

Review of the Heavy Vehicle National Law

1) Introduction

The Heavy Vehicle National Law (HVNL) has been in effect since 2014 in participating jurisdictions (all States except NT and WA).

The HVNL is the primary piece of legislation for on-road issues relating to heavy vehicles. It established the National Heavy Vehicle Regulator (NHVR) and outlines the Primary Duties as well as governing issues related to the Chain of Responsibility, Road Access, Fatigue, and the Performance Based Standards system to name a few.

The NTC has been asked by the Transport and Infrastructure Council Ministers to lead a review of the HVNL and its supporting Regulations. The NTC has conducted some initial consultation with stakeholders, has published a consultation RIS, and is now seeking feedback further feedback from stakeholders.

In parallel with the NTC review, the Productivity Commission has been undertaking a review of the governments transport reforms over the last decade. The passage of the Heavy Vehicle National Law and the establishment of the National Heavy Vehicle Regulator (NHVR) was a key part of Productivity Commission's review. The productivity commission produced a draft report in November 2019 to facilitate public consultation and provided the final report to Government in April but this report has (as at 27 September) not yet been published.

The RIS identifies several short comings in the way that the current legislation is implemented has including:

- Inconsistencies between jurisdictions
- The prescriptive and inflexible structure of the current law
- Insufficient use of risk-based approaches
- Cumbersome administrative and approval processes

Many of the inconsistencies are a result of horse-trading and compromises that were required to gain agreement from the individual jurisdictions, who were being asked to give up powers to a new, yet-to-be-established body.

This has been a key factor in making the legislation long, complex and inefficient. The RIS identifies that 60% of the HVNL is prescriptive and adopts a 'one size fits all' approach. This is way out of step with other like legislative instruments in particular the Rail Safety National Law (37%) and the Work Health and Safety Model Law (40%).

HVIA agrees with these observations and is also concerned that the current structure of the HVNL is primarily focussed on using on-road enforcement and prosecutions as the mechanism for enforcing the provisions of the law.

In HVIA's view the Law needs place more emphasis on providing incentives for good behaviour rather than punishing bad behaviour after the event.

HVIA agrees with the broad conclusions of the RIS which is that the solution is to develop a risk-based and outcomes-focused legislative framework that will:

- improve safety for all road users
- support increased economic productivity and innovation
- simplify administration and enforcement of the law
- support the use of new technologies and methods of operation, and
- provide flexible, outcome-focused compliance options.

HVIA also agrees with the Productivity Commission that most of the recent gains in safety and productivity in the heavy vehicle fleet are a direct result of the use of safer vehicles and the adoption of safe systems practices by heavy vehicle manufacturers, equipment providers and operators.

HVIA has identified strategies that are necessary for successfully changing the law. These include:

- Strengthening the Chain of Responsibility provisions of the Law to explicitly recognise that the responsibility of directors explicitly includes the selection and maintenance of the fleet and the implementation of systems to monitor and manage vehicle and driver behaviour
- Providing incentives for participants in the chain of responsibility to adopt a “safe systems methodology” approach to managing their transport operations.
- Streamlining the administration of the law to reduce barriers to the uptake of safer and more productive vehicles. (particularly PBS vehicles)
- Improving access arrangements to remove barriers to the take up of innovative vehicles
- Revise concessional schemes to encourage the use of newer safer and more productive vehicles as a condition of participation in these schemes.

The Regulatory Impact Statement (RIS) is [here](#). It is nearly 200 pages long and covers many issues, some of which are not front of mind for HVIA members, however HVIA has undertaken an analysis of the key items facing our members and have summarised the options for discussion below.

We would appreciate your thoughts and comments in relation to these aspects of the RIS and any further commentary you might have regarding the HVNL reform.

2.0 Suggested Reforms

The RIS contends that the underlying rationale for establishing the HVNL was sound and suggests a range of incremental improvements to the HVNL to address the weaknesses it has identified. The key areas for reform are:

- Changing the Chain of Responsibility Provisions to modify the primary duties and potentially expand the range of parties in the Chain.
- Improving the Flexibility of the National Heavy Vehicle Regulator by fostering the use of more flexible approaches such as codes of conduct rather than prescriptive regulatory controls
- Improved use of technology and data
- Enhanced Assurance and accreditation
- Improved management of Fatigue

- Improving heavy vehicle access including reforms to the PBS scheme to foster safer vehicle design
- better handling of vehicle defects

2.1 Key Parts of the proposed reforms affecting HVIA members

2.1.1) Chain of Responsibility Changes

The HVNL currently imposes a Primary Duty on a defined list of participants in the Chain of Responsibility (COR). The law then requires these parties to do everything reasonably practicable to ensure the safety of their transport operations. The parties in the chain include:

- Employer of a Driver (if applicable);
- A prime contractor (if the vehicle's driver is self-employed);
- An operator of a vehicle;
- A scheduler;
- A consignor;
- A consignee;
- A packer;
- A loading manager;
- A loader;
- An unloader.

The primary duties include explicit requirement on executives within the parties of the chain to manage these safety obligations.

The RIS discusses options for including additional parties within the chain including manufacturers, technology suppliers and third-party repairers who are not currently part of the chain.

Currently HVIA members including manufacturers, repairers, and technology providers are not included in the COR.

The RIS goes on to discuss whether the threat of punishment under the COR provisions would result in these parties becoming more aware of a responsive to their safety obligations

In discussing this issue, the key question raised by the RIS is whether these parties are already sufficiently covered by existing consumer and other laws and whether there would be any advantages of including them in the COR chain.

HVIA believes that manufacturers, repairers and technology providers are adequately covered by existing consumer law and including them in the chain provides no benefit. In addition, HVIA maintains that operators are the parties that decide what vehicles to purchase, what repairs are done and how technology is used to manage their fleet. Manufacturers, repairers and technology providers may provide advice but ultimately operators make these decisions and must take responsibility for them.

- Example - A diesel mechanic notices a structural problem with a drawbar and reports it to the vehicle owner / driver and states to go get it fixed, the vehicle operator acknowledges but the drawbar snaps and the trailer causes an accident / fatality. Or

- If a routine service identifies a really significant problem which is reported to the owner but is too expensive for repair immediately, so the work is not performed, and an accident ensues.

HVIA is interested in members views on

- Would you support or oppose being added to the COR defined list?
- Does other legislation (such as consumer legislation) adequately cover your operations?
- Are there other examples of situations where you do not have control over decisions but could be subject to prosecution if you were included in the chain?
- What could the ramifications of this change be? Increased costs? Would it improve safety or business practices any further than is already the case?

In relation to Chain of Responsibility, HVIA believes the current law is too focussed on after the event prosecution of speeding, fatigue and other breaches of the law and instead should focus on encouraging parties in the chain to implement safe systems in order to proactively manage the risks.

Codes of Practice

The RIS suggests that greater use of codes rather than prescriptive regulation would provide greater scope for industry input into regulation and would foster more responsive, risk management focussed regulation. HVIA is generally supportive of this approach as it is a more effective and responsive mechanism but is interested in members views on the greater utilisation of Codes of Practice.

Are there particular areas where this approach would be desirable or undesirable? Please provide details or examples.

2.1.2) Technology and Data

The RIS notes that the HVNL contains specific provision for the use of technologies, such as the Intelligent Access Program (IAP) and Electronic Work Diaries (EWDs) to demonstrate compliance. The RIS outlines that the current approach is too cumbersome to keep pace with changing technology.

The RIS goes on to suggest that the establishment of an overarching technology and data certifier may provide a mechanism for better managing the incorporation of new technology into the HVNL while maintaining data privacy.

HVIA has reservations in relation to this proposal. The establishment of Transport Certification Australia to oversee the IAP had been intended to address these issues but has not been particularly effective in fostering the uptake of new technology.

The RIS also outlines a proposal to remove the requirement for operators to carry paper documents and presents two options for managing this:

- The first option would allow operators to develop their own mechanisms for being able to provide documents on demand to drivers, operators, the NHVR and enforcement personnel subject to record keeping requirements.
- The second option would be to remove the requirement to carry documents but require the documents to be produced within a certain period (say 48) hours.

Questions to consider

HVIA is interested in finding out whether Members support establishing an overarching technology and data certifier. NTC is also seeking views on whether TCA or the NHVR or another entity should be given this role.

The NTC is also seeking feedback on what level of data assurance should apply, what privacy provisions should apply and what technologies would benefit from this approach.

HVIA is interested in members views on any issues related to the options for minimising the need to carry paper including any equipment requirements, (operators, regulators, and enforcement) advantages and disadvantages, policy considerations and likely costs and benefits.

2.1.3) Assurance and Accreditation schemes

The RIS examines existing accreditation schemes for issues like, mass management maintenance and fatigue such as the NHVAS, Trucksafe and the Western Australian Heavy Vehicle Accreditation Scheme and notes that they have relatively low uptake.

The RIS goes on to discuss options for improving uptake of accreditation schemes as a means of enhancing safety and facilitating the NHVR taking a risk management approach to industry.

Questions to consider

While most of this section is aimed at accreditation schemes for Mass Management, fatigue or maintenance, HVIA would be keen to hear of any technological developments at OEM level or through technology suppliers using telematics and monitoring devices such as attention monitoring and weigh in motion technologies which offer alternatives to, or supplements for, accreditation schemes.

2.1.4) Fatigue

The section on fatigue in the RIS is largely focussed on three operator related issues:

- Whether the scope of the activities subject to fatigue requirements is appropriate
- Reducing the complexity of the fatigue rules
- Simplifying record keeping

However, while the RIS does recognise fitness for duty issues and briefly discusses technology, it does not address the fundamental problem with the current approach to fatigue management which assumes that the risk of a fatigue incident increases as the amount of driving increases. This does not account for more recent evidence that many fatigue incidents occur early in a driver's shift.

Questions to consider

Following on from the last section HVIA is interested in any information from users on any new developments in using technology to manage fatigue.

2.1.5) Access

The RIS argues that allowing higher productivity vehicles greater access to our roads will be a key to improving the productivity of road freight. The RIS explores a number of options for achieving this.

The first set of options involve allowing general access to vehicles with greater mass (increase general mass limits to current CML limits), length or height. The options include making these changes to all vehicles or restricting them to vehicles with specific features such as mass management, fitment of safety features or enrolment in an accreditation scheme.

The RIS also examines options for improving the permit application process including changes to the provisions around reviewing decisions and removing the detail on access requirements from the main law and putting it in the regulations.

Standardising pilot and escort arrangement is also discussed in the RIS.

The RIS acknowledges that the impact of the proposed increases for general access vehicles on the road system would need to be assessed

Questions to consider

HVIA is seeking members views on the costs (e.g. retooling) and benefits of:

- a) Increasing mass limits for General Access Vehicles to current CML limits (a 5% increase)
 - a. For all vehicles
 - b. for vehicles where the operator has been accredited
 - c. for vehicles with a mass management system installed
- b) increasing length for general access vehicles to 20m
 - a. for all vehicles
 - b. for vehicles fitted with specific safety features
 - c. For vehicles with a sleeper cab
- c) Increasing both mass and CML limits to general access vehicles with specific features such as on board mass management, specified emission standards and specific safety features.

HVIA is also interested in members thoughts on other ways concessional arrangements could be used to incentivise the uptake of safer and more productive vehicles.

2.1.6) Safer Vehicle Design (PBS)

The RIS acknowledges that PBS is a mechanism for fostering safer and more productive vehicles and proposes several options to improve the PBS system to ensure the use of the system is maximised.

Some of these options are poorly specified in the RIS so it is difficult to understand specifically what is proposed but the NHVR is undertaking a separate project relating to the PBS system and HVIA will keep members abreast of further developments.

- Providing an increase ability for the NHVR to approve PBS designs without reference to the PBS review panel
- Providing greater certainty that provisional access approval will translate into access approval for the final design
- Allow manufacturers to self-certify under an audit regime.

- Making allowance for fitting technology such as electronic stability in assessing performance against PBS standards
- Providing a short form assessment for vehicles exceeding 2.5 m provided they otherwise comply and meet all PBS standards

HVIA is interested in feedback from members on:

- The costs and benefits and any issues or alternatives that need to be considered in relation to any of these options
- Any specific additional safety features or issues which would need to be considered in increasing vehicle widths beyond 2.5m.

3.0 Providing feedback to HVIA

Please provide any comments or questions to HVIA's National Manager Policy and Government Relations Greg Forbes at g.forbes@hvia.asn.au or 0437923755.