP recommends a particular control measure, that every person must implement it. There may be good reasons why that measure would not be reasonably practicable for a particular person or business. A court considers all the circumstances before determining whether the control measures that were taken were adequate or not.

Is it obligatory to adopt an RICP?

As explained above, recommendations in an RICP are not obligatory. Choosing to adopt or follow the recommendations in an RICP is not obligatory, but a voluntary choice. A party in the Chain of Responsibility (CoR) or the executives of the party may use an RICP as one way to take responsibility for the safety and compliance of their business and to be part of continuous improvement in best practice within their industry.

A party may use the RICP to identify risks in their business but use other equally effective or superior measures to manage those hazards and risks. Or they may use some controls from the RICP and some of their own devising.

In any case, familiarity with relevant RICPs ensures that the party is aware of what the rest of the industry considers to be the relevant risks, and best practice for managing them. This puts them in a much better position for complying with their primary duty, and for working with other parties.

Operators in non-participating jurisdictions may not obtain the legal protection of complying with an RICP, but they can still use the guidance in Registered Industry Codes of Practice to improve the safety of their businesses or to satisfy some of the contractual obligations of business partners.

The NHVR's role

The NHVR works closely with industry to develop, draft, assess and register an Industry Code of Practice.

Preventing duplication and inconsistency

Rather than the uncertainty and increased regulatory burden of many codes covering the same areas it is better to have a few that are well targeted. During the development and registration phases, NHVR's procedures and its consultation with developers are aimed at avoiding overlap or inconsistency between registered codes.

Keeping RICPs relevant

The NHVR is responsible for ensuring that RICPs are reviewed and amended to accommodate new circumstances such as changes to law, advances in technology, modifications to equipment, or altered operating environments.

Each RICP has a fixed review date, usually within 3 to 5 years from its date of registration. The NHVR may also commence a review of an RICP, or parts of it, at an earlier time, when it becomes aware that revision is warranted. This may be prompted by the Sponsor of the RICP, a member of the public, or through NHVR's own sources of information.

The NHVR has statutory powers to cancel the registration of an RICP, however this power would be exercised only in exceptional circumstances because of its impact on industry members who invest time and resources contributing to the development of a code, or to its implementation.

Keeping industry and the general public safe

In all decisions relating to RICPs, the NHVR will give primary consideration to potential impacts on public safety.

RICPs at a glance

Here are some of the key things you need to know about an RICP:

Which industries develop RICPs?	An RICP may be created for any industry whose activities fall under the provisions of the HVNL. This could include shipping, freight forwarding, exporting and importing, retailing, wholesaling, manufacturing, service industries, mining and resources, primary production and the road transport industry.
Who may sponsor an RICP?	Any person, organisation or industry body in consultation with industry experts and the NHVR may sponsor an RICP.
Who owns the RICP?	An RICP is published under a creative commons licence that protects the authors' right of attribution and prohibits other parties from exploiting the content of the RICP.
How long is it registered?	A code is registered until the review date set by the NHVR, usually between 3- 5 yrs.
Where does it have legal status?	An RICP has effect in all jurisdictions covered by the HVNL, unless otherwise specified.
What content should it not contain?	Matters such as dispute resolution, sanctions for non-compliance, competition, insurance, and legal liability indemnity that are beyond the scope of the HVNL cannot be included in an RICP.
Who can adopt an RICP?	Any business or participant in the transport industry and supply chain can adopt an RICP by downloading the document from the NHVR website and applying it within their business.

FOR RICP ADOPTERS

Any adopter of an RICP must develop and implement a risk management process that enables them to identify, assess and control the risks specific to their own operations. They will use the RICP to better understand risk types within their industry and controls known to be effective and representative of industry best practice.

The RICP will also guide them to identify risks and to devise their own system for managing them. The scale and complexity of that system will vary with the nature of the business but there will be common features such as documented processes or mechanisms for monitoring and review.

Some code adopters will undertake this process without assistance. Others may look for help from industry associations, service providers or consultants or may make use of compliance tools, templates and publications provided by industry or government. In some cases, RICP sponsors may offer services or tools to help adopters comply with requirements.

Adopters may find it useful to participate in audit schemes to verify that they comply with an RICP in order to satisfy contractual requirements, to mount a more compelling defence in the event of legal actions, or for their own peace of mind. The value of an audit will depend on the experience, qualifications and objectivity of the auditor and on how thorough the audit process is.



Benefits of adopting an RICP

These are some of the benefits for any business or organisation wanting to adopt an RICP and implement its requirements:

Better safety performance	<p>Implementing risk management systems in accordance with an RICP raises awareness of risks and the effort needed to mitigate them, leading to:</p> <ul style="list-style-type: none"> • more efficient allocation of safety resources • improved safety culture and performance.
Better compliance	<p>A risk-based approach to managing safety enables you to comply with the HVNL in a way that best suits your business. It is also likely to improve your compliance with other health and safety and environmental related legislation.</p>
Reduced costs	<p>The adoption of safety and risk management systems means fewer incidents and accidents, which leads to:</p> <ul style="list-style-type: none"> • reduced direct costs such as damage, recovery, injury and lost time • reduced indirect costs such as insurance premiums, legal exposure, and internal investigations.
Fewer audits	<p>Better compliance records may reduce the number of audits to which a business is subjected.</p>
Fewer penalties, cancellations and claims	<p>Better safety and compliance also means fewer penalties and cancellations of permits or approvals under the HVNL and reduced exposure to civil claims. In the event of a breach, your compliance with a code may assist your defence.</p>
Better reputation	<p>Fewer mishaps and higher efficiency achieved through risk management leads to better regard from staff, customers and suppliers.</p>
Improved productivity	<p>Better safety systems enhance processes and techniques and thereby business productivity: for example, improving loading accuracy allows you to carry loads closer to statutory limits.</p> <p>It also means improved reliability and assurance for customers.</p>

Use of an RICP as a legal instrument

An RICP can be used as evidence when a party in the CoR has been charged with breaching their primary duty to ensure the safety of their transport activities. It may also be used in a hearing where an executive has been charged with breaching their duty to exercise due diligence. (See s26D)

An RICP can be used by a court as evidence of “what is known about a hazard or risk, risk assessment, or risk control, to which the code relates” and “what is reasonably practicable in the circumstances to which the code relates.”

This does not make the recommendations in a RICP obligatory. A court also considers other factors that determine what would have been reasonably practicable for eliminating or minimising public risks in the circumstances. The main effect of a code of practice is that the defendant cannot claim that they did not know about a risk, or a control, if it is included in a code.

A person may prove that they used measures to eliminate or minimise public risks that are different from ones recommended in an RICP so long as those measures provided a standard of safety and protection equivalent to or higher than the standard set by the RICP. (s632A(5))

Using RICPs and other schemes

Many businesses already have to comply with other codes of practice, or schemes required by client companies and may see adopting an RICP as another business burden. In some instances, complying with existing schemes may already satisfy components of an RICP.

Compliance with a vehicle maintenance regime, for example, may be equal to adoption of part of an RICP, provided it demonstrates a risk-based approach. Processes necessary to maintain accreditation in mass management may be consistent with the requirements of an RICP.

FOR RICP SPONSORS

Any person or organisation may propose development of an RICP. Because a code has a status as a legal instrument, the standard for registration is high and requires input from a range of people with different knowledge and skills.

When you first contact the NHVR, you should already be able to explain the safety issue that a code will address and describe it in context, addressing the human, technical, business and environmental factors that come into play. You should be able to identify relevant regulations, standards, publications and guidance already in existence.

You connect industry with the NHVR

If the code is to be developed, you will work closely with a Code Development Officer (CDO) to facilitate broad consultation with the industry.

You will be identified as a contact point for industry to raise questions, make comments and provide feedback in relation to the code.

You will assist the CDO to identify relevant stakeholders, associations, and experts, and will help them establish a Code Development Group. You will help convene meetings of the development group and participate in those meetings.

You will assist the CDO to review existing research or reports on the topic of the code, whether technical, academic, or from industry or another safety agency and you will provide background information and practical knowledge that puts the research information into context.

Where other expertise is required, you will assist the CDO to find consultants with relevant experience and information.

You will assist the CDO to review feedback and correspondence.

For more information about the code development process, refer to the flow chart on page 2, the *Guidelines for preparing and Registering Industry Codes of Practice* or contact the NHVR at codes@nhvr.gov.au

Copyright in the RICP is protected by a creative commons licence

Intellectual property in the RICP will be protected by a creative commons licence that allows other persons to use and republish material from the code for certain purposes but requires them to attribute content to the authors of the RICP (usually both the Sponsor and the NHVR). It also prevents third persons from selling or otherwise profiting from the material in the document.

Copyright protection only covers the form of expression rather than the content of written work. It does not protect the ideas or information contained in a work.

RICPs will be published in a format that embeds the terms of the creative commons licence and the identity of the authors.

The terms of use will allow RICPs to be read, downloaded, and printed for individual use and for training purposes so long as there is clear attribution of the authors.

Because RICPs are freely and publicly available, sponsors will not be able to charge a licence fee for their use; however, they will be able to create other products or resources that relate to the RICP, or to provide auditing or consulting services to industry.

NHVR maintains the RICP after it is registered

Once a code is registered, NHVR and the Sponsor are responsible for maintaining its currency up until its date for review. This includes updating the RICP to reflect changes in the legislation, the Guidelines and the operating environment of the industry.

The NHVR commences a thorough review of the RICP at least 6 months before the registration period. Meanwhile, it also monitors RICPs to ensure that they continue to meet the conditions of their registration and invites members of the public to notify the NHVR of new risks or new safety technology which warrant revision of an RICP.

Changing the conditions of registration of an RICP

The NHVR may change the conditions of registration to manage overlap between codes, to ensure that an RICP is up to date, or for another reason. Before taking this step, it will:

- liaise with the sponsor about the reasons for altering the conditions of registration
- consider alternative options including transition arrangements
- publish all relevant information on the NVHR website.

Cancelling registration of an RICP

Before cancelling the registration of an RICP, the NHVR will:

- liaise with the sponsor about the reasons for cancellation,
- consider alternative options including transition arrangements,
- publish all relevant information on the NVHR

Obsolete codes will be available from the NVHR website for use in Court proceedings.



