



**AUSTRALIAN TRUCK RULES IS A PROPOSED MANDATORY AND ENFORCEABLE
CODE OF PRACTICE AND ACCREDITATION SCHEME**

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SUBMISSION: DRAFT FINDINGS AND RECOMMENDATIONS NATIONAL TRANSPORT REGULATORY REFORM

This submission specifically focusses on the Commission's findings and recommendations in regards to the HVNL & NHVR and does not comment on Rail or Maritime topics.

DO WE HAVE NATIONALLY CONSISTENT REGULATORY SCHEMES?

Draft Finding 4.1 - Implementing national transport regulation and establishing national regulators has been slower than anticipated. Both the regulation and the regulators are works-in-progress. Creating a national regulatory system is complex and time consuming, with early expectations proving to be optimistic.

Draft Recommendation 4.1 - The Transport Infrastructure Council should request that the National Transport Commission undertake a review of significant derogations from the Heavy Vehicle National Law and the Rail Safety National Law, with the aim of reducing regulatory inconsistency.

The Council of Australian Governments should commit to altering or removing derogations, or altering the national laws, to achieve best practice regulation.

Comment 4.1:

WA & NT must participate. They should be given a senior role in drafting the new law. The new law must be truly national and consistent without derogation.

Draft Finding 4.2 - There are many derogations by jurisdictions to the national laws. There are over 70 derogations from the Heavy Vehicle National Law and over 80 derogations from the Rail Safety National Law. Some derogations create unnecessary costs and complexity for industry and regulators. These derogations are contrary to the objectives of the Council of Australian Government's harmonisation reforms.

Draft Recommendation 4.2 - The national regulators should phase-out Service Level Agreements (SLAs) with State and Territory agencies by absorbing these functions at the earliest opportunity.

Where there is a business case to use SLAs with third parties, those parties should act under the direction of the national regulators to ensure consistent decisions across jurisdictions

Comment 4.2:

The NHVR must be the "one stop shop" provider of regulatory services to industry.

HAS HARMONISATION OF TRANSPORT REGULATION IMPROVED SAFETY?

Draft Finding 5.1 - There have been significant improvements in heavy vehicle safety over the past decade, with the number of heavy vehicle crashes involving injury or death per kilometre travelled decreasing by about 40 per cent between 2008 and 2018. The fall in crash rates is consistent with longer term trends and is likely to be due to factors affecting all vehicle types such as improvements in road infrastructure and safer vehicle design.

Draft Recommendation 5.1 - State and Territory governments should seek to improve general road users' understanding of driving safely in the vicinity of heavy vehicles through education and enforcement measures

Comment 5.1:

This recommendation has previously been identified through many other industry reports



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Draft Finding 5.2 - Most multi-vehicle fatal crashes involving a heavy vehicle are not the fault of the heavy vehicle driver — in 2017, the driver of the other vehicle was at fault 83 per cent of the time. For serious, non-fatal, multi-vehicle crashes involving a heavy vehicle, the heavy vehicle driver was at fault 65 per cent of the time (2017).

Draft Recommendation 5.2 - The Council of Australian Governments should amend the Heavy Vehicle National Law to give the National Heavy Vehicle Regulator (NHVR) greater scope to provide concessions from prescribed aspects of fatigue management regulation, where the NHVR is satisfied that more effective systems of fatigue management are in place, such as technology-enabled management systems, and/or accredited management systems.

Driver fatigue laws should continue to set outer limits on driving hours.

Comment 5.2:

Australian Road Rules should set the outer limit on driving hours as fatigue is a condition that affects drivers of all vehicles regardless of whether they're cars or trucks.

Fatigue, as a workplace condition, is adequately covered in Workplace Health and Safety Laws.

Additionally, fitness for work requirements, including a fatigue management plan, could be part of a mandatory and enforceable code of practice and accreditation scheme for truck operators and truck drivers.

Draft Finding 5.3 - The lack of effective mutual recognition of heavy vehicle accreditation between Western Australia and the jurisdictions that have adopted the Heavy Vehicle National Law is counter to the objectives of the harmonisation agenda and does not promote safety. Operators bear the costs of meeting the requirements of different jurisdictions.

Information Request 5.3 - The Commission is seeking additional information about the situations where greater clarity is required between the operational jurisdiction of national transport regulators and workplace health and safety regulators and overlaps in their responsibilities. What options for rectification would be desirable?

Comment 5.3:

- a. *Workplace Health and Safety laws cover driver health and safety issues*
- b. *Workplace Health and Safety laws cover truck maintenance requirements (safe workplace)*
- c. *Australian Design Rules cover truck design*
- d. *Australian Road Rules cover truck driving operations*

Therefore, the HVNL only needs to cover truck mass, dimension and loading issues and be underpinned by a mandatory and enforceable code of practice and accreditation scheme

HAVE THE COAG REFORMS RAISED PRODUCTIVITY?

Draft Finding 6.1 - Constraints around local government investment capacity and engineering expertise are limiting the effectiveness of the heavy vehicle reforms by preventing adequate assessment and upgrading of bridge and road infrastructure.

Draft Recommendation 6.1 - Local governments should share engineering expertise and agree to consistent access arrangements for shared roads. The Australian Government should work with States and Territories to encourage this collaboration. States and Territories should report to the Council of Australian Governments in early 2020 on the status of this work.

Comment 6.1:

The state and territory government's roads and transport departments should provide the engineering expertise and be a shared resource for local governments

Draft Finding 6.2 - The complexity of the vehicle classifications has limited the progress of faster access approvals, through permits, pre-approvals and notices.

Draft Recommendation 6.2 - The Australian Government should seek simpler heavy vehicle classifications through the National Transport Commission's review of the Heavy Vehicle National Law for the purposes of access decisions. Additionally, the National Heavy Vehicle Regulator should provide more detailed and effective guidelines to road managers.



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Comment 6.2

Heavy Vehicle classifications are just another example of needless complexity

Draft Finding 6.3 - The National Heavy Vehicle Regulator (NHVR) has a well-developed information system that allows for effective management of its operational commitments. The NHVR is taking a strategic approach to the collection and use of data and this will allow it to target its activities better. It will also be able to drive broader policy change to improve productivity and safety.

Draft Recommendation 6.3 - The National Heavy Vehicle Regulator should continue improving its data management processes, including how data are stored, integrated, analysed and reported.

Comment 6.3

Improvement to process is basic quality management

Draft Finding 6.4 - The productivity gains from the reforms so far are much less than expected, although there is scope in the future for greater improvements as Performance-Based Standards vehicles become a larger proportion of the heavy vehicle fleet

Draft Recommendation 6.4 - The Council of Australian Governments should direct road managers (including the state road authorities) to work with the National Heavy Vehicle Regulator to rapidly expand key freight routes covered by notices and allowing as-of-right access for larger vehicle types. The focus of this work should include:

- expanding the networks available for heavy vehicles with performance characteristics equivalent to B-doubles (including Performance-Based Standards (PBS) level 2A and 2B B-doubles) and type 1 and 2 road trains (including PBS equivalents)
- where there are classes of vehicles for which permit applications are almost universally approved, developing notices covering these vehicles
- meeting infrastructure requirements such as truck stops and logistics centres near major urban centres, allowing larger vehicles to be broken down into smaller units where required by urban road network constraints.

Comment 6.4

PBS benefits have been largely overestimated and overstated.

It's been 30 years since the last industry wide major productivity gain (the B Double)

In 2020, as an industry, we would have even expected that A Doubles would now be the predominant linehaul vehicle and that 25-26mt B Doubles would be general access vehicles. Inadequate infrastructure has been the main impediment to productivity gains.

Draft Finding 6.5 - There is scope to rapidly increase the number of gazetted routes, reducing the need for permit applications. In many cases, permit approvals are given as a matter of course for certain vehicle types; these approvals should be replaced with as-of-right access by gazette.

Draft Recommendation 6.5 - The National Heavy Vehicle Regulator, the Office of the National Rail Safety Regulator and the Australian Maritime Safety Authority should monitor the compliance and administrative costs created by the national regimes and report on the level and change in these costs in periodic (say 3 yearly) reporting. The first report should be published in 2020 to establish benchmark costs.



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Comment 6.5

Should be in the NHVR Annual Report. Results should be then audited and assessed by the Productivity Commission.

Draft Finding 6.6 - Data on the compliance costs for businesses for the three national regulators are not routinely collected, monitored and published.

See Comment 6.5

Draft Finding 6.7 - There is little evidence at this stage that compliance costs for businesses have fallen. Each regulator is pursuing changes that should help reduce costs in the future.

See comment 6.5

Draft Finding 6.8 - The Chain of Responsibility reforms appear to be resulting in greater focus at all parts of the supply chain on compliance systems. However, the proliferation of in-house systems may raise the compliance burden for transport contractors. Industry could play a stronger role in determining common standards for the heavy vehicle industry. In the rail industry this role is undertaken by the Rail Industry Safety and Standards Board.

Comment 6.8

A simple, but mandatory and enforceable code of practice and accreditation scheme is all that's needed

ASSESSING THE NATIONAL REGULATOR

Draft Finding 7.1 - The prescriptive approach of the Heavy Vehicle National Law impedes the National Heavy Vehicle Regulator from administering the law consistently with the Council of Australian Governments' objectives. A more outcomes-based approach to legislation and regulation would improve road safety, reduce the burden of compliance and administration, and increase the efficiency of road transport. The National Transport Commission, which is reviewing the Heavy Vehicle National Law, is well placed to recommend improvements

Draft Recommendation 7.1 - The Australian Government should lead efforts through the Transport and Infrastructure Council to reform the Heavy Vehicle National Law. It should encourage State and Territory governments to remove prescriptive material from the legislation and to include an explicit mandate for the National Heavy Vehicle Regulator to take a risk-based approach to its functions

Comment 7.1

This draft finding is well known and obvious to everyone in industry and most in bureaucracy. The NHVR will need to recruit people with the necessary industry operational experience if they are required to make "judgement" calls

Draft Recommendation 7.2 - The Transport and Infrastructure Council should agree to have all regulatory functions still held by participating jurisdictions transferred to the National Heavy Vehicle Regulator no later than 1 January 2022

Comment 7.2

Agree – this has hampered the establishment of the regulatory "one stop shop" and affected productivity gains

Draft recommendation 7.3 - The Transport and Infrastructure Council should direct the National Heavy Vehicle Regulator to undertake the comprehensive collection and reporting of key safety risks and outcomes, similar to the Office of the National Rail Safety Regulator's annual *Rail Safety Report*.

Comment 7.3

Agree – should be a key function and reported in the NHVR Annual report, then audited and assessed by the Productivity Commission.



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TRANSPORT TECHNOLOGY AND DATA

Draft Recommendation 8.1 - The Australian Government should amend the Australian Design Rules and in-service vehicle standards to allow for new transport technologies, including automated technologies, with proven productivity or safety benefits. The Australian Government should aim for national and international consistency of laws and standards where practicable, and accept safety devices adopted in other leading economies. The Council of Australian Governments should investigate whether a 'deemed to comply' approach would be practical for some technologies.

Comment 8.1

ADR's must not be compromised and need to be protected at all costs to ensure vehicles and components meet the requirements to deal with our harsh and unique conditions.

The "proof" of productivity and safety benefits must be demonstrated in Australian conditions.

Draft recommendation 8.2 - The Australian Government should co-operate with stakeholders including Transport Certification Australia when developing the National Freight Data Hub. The Hub should include a regulatory framework for the collection, storage, analysis and access of transport data, including telematics data. This framework should specify the data access powers of regulators, enforcement agencies and accident investigation bodies, and should enable these bodies sufficient access to undertake their respective tasks, while protecting privacy and confidentiality.

Comment 8.2

The discussions and legal framework regarding ownership and access to electronic data across all industries will need to be settled before this project can be completed.

Draft Recommendation 8.3 - The Australian Government should impose a general safety duty on all parties with a significant influence over the safe operation of autonomous transport technologies. The creation of a general safety duty should not preclude the use of prescriptive rules where the assessed risks are high

Comment 8.3

The TCA, NHVR, DIRDAC and State Bureaucracies, as well as technology manufacturers and developers, will have "significant influence" therefore they must also be held accountable and subject to the rules.

A REFORM AGENDA FOR SAFER TRANSPORT

Draft Finding 9.1 - While some of the potential benefits of logistics data are specific to the individual operator, there are larger, broader benefits from the collection and integration of data across many operators. These broader benefits risk being underprovided if data generation and sharing are not facilitated

Draft Recommendation 9.1 - Governments (and their agencies) and industry should consider how best to harness logistics and telematics data to improve incentive-based safety regulation, with the aim of influencing behaviours that increase safety and productivity.

Governments and regulators should aim to facilitate the adoption of technologies by operators to generate and share data by:

- providing legal assurances about the acceptable use of such data
- clarifying the value proposition to individual operators of their participation in data sharing regimes.

Information Request 9.1 - The Commission is interested in further information regarding the safety implications of commercial contracts in the industries covered by the Heavy Vehicle National Law (HVNL), Rail Safety National Law (RSNL), and the Marine Safety (Domestic Commercial Vessels) National Law (MSNL). In this regard, the Commission would be interested in understanding the effectiveness of safety duties applying to various businesses through the supply chain (for example, Chain of Responsibility, Workplace Health and Safety).



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There is significant lost productivity to all supply chain participants in trying to meet ambiguous compliance requirements. A simple mandatory and enforceable code of practice and accreditation scheme is all that's required

Draft Recommendation 9.2 - The Australian Government should direct the Australian Transport Safety Bureau (ATSB) to undertake a defined, targeted trial of incident investigation for heavy vehicles, with adequate additional resourcing for the task. Subject to the successful outcome of the trial, the Government should amend the *Transport Safety Investigation Act 2003* to confirm investigation of incidents involving heavy vehicles as a function of the ATSB.

Comment 9.2

Industry largely supports the ATSB to be appointed as the principal heavy vehicle accident investigators

Information Request 9.3 - To what extent are heavy vehicle drivers receiving adequate on-the-job training, and informal guidance from more experienced to less experienced drivers?

If a more formal training system were to be devised, what would this look like, and should training requirements target the newly licensed or should it also include incumbent, experienced drivers?

Comment 9.3

Government assistance and co-funding in the development of "Blue Collar Universities" (as a model, refer to Central Queensland University's acquisition of Rockhampton TAFE)

Draft Recommendation 9.4 - The remit of the Australian Transport Safety Bureau should be extended to include any incident where autonomous technologies at or above SAE level 3 autonomy may have been involved

Comment 9.4

Australia's sub-standard current road network and telecommunications infrastructure appear to be many years away from supporting widespread application of Autonomous vehicles

A REFORM AGENDA FOR TRANSPORT PRODUCTIVITY

Draft Finding 10.1 - Some local governments are struggling to deliver timely heavy vehicle access assessments. While resourcing is important, more resources alone will not guarantee greater efficiency. Other factors including access to data and appropriate technical skills, and economies of scale in permit applications also contribute to greater efficiency.

Draft Recommendation 10.1 - The Council of Australian Governments should provide support to ensure local government has the financial and technical capacity to deliver its role as asset manager for local roads. Transparency and accountability of performance should accompany any additional support, particularly with respect to processing times for access permits and the use of notices to gazette heavy vehicle routes.

This should be pursued in the context of broader changes under the Heavy Vehicle Road Reform agenda.

Comment 10.1

An authority or liaison at state and territory government transport department level should be established to represent and relieve local council of their role in the access permit process

Draft Finding 10.2 - There are different approaches to cost recovery in each of the three modes, from near full cost recovery in rail, to very limited cost recovery in heavy vehicles and maritime. The amount of government funding received by each national regulator reflects these arrangements

Draft Recommendation 10.2 - The national regulators (particularly the National Heavy Vehicle Regulator and the Australian Maritime Safety Authority) should move towards cost recovery arrangements in line with the Australian Government Cost Recovery Guidelines. Consistent arrangements across the three transport regulators will eliminate the risk of distorting intermodal choices

Comment 10.2:

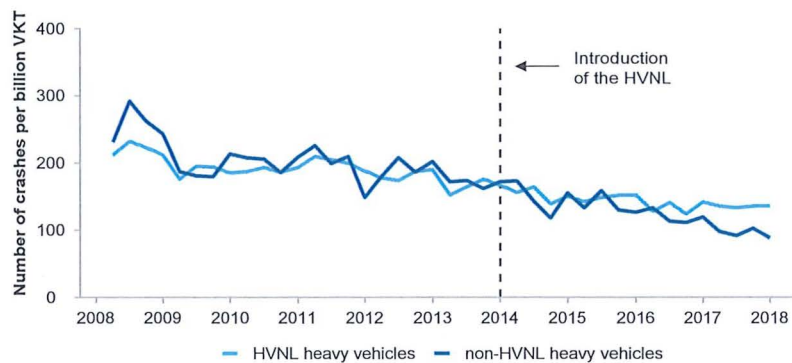
The NHVR already charges fee for service for access permits and accreditation functions.



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Figure B.1 Pre- and post-reform trends in heavy vehicle crash rates in HVNL and non-HVNL jurisdictions^{a,b}

Heavy vehicle crashes involving injury or death per billion heavy vehicle kilometres travelled (VKT)



^a Crashes (fatal and non-fatal) are expressed as crashes per billion heavy vehicle kilometres travelled. Data for ACT not included. The Commission is aware that a quality assurance process is underway for WA crash statistics before 2012. ^b The HVNL commenced on 10 February 2014 in all jurisdictions except for Western Australia and the Northern Territory.

Source: Commission estimates based on National Crash Database (BITRE, unpublished).

Comment Fig B.1

WA & NT HAVE A BETTER SAFETY RECORD THAN THE EASTERN STATES

Final Comment:

The findings in this report support the feeling of many of us in industry that believe the HVNL in its current form has been an expensive failure.

There is no irrefutable evidence that it has achieved any improvements to industry safety and productivity

The current HVNL is symptomatic of Eastern States governments obsession in creating bloated bureaucracies and needless red tape.

WA & NT, as proven supporters of their road freight and road transport industries, should be asked to the lead in the development of the new law.

Yours sincerely,

Shane Jeffrey

14.01.2020