

Heavy Vehicle National Law Regulation Impact Statement

September 2011

NTC AUSTRALIA

National Transport Commission

National Transport Commission

Heavy Vehicle National Law—Regulation Impact Statement

ISBN:

Date: September 2011

Report outline

Title:	Heavy Vehicle National Law
Type of report:	Regulation Impact Statement
Purpose:	For Standing Committee on Transport and Infrastructure (Australian Transport Council)
Abstract:	**The Regulation Impact Statement assesses the impact of the proposed Heavy Vehicle National Law.**
Submission details:	Submissions were accepted until 6 May 2011 online at www.ntc.gov.au or by mail to: Chief Executive Officer National Transport Commission L15/628 Bourke Street MELBOURNE VIC 3000
Key milestones:	28 January 2011, draft RIS release; 6 May 2011, public consultation closes
Key words:	Heavy Vehicle National Law, Heavy Vehicle Regulator, COAG reform
Contact:	sjones@ntc.gov.au

Foreword

The National Transport Commission (NTC) is an independent body established under an Act and intergovernmental agreement to provide independent advice to transport ministers on regulatory and operational reforms. The NTC undertakes these reforms across road, rail and intermodal transport to improve safety, productivity and environmental outcomes.

For many years the Australian Government and the state and territory governments, with input from industry and other stakeholders, have been working towards increased harmonisation of heavy vehicle regulation. Despite significant progress towards national consistency, important variations remain. Accordingly, in July 2009, the Council of Australian Governments (COAG) agreed to establish a National Heavy Vehicle Regulator (NHVR) and a national body of law governing the regulation of all vehicles weighing more than 4.5 tonnes. COAG agreed that the basis for the Heavy Vehicle National Law (HVNL) should be the reforms developed by the NTC and its predecessor, the National Road Transport Commission.

This Regulation Impact Statement (RIS) marks the next step in the national heavy vehicle reform program and evaluates the likely impact of the HVNL. It represents a significant step forward in the drive for consistency and equity in the regulation of heavy vehicles across state/territory and regional boundaries.

Heavy vehicle regulation affects all Australians. The cost of goods and services is directly impacted by the efficacy of 'last mile' access decisions, the cost of industry compliance and the impediments to market entry presented by multiple and conflicting compliance regimes. Road safety and emissions are impacted by the number and nature of trips required to deliver the freight task and the operating conditions of those responsible for it. Industry's ability to confidently plan and invest is influenced by policy and administrative certainty.

Extensive consultation has been undertaken between the NTC and representatives of all Australian, state and territory transport agencies in developing this RIS. Input from industry has been sought through the Industry Advisory Group, industry forums, direct consultation with industry peak bodies, the auspices of the Independent Expert Panel and an open consultation process.

The NTC acknowledges the work of Dr Sarah Jones, the Independent Expert Panel, George Konstandakos and Keith Ryan in preparing this report. NTC also acknowledges the Centre for International Economics for the preparation of the cost–benefit analysis used in this RIS.



Greg Martin

Chairman

Executive summary

Objective

On 2 July 2009, the Council of Australian Governments (COAG) agreed to establish a single national system of laws for heavy vehicles weighing more than 4.5 tonnes. These laws will be administered by an independent national regulator—the National Heavy Vehicle Regulator (NHVR). Located in Queensland, the regulator and laws are to come into effect from 1 January 2013.

This Regulation Impact Statement (RIS) marks the next step in the national heavy vehicle reform program. The purpose of the RIS is to explore the impact of the Heavy Vehicle National Law (HVNL) and to summarise the responses of governments, industry and other interested parties to the exposure draft. It is important to note that the RIS relates only to the impacts of the proposed *law.* It does not make the case for the NHVR.

The HVNL will be a single cogent body of law built from the past 20 years or so of model laws developed by the National Transport Commission (NTC), states and territories. In themselves, these laws had no power and relied on implementation at the jurisdictional level to give them effect.

Nature of the problem

Problems have arisen because the model laws have been adapted to reflect individual state and territory concerns and environments. Differences in legal and law enforcement systems, drafting preferences, local requirements and operational realities have meant that sometimes laws have been partially implemented, or not implemented at all. In other instances, local productivity variations have gone beyond thresholds given in the model laws. Consequently, despite significant progress towards national consistency, important variations remain.

The lack of a single administering body leaves operators to navigate a maze of government bodies for important decisions around registration, vehicle conditions and access. Hence, operators often face ambiguity when identifying appropriate decision makers and where to lodge an application. The divergent roles of transport agencies and the road manager (often a local council) may be unclear, and operators may face long delays in determinations. Rights of review have not been enshrined in law, and administrative mechanisms are inconsistent. Consequently, letters of complaint are often addressed to ministers, chief executives and other officials thought to be relevant, in the hope of a favourable response. Operators may 'shop around' within and between government departments in search of advice and information that best suits them.

Though they may be sound from a state and territory perspective, the legal variations create problems for interstate operators. Even relatively small distinctions in regulation have compliance and enforcement consequences for cross-border operators. The more diversions within law, the more resources interstate operators must expend on understanding and maintaining compliance.

Methodology

In all, around 368 issues have been identified that require resolution. The vast majority of these variations are of a minor technical or definitional nature, where consensus on the way forward was reached at the state and territory level. These minor issues are summarised in Appendix A.

Around 34 issues of a more contentious nature are presented for consideration in this RIS. These issues have medium or high economic impacts and/or tend to be of a more complex nature. Where a change to the existing model law is proposed, the RIS explores the rationale for the change, the benefits likely to accrue from it, any disadvantages that may arise, and the quantitative and qualitative impacts for industry, the regulator and the jurisdictions. (The quantitative work was done by the Centre for International Economics [CIE] in the form of a cost–benefit analysis.) Where a change to the model law is not recommended for inclusion in the national law but is likely to significantly impact a jurisdiction that has considerably diverged from the model law, this is also explored. Some of these issues were referred to an independent expert panel whose final report was approved by the Australian Transport Council in May 2011.

The grid through which evidence has been filtered and evaluated is consistent with the reform principles articulated in the 2009 Commonwealth RIS as follows:[1]

---

[1] Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement*, May 2009.

1. Uniform laws and administrative practices should achieve the 'same outcome in the same circumstances' across Australia.

2. Regulatory burden should not increase overall as a result of the reform.

3. Legal and administrative costs of regulatory compliance should be minimised.

4. Productivity, effectiveness and safety of the heavy vehicle industry should be increased.

5. Efficient, productive and sustainable freight and heavy vehicle operations should be facilitated, consistent with sustainable management of state and territory assets.

6. The framework should allow for regular review and evaluation of the regulation and supporting systems, to ensure their ongoing national relevance and efficiency.

There was also general agreement that local productivity variations and concessions should remain in place so as not to disadvantage a particular region, state or territory.

Consultation

The draft regulation impact statement was released on 28 February 2011 and was available for public consultation until 6 May 2011. Sixty three submissions were received. In addition, 18 forums were held across the country attended by around 780 stakeholders who posed questions to guest speakers and were requested to complete evaluation sheets. Key stakeholders, such as the Australian Trucking Association (ATA), Australian Livestock Transporters Association, NatRoads, Australian Logistics Council (ALC), National Farmers' Federation, Australian Local Government Association and Transport Workers Union (TWU) have all been directly consulted at least once.

The submissions reveal an overwhelming support for the concept of a National Heavy Vehicle Regulator (NHVR). Industry is enthusiastic about a 'one stop shop' and supportive of the new decision making frameworks and the potential to improve access arrangements. Local Governments have welcomed the prospect of improved technical assistance regarding pavements and bridges and all parties strongly support the ability of the regulator to chart and respond to access 'hot spots'. The potential for the regulator to take a decisive leadership role in chain of responsibility investigations is warmly embraced by virtually all stakeholders.

The enthusiasm for the regulator concept, however, comes with a caveat: the regulator must **replace rather than replicate** the existing bureaucracies. This has been variously expressed as a fear of a 'ninth regulator' and a desire for a 'regulator with teeth'. Industry and local government, although generally supportive of the heavy vehicle law, want to see a regulator with genuine power and robust, transparent governance structures.

Most stakeholders have agreed that the proposed decision-making frameworks have the potential to deliver significant productivity benefits. However, concerns have been raised about the magnitude of the benefits cited. The cost benefit analysis has been revised to reflect a more conservative/ pessimistic scenario.

Impact Analysis

To quantify impacts of the proposed national law, the CIE took two approaches. The first was a 'top-down' combined impact analysis that apportioned costs and benefits from existing Regulation Impact Statements to the variations. The second approach was a 'bottom up' analysis built from direct consultation with industry and existing studies that took a detailed look at individual legal reforms considered to be high impact.

Top Down Analysis

The 'top down' approach is methodologically appropriate because the impacts of a national approach have mostly already been articulated through previous RISs and some industry-initiated studies. Consolidating the law consolidates these known benefits. Table 1 apportions the indicative costs and benefits across the 368 proposals for the national law.

The table lists the various divergences by heading and differentiates between the medium–large impacts (shown in the pink-banded 'RIS variation' row) and minor changes. Potential impacts considered are on compliance costs (for industry), enforcement administration costs (for government), safety, environment (noise and carbon emissions) and productivity. Impacts are expressed in net present value (NPV) terms. For a fuller discussion of economic impacts, see Appendix B.

Table 1: Indicative gains from a single national approach to regulation[2]

Legal issues	*Number*	*Economic impacts (NPV, billion dollars)*						*Sum (NPV, billion dollars)*
		Savings						
		Compliance cost (on industry)	*Enforcement administration cost (on regulators*	*Safety*	*Environment*		*Productivity*	
					Noise	*$C0_2.e$*		
Registration law	30	**0.150**	**0.050**					**0.200**[a]
RIS variation	*7*	*0.035*	*0.012*					*0.047*
AVSRs	24	**0.075**	**0.025**					**0.100**[a]
RIS variation	*1*	*0.068*	*0.023*					*0.090*
Mass and loading	17	**0.075**	**0.025**					**0.100**[a]
RIS variation	*1*	*0.004*	*0.001*					*0.006*
RAVs	22	**0.840**	**0.210**	**0.140**	**0.070**	**0.140**	**5.700**	**7.000**[b]
RIS variation	*2*	*0.720*	*0.180*	*0.120*	*0.060*	*0.120*	*4.800*	*6.000*
IAP	33	**0.139**	**0.035**	**0.023**	**0.012**	**0.023**	**0.924**	**1.156**[c]
RIS variation	*4*	*0.093*	*0.023*	*0.015*	*0.008*	*0.015*	*0.619*	*0.774*
NHVAS	12	**0.099**	**0.033**				**0.198**	**0.330**[d]
RIS variation	*2*	*0.008*	*0.003*				*0.017*	*0.028*
Compliance and enforcement	74	**0.050**	**0.013**	**0.125**			**0.063**	**0.250**[d]
RIS variation	*6*	*0.005*	*0.001*	*0.013*			*0.006*	*0.025*
Fatigue CoR	68	**0.200**	**0.050**	**0.500**			**0.250**	**1.000**[e]
RIS variation	*6*	*0.020*	*0.005*	*0.050*			*0.025*	*0.100*
Speeding CoR	16	**0.050**	**0.013**	**0.125**			**0.063**	**0.250**[d]
OSOM	43	**0.042**	**0.011**	**0.007**			**0.238**	**0.298**[c]
RIS variation	*3*	*0.021*	*0.005*	*0.004*			*0.119*	*0.149*
CML	4							
HML	13	**0.210**	**0.053**	**0.035**	**0.018**	**0.035**	**1.400**	**1.750**[c]
RIS variation	*2*	*0.180*	*0.045*	*0.030*	*0.015*	*0.030*	*1.200*	*1.500*
Other business	12							
TOTAL	368	**1.930**[f]	**0.516**[f]	**0.955**[g]	**0.099**[g]	**0.198**[g]	**8.735**[h]	**12.433**
RIS variations	*34*	*1.154*	*0.298*	*0.231*	*0.083*	*0.165*	*6.786*	*8.718*

AVSR = Australian Vehicle Standards Rules; CML = Concessional Mass Limits; CO_2-e = carbon dioxide equivalents; CoR = chain of responsibility; HML = higher mass limits; IAP = Intelligent Access Program; NHVAS = National Heavy Vehicle Accreditation Scheme; OSOM = oversize and overmass; RAV = restricted access vehicle

a Based on NTC (personal communication) distribution of Castalia (2009) estimates.

b Based on NTC (2010) performance-based standards (PBS) RIS estimates. PBS is a subset of RAV impacts; with RAV impacts assumed to be double the PBS estimates.

c Proportionally smaller than RAV NTC (personal communication).

d Proportionally smaller than fatigue NTC (personal communication).

e Based on NTC fatigue RIS (2002).

[2] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law,* September 2011, p. 16

f Based on Castalia (2009)[3].

g Based on NTC (2010) PBS RIS proportions.

h Based on conservative interpretation of Productivity Commission (2006) numbers.

As indicated by Table 1, total gains of around $12.4 billion are possible. Around 70 per cent of these gains ($8.7 billion) are attributable to the 34 RIS variations discussed in Chapters 8 (Medium impact variation analysis) and 9 (High impact variation analysis).

It is important to note that the previous studies represent what is possible under a pure NHVR model, where the states and territories implement the HVNL *without change.* **Every departure from the pure model represents a reduction in potential gains and a likely increase in costs**. Where jurisdictions have signalled that they will diverge from the national law, this has been noted in the text of the RIS.

To take account of the risk of persisting variations, and recognising that cultural and administrative change will take time, a 'pessimistic' and a 'best bet' scenario are charted below. This shows the pattern of expected net benefits over twenty years according to both scenarios.

Chart 1: Pattern of expected net benefits over twenty years[4]

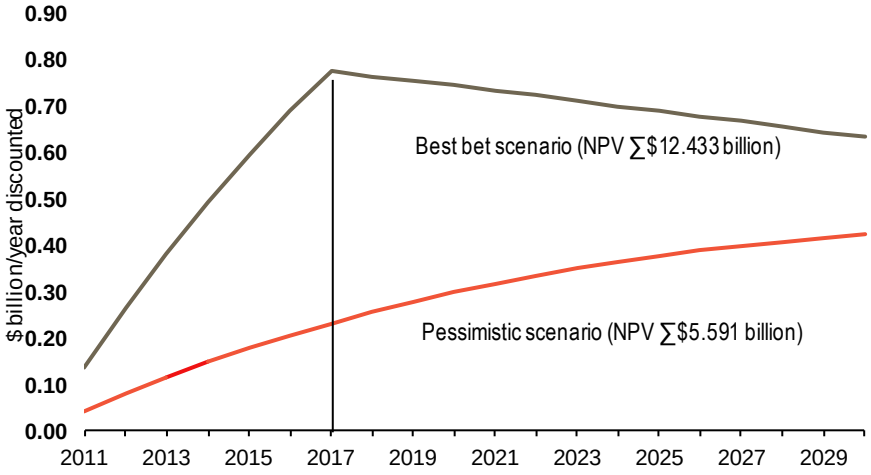


Chart 1 suggests a best bet scenario of annual benefits peaking at around $0.75 billion a year in 2017 and averaging around $0.6 billion a year for twenty years. However, if the phase in is slower and more gradual accumulated net present value benefits would amount to only $5.591 billion.

Table 2 on the following page suggests how these 'pessimistic' net benefits are apportioned across the legal variations.

[3] Castalia Strategic Advisers, *Securing a National Approach to Heavy Vehicle Regulation, Report to the National Road Transport Operators Association (NatRoad)*, 2009

[4] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law,* September 2011, p. 17

Table 2: Indicative net benefits of legal reconciliations in 20 year NPV terms ($b); pessimistic scenario

Legal issues	*Count*	*Economic impacts*						*Sum*
		Savings						
		Compliance cost	*Enforcement admin cost*	*Safety*	*Environment*		*Productivity*	
		On industry	*On regulators*		*Noise*	*C_2e*		
		$NPVb	$NPVb	$NPVb	$NPVb	$NPVb	$NPVb	$NPVb
Registration law	30	**0.067**	**0.022**					**0.090**
RIS variation	*7*	*0.016*	*0.005*					*0.021*
AVSR's	24	**0.034**	**0.011**					**0.045**
RIS variation	*1*	*0.030*	*0.010*					*0.040*
Mass & loading	17	**0.034**	**0.011**					**0.045**
RIS variation	*1*	*0.002*	*0.001*					*0.003*
RAV's	22	**0.378**	**0.094**	**0.063**	**0.031**	**0.063**	**2.518**	**3.148**
RIS variation	*2*	*0.324*	*0.081*	*0.054*	*0.027*	*0.054*	*2.159*	*2.698*
IAP	33	**0.062**	**0.016**	**0.010**	**0.005**	**0.010**	**0.416**	**0.519**
RIS variation	*4*	*0.042*	*0.010*	*0.007*	*0.003*	*0.007*	*0.278*	*0.348*
NHVAS	12	**0.045**	**0.015**				**0.089**	**0.148**
RIS variation	*2*	*0.004*	*0.001*				*0.007*	*0.012*
C & E	74	**0.022**	**0.006**	**0.056**			**0.028**	**0.112**
RIS variation	*6*	*0.002*	*0.001*	*0.006*			*0.003*	*0.011*
Fatigue CoR	68	**0.090**	**0.022**	**0.225**			**0.112**	**0.450**
RIS variation	*6*	*0.009*	*0.002*	*0.022*			*0.011*	*0.045*
Speeding CoR	16	**0.022**	**0.006**	**0.056**			**0.028**	**0.112**
OSOM	43	**0.019**	**0.005**	**0.003**			**0.107**	**0.134**
RIS variation	*3*	*0.009*	*0.002*	*0.002*			*0.054*	*0.067*
CML	4							
HML	13	**0.094**	**0.024**	**0.016**	**0.008**	**0.016**	**0.630**	**0.787**
RIS variation	*2*	*0.081*	*0.020*	*0.013*	*0.007*	*0.013*	*0.540*	*0.675*
Other business	12							
TOTAL	1 - 368	**0.868**	**0.232**	**0.430**	**0.045**	**0.089**	**3.928**	**5.591**
RIS variations	*34*	*0.519*	*0.134*	*0.104*	*0.037*	*0.074*	*3.052*	*3.920*

Corroboration that the indicative net benefits from legal reform will lie somewhere between the 'pessimistic' and 'best bet' scenario is provided by the Productivity Commission's study into road and rail freight infrastructure pricing.[5] The Commission identified four reform areas needed to unlock productivity two of which – reducing regulatory fragmentation and replacing prescriptive regulations with performance-based regulations – are clearly consistent with the aims of the heavy vehicle reform. According to the Centre for International Economics:

> *If the benefits were distributed evenly across each of the four areas of reform, reducing regulatory fragmentation alone might deliver 25 per cent of the $30 billion gain (around $7.5 billion). This provides one indicator of the considerable potential net gains from a national approach to heavy vehicle regulation. But this is likely to be a conservative estimate because*

[5] Productivity Commission Inquiry report, *Road and rail freight infrastructure pricing*, no. 41, 22 December 2006,

under a national regulator, reducing fragmentation is likely to open the way to achieve other reforms such as those relating to prescriptive standards and appropriateness of regulation. In time gains larger than $7.5 billion (NPV) might plausibly be expected. It is also likely to be conservative because little or any of these gains have been taken up since the Productivity Commission report.[6]

The important point is that regardless of which scenario is applied – best bet or pessimistic – the gains from heavy vehicle national reform are significant and are corroborated by extrapolating from the Productivity Commission's work.

The table below (table 2) summarises the variations considered 'medium-impact' that were not subject to individual impact analysis.

Table 3: Summary of medium-impact items

No.	Legislation	Description	Summary
1	Heavy vehicle registration	Custom plates	Custom plates have evolved to become valuable consumer items. The percentage of custom plates assigned to heavy vehicles is around 5%. To retain economies of scale, it is proposed that custom plate manufacture, sale and marketing remain with the states and territories. The NHVR will record in the register of heavy vehicles details of the custom plates used on heavy vehicles. Custom plates will not be transferable between states.
2	Heavy Vehicle Driver Fatigue Bill	Regulating heavy vehicle driver fatigue through OH&S	Despite the introduction of national heavy vehicle driver fatigue legislation, Western Australia continues to regulate driver fatigue through state-based OH&S law. Evaluating transport and OH&S law is not a matter of choosing between alternatives because OH&S law continues to apply to the long-distance road transport industry in all jurisdictions. The expert panel sees merit in both options and that Compliance and Enforcement (C&E) functions could be done under either regulatory regime. The key issue is that there is adequate funding and authority to carry out C&E functions. Western Australia have indicated that they will continue to regulate heavy vehicle driver fatigue through their state-based OH&S. The Heavy Vehicle National Law will include provisions to allow for a mutual recognition of heavy vehicle driver fatigue schemes. The national law will adopt the expert panel recommendation to retain driver fatigue within transport law.
3	Heavy Vehicle Driver Fatigue Bill	'Short rest' defence under standard hours fatigue management	The model law provides a defence for a driver operating under standard hours who could not take a 'short rest' break if a suitable rest place was not available and the driver took the break within 45 minutes. Victoria and New South Wales diverged from the model law and did not allow the defence.

[6] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law,* September 2011, p. 11

No.	Legislation	Description	Summary
			The national law will adopt the expert panel recommendation to retain the defence.
4	Heavy Vehicle Driver Fatigue Bill	'Split rest' defence under basic fatigue management	A driver operating under basic fatigue management has a defence for delaying a 7-hour continuous rest break if a split rest break is taken instead, under certain conditions. Victoria diverged from the law and did not allow the defence. The national law will adopt the expert panel recommendation to retain the defence.
5	Heavy Vehicle Driver Fatigue Bill	Work diary	The model law stipulates that drivers engaged in work beyond a 100-km radius from a home base must carry a work diary. The allowable radius has been varied in some states. In Tasmania, a 0-km rule applies; in Queensland, a 200-km rule applies. The expert panel is not aware of any evidence that links the work diary limit to the incidence of heavy vehicle crashes. In the interest of national consistency, the expert panel therefore recommends retaining the 100-km radius rule. Tasmania has signalled that it will derogate to retain the 0km radius. Powers of exemption will apply—for example, to emergency services personnel travelling to incidents.
6	Heavy Vehicle Driver Fatigue Bill	'Reasonable steps' defence to prevent driving while fatigued	The model law makes suggestions about practices and procedures that may indicate that sufficient care was taken to prevent a driver driving while fatigued. New South Wales has extended this to create a positive obligation to annually identify and assess risk management practices to manage fatigue. The expert panel recognises that New South Wales was motivated by a desire for greater certainty in fatigue management. However, the variation could ultimately limit the ways in which fatigue is managed. The national law will adopt the expert panel recommendation to retain the model law provision.
7	Not applicable	Three strikes policy	'Three strikes' was introduced to deter repeated speeding offences and was targeted at vehicle registration rather than driver licensing. Although this policy was not included in model law, it was implemented in New South Wales, South Australia and Victoria. South Australia and Victoria have since discontinued the policy. However, New South Wales is keen to retain the policy, arguing that less than 15% of vehicles that received a first strike went on to receive a second, and less than 3.5% received a third. A lack of comparative data and multiple policy variables

No.	Legislation	Description	Summary
			make it difficult to establish the success or otherwise of the policy. It is arguable that chain-of-responsibility provisions mirror the intent of 'three strikes'. The expert panel recommends that 'three strikes' not be included in the national law. It is acknowledged that removing three strikes will make it more difficult for operators to be advised of driver breaches. New South Wales has signalled its intent to retain three strikes through derogation.
8	Higher mass limits	HML eligible vehicles	HML has considerable potential to deliver productivity gains, with a potential reduction in road freight costs of $498 million annually and in pavement rehabilitation costs of $11.2 million annually. However, these benefits have not been realised because of state and territory implementation variations and infrastructure (mainly bridge) issues. Extensive consultation between the states and territories has failed to arrive at consensus on an agreed table of HML eligible configurations. It is recommended to retain the model law and allow for local productivity variations, acknowledging that most states and territories will introduce derogations to retain their current variations from the model law. The advantage of this approach is that it places the onus on the states and territories to justify their HML position.
9	Compliance and enforcement Bill	Registering codes of practice	The current model law provides for the registration of industry codes of practice. Victoria is the only jurisdiction to have implemented this provision. Other jurisdictions have raised concerns that the process of government registering codes of practice could be taken as an endorsement of that code. The inclusion of the prima facie approach was not preferred by some states due to the onus-of-proof requirement. Industry argues that codes of practice encourage a low-cost path to compliance, and the prima facie 'reasonable steps' provision gives an incentive to have codes registered. It is recommended that the current model law provision be retained to allow for the registration of industry codes of practice (which can be used as prima facie evidence that reasonable steps had been taken). Ministerial guidelines are to be developed by the NHVR Project Office to ensure a robust process for the registration of industry codes of practice.
10	Administrative guideline: *Pilot and escort vehicle driver accreditation*	Regulation of pilot and escort vehicle drivers	A 2004 administrative guideline specifies the operational obligations for drivers of pilot and escort vehicles; however, the guideline does not specify eligibility requirements. Consequently, jurisdictions have developed their own systems, which create cross-border

No.	Legislation	Description	Summary
	procedures		issues. An Austroads project has been approved to work out a nationally consistent system for pilot and escort vehicles. In the interim, the HLRG recommends that mutual recognition apply for accreditation schemes between the states and territories.
11	Compliance and enforcement bill	Driver licence sanctions for mass, dimension and load-restraint breaches	The current model law permits the courts' discretion to apply licence sanctions for severe mass dimension loading breaches. The court may elect to suspend or cancel a licence. Some states and territories have diverged from the model law, allowing courts to impose licence sanctions for severe and minor breaches. As the national law is currently limited to vehicle registration, the expert panel has recommended that licence sanctions be removed from the national law. Driver licensing sanctions will continue to be regulated by the states and territories.
12	Compliance and enforcement bill	Vehicle registration sanctions for mass, dimension and load-restraint breaches	Courts may impose registration sanctions for severe mass dimension loading breaches under the model law. Most states and territories have adopted the law (with Western Australia and the Northern Territory intending to do so). The national law will adopt the expert panel recommendation to retain the model law provision.
13	Oversize, overmass	Special-purpose trailers	Some trailers, such as amusement rides and drilling-rig trailers, are built for purposes other than carrying a load. Issuing permits for these can be problematic because they do not carry a load (and therefore cannot be treated as oversize load-carrying vehicles) and are not motorised (and therefore cannot be treated as special-purpose vehicles). Victoria has diverged from the model law to broaden the definition of a special-purpose vehicle to cover 'any vehicle … where the primary purpose for which it was built was not the carriage of goods or passengers'. The Victorian definition will be adopted in the national law to recognise special-purpose trailers.
14	Oversize, overmass	Treatment of silage trailers	The status of silage trailers in the model law is currently ambiguous. There is uncertainty as to whether a silage trailer is an 'agricultural implement' and thereby exempt from registration. This uncertainty has led to farmers being penalised for towing silage trailers on the road. Victoria has removed the ambiguity by explicitly defining 'agricultural task'. A similar definition has been included in the national law to facilitate issuing exemptions relating to silage trailers.

No.	Legislation	Description	Summary
15	Heavy Vehicle Driver Fatigue Bill	Obligations to carry accreditation documents	The model law requires a driver to carry a copy of the operator's accreditation certificate and a document signed by the operator stating that the driver meets the requirements as stipulated under the accreditation. If the driver is found without the accreditation documents, the operator is automatically guilty of an offence. The offence carries a maximum court penalty of $2000 or an infringement of $600. South Australia has diverged from the model law and removed the strict liability offence, instead requiring operators to take 'reasonable steps' to ensure that drivers are carrying their documents. A similar provision has been included in the national law.
16	Compliance and Enforcement Bill	Returning seized material	The model law requires that, where an authorised officer seizes goods as part of their enforcement duty, they issue a receipt to the person from whom the goods are removed. However, there is no provision for the return of those goods. This has been left to the states and territories. The national law will include a provision for returning seized goods when they are no longer required as evidence or otherwise as part of an investigation.
17	Compliance and Enforcement Bill	Restoration of vehicles, combination or premises	The model law currently requires enforcement officers to attempt to repair damage to property occasioned by the 'unreasonable exercise' of their powers. In some cases, attempts to restore property could further aggravate damage or cause unreasonable delays in returning property to the owner. South Australia has diverged from the model law to allow a person so affected to elect to receive monetary compensation rather than have the goods repaired. A similar provision has been included in the national law.
18	Compliance and Enforcement Bill	Places where powers can be exercised	The model law sets out where the powers of authorised persons may be exercised. New South Wales has extended the power to make directions about the stopping, moving or leaving of vehicles to include any vehicle 'seen on a road'. This may allow an authorised person to follow a vehicle onto private property if they suspect that the vehicle may be in breach of mass and loading limits. The expert panel believes that the existing power in the model law is sufficient and that there is no evidence justifying the extension of powers, and therefore the national law will exclude the New South Wales variation.
19	Compliance and Enforcement Bill	Detaining a vehicle breaching mass, dimension and load restraint requirements	The model law allows an authorised officer to direct a driver to stop a vehicle until a breach is rectified, but not beyond that. New South Wales has introduced a variation allowing authorised officers to 'detain' a vehicle. The expert panel believes that the existing powers in the

No.	Legislation	Description	Summary
			model law are sufficient and therefore the national law will exclude the New South Wales variation.
20	Intelligent Access Program	IAP record retention	The model law requires that sensitive IAP data be destroyed after one year. New South Wales has included a minor variation from the model to require destruction of records 'not later than one year', technically making possible the destruction of important material before the close of 12 months. To manage the risk of premature destruction of IAP data, the national law will retain the model law provision.
21	Administrative scheme: National Heavy Vehicle Accreditation Scheme	Administration fees	Different services provided by heavy vehicle regulators attract administration fees. A mechanism is required to enable the regulator to charge these fees. Fees are to be set by regulation applying cost-recovery principles.
22	Oversize, overmass, restricted access vehicles	Driver not required to carry documents	It is recommended that drivers be required (prima facie) to carry permit documents while driving and that drivers not be required (prima facie) to carry notice documents while driving. The national law will include a power for the NHVR to: (a) impose a requirement to carry documents as a condition of a notice; and (b) exempt a driver from having to carry any documents listed in a permit.

C&E = compliance and enforcement; HLRG = High Level Reference Group; HML = higher mass limits; HVNL = Heavy Vehicle National Law; IAP = Intelligent Access Program; NHVR = National Heavy Vehicle Regulator; OH&S = occupational health and safety

High impact analysis

The second methodological approach taken by the CIE was to conduct a 'bottom-up' analysis, working from data directly collected from industry consultation, as well as previous studies. The bottom-up analysis drilled into the items that were considered to be high impact—that is, those that had a medium-to-significant impact on compliance costs and medium-to-significant competition impacts. These items are new decision-making frameworks, a new advanced fatigue management (AFM) system, approaches to vehicle inspections, spray suppression, transfers of vehicle registration, new restricted access vehicle (RAV) permit issuance mechanisms and unpaid fines. Three new offences are also proposed under the HVNL.

New decision-making frameworks[7]

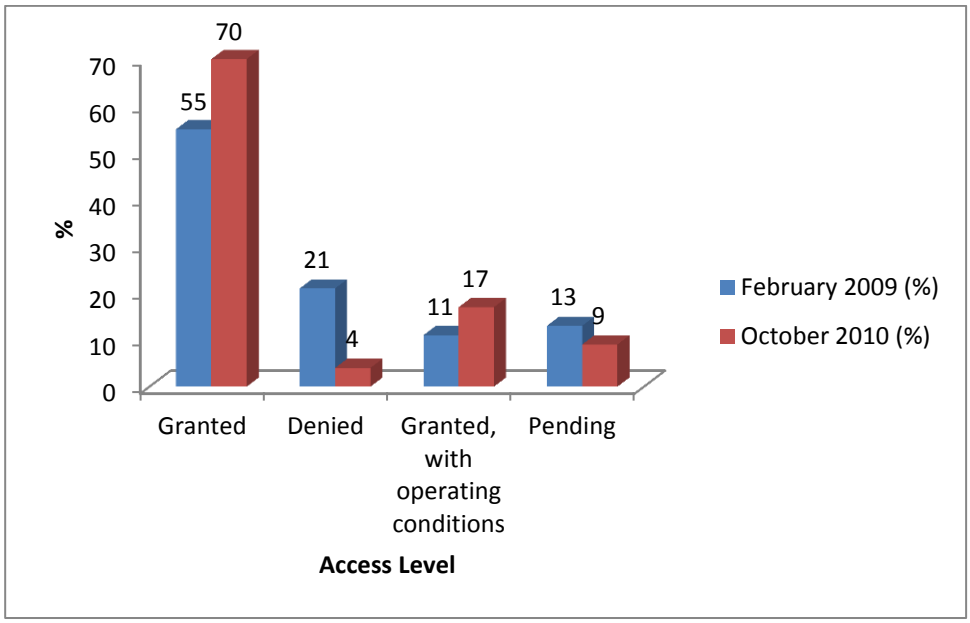
This finer-grained analysis found that significant productivity gains are possible through new decision-making frameworks. A criticism that is frequently levelled at the existing system is that the evaluative process and evidentiary basis on which access decisions are made can lack transparency, is sometimes inconsistent with agreed Australian Transport Council (ATC) and COAG policy, and is not subject to review.

Experience with the performance-based standards (PBS) scheme illustrates the point well. The intent of PBS is that, if a vehicle design is considered by the PBS Review Panel (PRP) to be consistent with ATC and COAG policy, it should be granted access to the PBS network. In practice, vehicles approved by the PRP have no guarantee of access to the road network once they are operational. In October 2009, 55 per cent of PRP-approved vehicles were granted access, while 21 per cent were denied access because of the inconsistent application of regulations. These

[7] The term 'decision making frameworks' does not appear in the HNVL. The provisions relating to access are found in chapter 4, part 7.

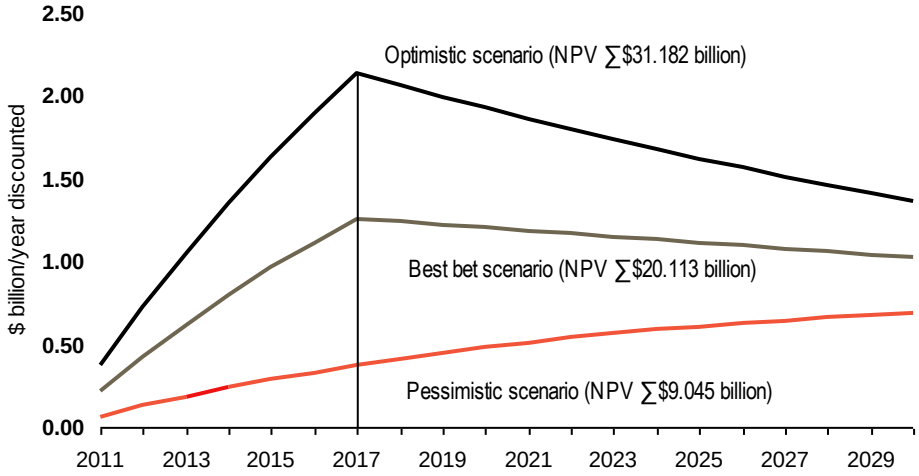
include the application of non–ATC approved pavement vertical loading standards and the fitment of additional equipment such as Intelligent Access Program (IAP), side under-run protection, mass monitoring and electronic stability control. Following an internal review process, access was granted to 70 per cent of vehicles by February 2010. The change in status of PRP-approved vehicles between October 2009 and February 2010 is shown in Chart 2.

Chart 2: PRP-approved vehicle access levels, February 2009 – October 2010



The CIE analysed the impacts that would accrue from consistently applying agreed national policy regarding PBS, RAV, higher mass limits (HML), oversize and overmass (OSOM), and IAP vehicles. The CIE estimates that the possible gains through the new framework could range from $9 billion NPV to $31 billion NPV, with a 'best-bet' scenario of around $20 billion in NPV, as shown in Chart 3.[8]

Chart 3: Cumulative benefits in NPV terms over 20 years



Implicit in the benefit calculation is the assumption that the new decision-making framework will promote access.

Improved access is more likely to eventuate with targeted investment in infrastructure that will alleviate anxiety around the cost of pavement and bridge degradation, currently largely borne by local councils. Previous studies suggest that infrastructure costs for bridges will be around $803.8 million in NPV terms.[9]

---

[8] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 43. The difference in the overall 'pessimistic' scenario ($5.56b) and the decision making framework 'pessimistic' scenario ($9b) reflects the fact that the decision making framework is entirely new, i.e. it has not been present in law before and so has not been subject to a RIS of the kind used to attribute potential benefits.

[9] National Road Transport Commission, *Regulatory Impact Statement: increased mass limits for road-friendly heavy vehicles*, April 1998. Figure converted to net present value by the Centre for International Economics.

The cost of developing, disseminating and updating the evaluative tools in support of the new framework (including bridge design checks, bridge load testing and condition monitoring, etc.) is estimated at $196.6 million in NPV terms over 20 years.[10]

Under the worst-case scenario (if all heavy vehicles in the OSOM, RAV and HML fleets were subject to review), the cost of internal review would be around $6.3 million annually or around $59.6 million over 20 years in NPV terms. If around 10 per cent of the heavy vehicle fleet were subject to decisions that prompted external review, this would represent a cost of around $24.6 million per year. In NPV terms, this would be around $231.7 million over 20 years.[11]

New decision-making frameworks—summary of benefits, costs and unknowns

BENEFITS

Total potential benefits from new decision-making frameworks, as suggested by consultation with industry and previous RISs, gives a 'best bet' of **$20 billion** in NPV over 20 years with a low (pessimistic) prediction of **$9 billion** in NPV over 20 years.[12]

COSTS

Total known cost, including bridge infrastructure upgrade, evaluative tools and internal and external review, is **$1.29 billion** in NPV over 20 years.[13]

BENEFIT-TO-COST RATIO

The CIE considered two models—gross domestic product and equivalent variation—to derive the benefit-to-cost ratio under a pessimistic (low) scenario, a 'best-bet' (medium) scenario and an optimistic (high) scenario, as shown in Table 3. Under all scenarios, benefits significantly outweigh costs.

Table 4: Benefit-to-cost ratio of new decision-making frameworks[14]

	Low scenario	Medium scenario	High scenario
Scenarios: GDP based			
Benefits (NPV $billion)	9.1	20.1	31.2
Costs (NPV $billion)	1.3	1.3	1.3
Benefit:cost ratio	7.0:1	15.5:1	24.0:1
Net benefit (NPV $billion)	7.8	18.8	29.9
Scenarios: based on equivalent variation plus safety and environmental benefits			
Benefits (NPV $billion)	8.2	17.9	27.8
Costs (NPV $billion)	1.3	1.3	1.3
Benefit:cost ratio	6.3:1	13.8:1	21.4:1
Net benefit (NPV $billion)	6.9	16.6	26.5

GDP = gross domestic product; NPV = net present value

UNKNOWNS

- the extent to which new decision-making frameworks will promote access
- the length of time the new process will take to deliver improved access
- the amount of confidence industry will have in internal and external review processes

[10] ibid.

[11] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 46

[12] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 43

[13] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 47

[14] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 48

- the impact of future road pricing reform.

Advanced fatigue management

The AFM policy set 16 hours as the outer limit. However, Victoria and New South Wales argued that this constituted an unacceptable risk, and argued for an outer limit of 15 hours. The matter was put to the expert panel, whose report stated that the 15- or 16-hour debate was largely moot because risk escalates from 12 hours. Furthermore, the panel believes that the entire AFM system requires an overhaul, as the barriers to entry are too high. It is clear that the current AFM system has not been adopted to the extent anticipated in the 2006 RIS.[15] The take-up of AFM was expected to be around 11 300 drivers in 5500 fleets.[16] In fact, only 21 operators had been approved for AFM as at February 2011—not even 1 per cent of the anticipated take-up rate. More applications have been rejected (26) than approved. Therefore, the estimated annual net benefits of $143 million anticipated from the fatigue reforms may be compromised by the low uptake rates for AFM.[17]

It should also be noted that Western Australia did not adopt the new fatigue laws and continues to regulate risk under state-based occupational health and safety (OH&S) laws. The expert panel has spent considerable time with Western Australian stakeholders learning how the system works and how some of its elements of sound practice can be incorporated into the national system. Tasmania and the Northern Territory have not yet implemented the fatigue laws.

The expert panel proposes a new approach to AFM, based on the principles of 'risk trading' and a classification system to enable an operator to assess the level of risk of any given operation. The intent is that any application must have a level of risk identical to the level of standard hours risk. In other words, although the driver may be working for longer than the 12 hours permissible under standard hours, the risk must be managed to a level commensurate with standard hours through the use of countermeasures such as only operating in daylight hours, increased opportunities for rest, and longer reset breaks. The panel has developed an indicative 'risk classification system' showing how fatigue risks and offsets can be balanced to manage the overall risk. Further work by the NHVR project office and the NTC is currently under way to develop a library of publicly available, sector-specific templates showing how risk can be managed in various situations. The intent is that applications that fall within the acceptable range will be approved swiftly. More contentious or borderline applications will be referred to a Fatigue Expert Group.

Preliminary analysis suggests that this would cost around $558 000 in development costs, with a recurrent cost of around $56 000 per year.

AFM—summary of benefits, costs and unknowns

BENEFITS

- Risk must be commensurate with standard hours.
- Lower entry costs for operators. Current costs are estimated at around $10 000–20 000 per application. Registered fatigue expert advice for those wishing to operate interstate can cost between $10 000 and $12 000.
- Freely available, sector-specific risk classification system templates.
- More timely approval process.
- Greater certainty of application outcome.

COSTS

- Development costs of around $558 000.
- Recurrent cost of around $56 000 per year.

UNKNOWNS

---

[15] National Transport Commission, *Heavy vehicle driver fatigue final Regulatory Impact Statement*, 2006.

[16] ibid., p. 103 (p. 31 of the RIS gives the figure at 5600 fleets). It is not clear from the RIS how long it was expected to take to achieve the uptake rate. However, costs were calculated over a 10-year period with an assumption of full compliance.

[17] ibid., p. 61.

- Level of uptake of the new system (Western Australia has signalled its intention to continue to operate its state-based fatigue regime through OH&S laws).
- Time to develop and upload a library of material for use by operators and drivers.
- Impact of the new system in promoting the $143 million in potential benefits identified in the 2006 driver fatigue RIS.
- New South Wales has signalled that its support of the new system is contingent on further analysis demonstrating sound safety outcomes.

Spray suppression

Spray suppression devices are currently required by Australian Vehicle Standards Rule 33 on B-doubles. The requirement has never been adopted in Western Australia or the Northern Territory. Spray suppression devices cost around $1500 to fit, and have direct maintenance costs of around $250 annually. The opportunity cost of foregone revenue for spray suppression maintenance is estimated at around $2000. There is no scientific evidence that spray suppression built to the British standard produces 'real-world' safety benefits.[18] The present value of future cost savings associated with removing the requirement to have a spray suppression device fitted to B-doubles is estimated at around $186.2 million (in 2010 dollar terms, using a discount rate of 7 per cent) over the 20 years to 2030.[19]

Accordingly, two options are presented for consideration: to remove the requirement altogether, with a longer term plan to develop a standard that works in the real world; or to allow mutual recognition between the states. The cost–benefit analysis supports the former option.

Spray suppression—summary of benefits, costs and unknowns

BENEFITS

- Reduced capital cost for eastern states operators of $1500 per vehicle.
- Reduced maintenance cost of around $250 per vehicle per year.
- Eastern states providers no longer subject to $2000 in annual foregone revenue from having the vehicle off the road.
- Present value of future cost savings is estimated at around $186.2 million (in 2010 dollar terms, using a discount rate of 7 per cent) over the 20 years to 2030.[20]
- Western Australian and Northern Territory B-doubles can operate cross-border.

COSTS

- None identified to date.

UNKNOWNS

- Extent to which the public perception of safety is reduced.
- When, or if, a standard that can be replicated in real-world conditions will become available.[21]

[18] See Appendix E for a summary of available data on the safety impacts of spray suppression.

[19] Centre for International Economics, 2011, p. 47.

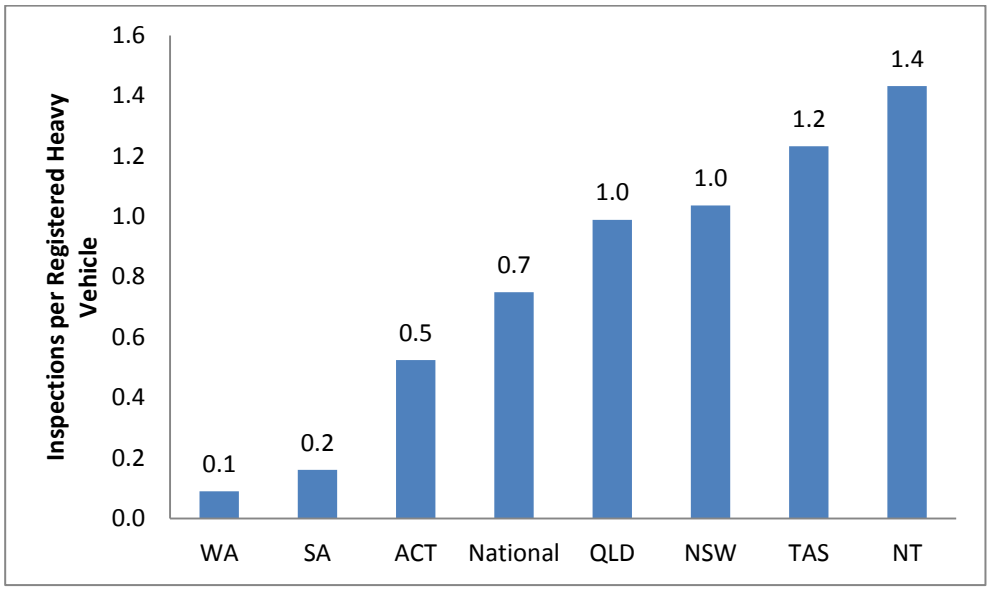
[20] Centre for International Economics, 2011, p. 47.

[21] New South Wales has provided evidence relating to spray suppression systems built to the European standard.

Vehicle inspections

At present, there is no agreed national approach to vehicle inspections. Consequently, there is wide divergence in the regulatory burden across states. Chart 4 shows the number of inspections required per registered heavy vehicle in each state.

Chart 4: Regulatory burden of vehicle inspections across Australia (2007)[22]



The systems vary in frequency, cost, delivery model, ease of compliance, inspection 'trigger', assessment methodology, and audit and control systems. The contribution that annual inspections make to road safety is difficult to definitively determine. The CIE concludes that an annual inspection regime would need to reduce the cost of road crashes by more than 20 per cent for the benefits to outweigh the costs.

The expert panel interim report suggests that there is no firm evidence that crash risk would be reduced by the national adoption of an annual inspection. It proposes that further work be done to develop a national approach to inspections, and that existing state-based regimes continue in the meantime.

Mutual inspection of jurisdictional regimes would yield the benefits identified in the 1996 agreements around vehicle transfers (already implemented in South Australia and Victoria) and country-wide defect notice removal inspections.[23]

Vehicle inspections—summary of benefits, costs and unknowns

BENEFITS

If mutual recognition is introduced:

- transferring vehicles will not be subject to inspection, potentially delivering the $14.24 million articulated in the 1996 RIS (1996 values)
- owners of transferring vehicles will no longer incur the $3000 opportunity cost of vehicle inspection[24]
- mutual recognition of defect notices may be more convenient for interstate vehicle owners issued with defect notices in New South Wales.[25]

[22] Data were not available for Victoria.

[23] National Road Transport Commission, *Regulatory Impact Statement: heavy vehicle registration*, August 1996.

[24] This is higher than for the opportunity cost of spray suppression because the vehicle may have to travel to the inspection site (Centre for International Economics, 2011, p. 55).

[25] There is some confusion about the situation in New South Wales. Industry representatives have claimed difficulty in having New South Wales-issued defect notices cleared outside of New South Wales. However, New South Wales states that the notices can be cleared through

COSTS

- Costs will be incurred in the further study (which has not yet been costed).

UNKNOWNS

- Findings and recommendations from the further study and how this will impact operators and the regulator.
- Potential impacts on the National Heavy Vehicle Accreditation Scheme in New South Wales.

Transfer of registration

In any one year, the registration of approximately 10 per cent of the heavy vehicle fleet (around 56 000 vehicles) is transferred.[26] Under the model law, when a heavy vehicle changes hands, only the acquirer (i.e. purchaser) of the vehicle is required to notify the registration authority. Most states and territories have diverged from the model law to require both seller and purchaser to advise the authority of a change of operator. In this way, a previous owner is prevented from incurring speeding fines or infringements incurred by a new owner, and the integrity of the registration database is promoted. As well, the registering authority can ensure that registration fees are appropriate (e.g. in situations where the previous owner was paying a concessional rate).

Victoria and Queensland use the transfer-of-registration model set out in the model law; the other states and territories have imposed additional obligations on sellers. It is suggested that requiring both seller and purchaser to notify of transfer better manages the risk that the register of vehicles may not reflect the responsible operator.

Transfer of registration—summary of benefits, costs and unknowns

BENEFITS

- Improved integrity of the registration database.
- Seller will not incur fines accrued by the new owner.
- More accurate collection of transfer fees and stamp duty.

COSTS

- An additional requirement to notify will be placed on sellers in Queensland and Victoria.
- The Queensland and Victorian registering authorities will incur system and administration costs. Queensland estimates this to be in the order of $1 million.

UNKNOWNS

- Exact volume of additional administrative burden for Queensland and Victoria.

RAV permits

Under the current model law, only a heavy vehicle operator or agent may apply for a RAV permit. Queensland has diverged from the model law to allow anyone to apply for a permit—for example, a farmer can apply for a permit to enable a B-double operator to enter their farm during the harvest. The permit specifies the *type of vehicle* permitted under the guidelines, the route and the conditions, but not the vehicle registration or vehicle identification number (VIN). If just 10 per cent of the Queensland permit applicants represent non-operators, administrative savings of around 50 weeks a year are achieved in permit issuance by the state. Industry has the benefit of greater flexibility if, for example, a vehicle breaks down and can no longer be used at the appointed time. An identical vehicle or combination may be used without needing to re-apply for a permit. It is suggested that the Queensland model presents efficiencies of benefit to the rest of the country.

---

recognised equivalents to an authorised inspection station (AIS) across Australia. Information was not available on how many such recognised equivalents exist.

[26] This is an estimate only. Exact figures are available for all states except Victoria, and are expressed as a percentage of the total heavy vehicle fleet in 2007. Victoria's figures were estimated by applying the same percentage of transfers as in New South Wales (12.76%) to the size of the Victorian heavy vehicle fleet in 2007.

RAV—summary of benefits, costs and unknowns

BENEFITS

- Time savings for the regulator in issuing permits—this could be anywhere from 50 weeks to 250 weeks, depending on who applies for the permit.
- Increased convenience for transport operators where a vehicle may break down or be unavailable.

COSTS

- Some scope to turn the system to competitive advantage.
- Systems costs for jurisdictions currently operating under the model law system.
- If the practice of using vehicle registration details on the permit is discontinued, there will be compliance and system cost implications.

UNKNOWNS

- Non-operators cannot be differentiated from operators, so it is impossible to precisely quantify benefits.
- Systems costs involved in adopting the Queensland RAV model are not known.
- Non-operators such as farmers may not be in a position to judge compliant from noncompliant vehicles.

Unpaid fines

All jurisdictions currently use vehicle registration sanctions as a punitive measure for unpaid fines. These fines may relate to the vehicle (e.g. non-payment of a speeding fine) or be entirely unrelated (e.g. non-payment of council fines). Registration sanctions differ in nature and severity across the country but can include suspension, cancellation, vehicle immobilisation and refusal to renew registration.

The model law is currently silent on registration sanctions for offences that are unrelated to the use of the vehicle. These sanctions are generally imposed under state-based enforcement laws unrelated to transport law. The HVNL could either (a) recognise that state law may result in registration sanctions for unpaid fines that are unrelated to the use of the vehicle, or (b) remove all reference to registration sanctions—even where they relate to the operation of the vehicle. The first option is recommended.

It should be noted that industry is strongly opposed to the imposition of registration sanctions for unpaid fines where the offence is unrelated to the operation of the vehicle.

Unpaid fines—summary of benefits, costs and unknowns

BENEFITS

- Achieves uniformity of sanction where the offence relates to the vehicle, since these will be covered in national law.
- Broadly similar to current practice where the offence is unrelated to the vehicle.

COSTS

- Does not promote consistency of registration sanctions across the states and territories for non–vehicle related sanctions.
- Imposes a burden on the regulator and registering authorities for outcomes with no relation to transport policy.
- Registration sanctions will impede an operator's ability to conduct business and therefore pay fines.
- Adding another layer of government involvement (the regulator) on top of the transport agency and the fines enforcement body may confuse customers and create delays.

UNKNOWNS

- The cost of the regulator's involvement in the process.

New offences

The proposed new offences cover:[27]

- defect notice removal or defacement
- refusing an auditor access to records kept by an IAP service provider
- tampering with a speed limiter.[28]

Transitional and operational costs

As noted above, this RIS is concerned with the impacts of reconciling state-based variations from the model laws with a single national approach. However, it is appropriate to include the forecast costs of establishing and maintaining the NHVR to give a more complete picture of net gains possible under the national system.

KPMG undertook a costing of the regulator and, on the basis of currently available evidence, deduced that total development and implementation costs are currently estimated at around $84 million, and ongoing costs at around $171 million per year.[29] Information technology was not included in these costs, nor were savings expected from transitioning state/territory functions into the national regulator. The exact ongoing cost will become clearer as the operational model is refined.

[27] The initial draft included new offences for noncompliance with the NHVAS. This has been removed in this version. Please refer to Section 10.4.6 for further information.

[28] This offence was not included in the draft RIS and was proposed during the consultation process. Please refer to Section 10.4.6 for further information.

[29] See KPMG, *Cost consultancy—jurisdictional costs to regulate heavy vehicles,* stage 3 report, September 2010.

Table of contents

1.Introduction 1

2. Background 2

3. Nature of the problem 5

4. Regulation Impact Statement structure and methodology 8

4.1 Independent Expert Panel 9

4.2 High Level Reference Group 10

4.3 Industry consultation 10

4.4 Drafting Advisory Panel 11

4.5 Other review processes 11

5. Scope and limitations 12

6. Combined impact analysis 14

7. Transitional and operational costs of the regulator 20

8. Medium impact variation analysis 21

8.1 Custom plates 21

8.2 Regulating driver fatigue through occupational health and safety law 23

8.3 Short rest defence under standard hours fatigue management 26

8.4 Split rest defence under basic fatigue management 26

8.5 Work diary 27

8.6 ‘Reasonable steps’ defence to prevent driving while fatigued 28

8.7 ‘Three strikes’ policy 29

8.8 Higher mass limits eligible vehicles 30

8.9 Registering codes of practice 33

8.10 Regulation of pilot and escort vehicle drivers 34

8.11 Driver licence sanctions for mass, dimension and load restraint breaches 39

8.12 Vehicle registration sanctions for mass, dimension and load restraint breaches 40

8.13 Special-purpose trailers 40

8.14 Treatment of silage trailers 41

8.15 Obligations to carry accreditation documents 43

8.16 Driver not required to carry documents 44

8.17 Returning seized goods 45

8.18 Restoration of vehicles, combinations or premises 46

8.19 Places where powers can be exercised 47

8.20 Detaining a vehicle 48

8.21 Intelligent Access Program record retention 49

8.22 Administration fees 50

9. High impact variation analysis 51

9.1 Decision-making frameworks 51

9.2 Advanced fatigue management 61

9.3 Spray suppression 72

9.4 Vehicle inspections 77

9.5 Transfer of registration 88
9.6 RAV permits 93
9.7 Unpaid fines 97
9.8 New offences 100
10. Consultation 105
10.1 Introduction 105
10.2 General response 105
10.3 Cost–benefit analysis 107
10.4 High-impact items 108
10.5 Medium-impact items 114
10.6 Issues not directly referenced in the Regulation Impact Statement 117
10.7 Issues considered out of scope for this Regulation Impact Statement 120
10.8 Feedback from the industry forums 120
11. Implementation, monitoring and review 126
12. Acronyms and abbreviations 127
13. Appendix A Low-impact RIS items 128
14. Appendix B Cost–benefit analysis 129
15. Appendix C Differences in health and safety laws 130
16. Appendix D Summary of the diversions from HML model law 132
17. Appendix E Summary of research on spray suppression 134
18. Appendix F List of respondents to the draft RIS and HVNL 138
19. Appendix G Summary of technical and operational issues raised in the RIS process 140
20. Appendix I – NHVR Project Office Forward Work Program 143

List of tables and charts

Table 1: Indicative gains from a single national approach to regulation iii
Chart 1: Pattern of expected net benefits over twenty years iv
Table 2: Indicative net benefits of legal reconciliations in 20 year NPV terms ($b); pessimistic scenario v
Table 3: Summary of medium-impact items vi
Chart 2: PRP-approved vehicle access levels, February 2009 – October 2010 xiii
Chart 3: Cumulative benefits in NPV terms over 20 years xiii
Table 4: Benefit-to-cost ratio of new decision-making frameworks xiv
Chart 4: Regulatory burden of vehicle inspections across Australia (2007) xvii
Chart 5: Road freight forecast 1972–2030 7
Chart 6: Decision-making and reporting structure 9
Chart 7: Australian heavy vehicle fleet in 2006–07 14
Table 5: Indicative gains from a single national approach to regulation 15
Chart 8: Proportion of benefits by impact 16
Chart 9: Relative magnitude of net benefits by economic areas (indicative) 17
Chart 10: Pattern of expected net benefits over twenty years 17

Table 6: Indicative net benefits of legal reconciliations in 20 year NPV terms ($b); pessimistic scenario 18
Table 7: Custom plates issuance 22
Chart 11: Interstate operators accredited under the Western Australian HVAS, October 2010 25
Table 8: HML model table, with state and territory variations 31
Table 9: Requirements for acting as a pilot or escort vehicle driver, by jurisdiction 36
Table 10: Pilot and escort requirements by jurisdiction 37
Chart 12: PRP-approved vehicle access levels, February 2009 to October 2010 54
Chart 13: Decision making relationship between the NHVR and the road manager 56
Chart 14: Indicative relative gains: cumulative benefits in NPV terms over 20 years 58
Table 11: Current state and territory costs for OSOM, RAV and HML vehicles 59
Table 12: Benefit-to-cost comparison for new decision-making frameworks 61
Table 13: AFM work and rest breaks 62
Table 14: Principles for effective risk management 67
Table 15: AFM scoring criteria 69
Table 16: Estimated development and recurrent costs for the new AFM system 71
Table 17: Compliance costs associated with spray suppression devices 74
Chart 15: Spray suppression costs for B-doubles, as at 2007 76
Chart 16: Total heavy vehicle inspections, 2009–10 78
Chart 17: Inspections per heavy vehicle, per state, 2007 78
Table 18: Heavy vehicle inspection triggers 80
Table 19: Cost of heavy vehicle inspection across states 82
Table 20: Cost of crashes involving heavy vehicles 85
Chart 18: Likelihood of a casualty crash by age of vehicle 87
Chart 19: Transfer of registration of heavy vehicle fleet by state 89
Chart 20: Infringements issued as a result of acquirer failure to notify of transfer (Queensland) 92
Chart 21: Potential efficiencies where permits are issued to non-operators (Queensland) 95
Table 21: Registration sanctions for non-payment of fines 98
Chart 22: Total heavy vehicle defect notices issued in 2009–10 101

1. Introduction

This Regulation Impact Statement (RIS) marks the next step in the heavy vehicle national reform program. Having agreed to the creation of a single national regulator administering a uniform body of law, the Council of Australian Governments determined that, rather than start from scratch in developing the heavy vehicle law, the law should be based on existing 'model laws' developed by the National Transport Commission and the states and territories. Since 1993, these laws have developed progressively as discrete pieces of legislation governing such areas as driver fatigue and higher mass limits. Work was required to reconstitute the model laws into a single cogent law.

The objectives of this work were twofold: first, to identify and address the variations that have arisen between the model law and the laws actually enacted in the states and territories; second, to improve the national law by tightening definitional consistency and introducing new elements to assist the functioning of the National Heavy Vehicle Regulator, such as processes for decision making and review. The mechanism for identifying and resolving variations is described in Chapter 4 (RIS structure and methodology). The intent was not to revisit previously agreed reforms and/or make new policy decisions.

The purpose of this RIS is to explore the impact of the Heavy Vehicle National Law. Where a change to the existing model law is proposed, the RIS explores the rationale for the change, the benefits likely to accrue from it, any disadvantages that may arise, and the quantitative and qualitative impacts for industry, the regulator, and the states and territories. Where a change to the model law is not recommended but is likely to significantly impact a state or territory that has considerably diverged from the law, this is also explored.

It is important to note that the RIS concerns itself solely with the impacts of the proposed law. It does not make the case for the regulator that will administer that law—that task was undertaken by the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government in the 2009 RIS evaluating the options for greater national consistency in heavy vehicle regulation.[30] Nor does this RIS outline how the regulator will operate—that task is being undertaken simultaneously with this RIS by the National Heavy Vehicle Regulator Project Office in Queensland.

[30] Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement*, May 2009.

2. Background

The heavy vehicle reform program formally began in March 2008, when the Council of Australian Governments (COAG) committed to a microeconomic reform agenda for Australia, with a particular focus on health, water, regulatory reform and the broader productivity agenda. All members signed up to a National Partnership Agreement to Deliver a Seamless National Economy. The agreement commits to 'deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation, to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy'.[31]

In September 2008, the Hon. Julia Gillard MP wrote to state and territory ministers proposing that a Regulation Impact Statement (RIS) be developed in support of a single national heavy vehicle regulation, registration and licensing system. The Australian Transport Council (ATC) agreed to investigate a framework that would make this possible.

The ATC framework proposed:

- a single regulator to administer a body of national heavy vehicle laws
- a body of national heavy vehicle laws that encompasses existing heavy vehicle regulation
- a national heavy vehicle registration scheme
- a consistent approach to minimum standards for heavy vehicle driver competency
- a single, physical, national heavy vehicle driver licence.

Ministers further agreed that, over time, pricing and/or network access would also be investigated as part of the national reform.

The proposed framework was the subject of an RIS developed by the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government in 2009. That RIS evaluated the case for a national approach to heavy vehicle registration and licensing against six key objectives for regulatory reform:

1. Uniform laws and administrative practices should achieve the 'same outcome in the same circumstances' across Australia.

2. Regulatory burden should not increase overall as a result of the reform.

3. Legal and administrative costs of regulatory compliance should be minimised.

4. Productivity, effectiveness and safety of the heavy vehicle industry should be increased.

5. Efficient, productive and sustainable freight and heavy vehicle operations should be facilitated, consistent with sustainable management of state and territory assets.

6. The framework should allow for regular review and evaluation of the regulation and supporting systems, to ensure their ongoing national relevance and efficiency.

The Commonwealth RIS considered four options for a national system of heavy vehicle regulation:

- to retain the status quo—this was used as the 'base case' against which to evaluate the other options
- to create a non-statutory body to foster consistency in the administration of the current model laws as they apply in each jurisdiction
- to enact uniform national heavy vehicle law in a 'host' jurisdiction—other jurisdictions would then adopt that law as 'template' legislation

[31] Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement*, May 2009, p. 8.

- to create a single national statutory regulator that would administer uniform legislation and deliver services through the existing registration authorities.

Under the fourth option, the regulator would:

> … **administer the entire body of the national heavy vehicle law** … from the day-to-day matters such as registering trucks and administering licence testing to setting the standards for, and collating the results of, compliance and enforcement activities …
>
> The NHVR [National Heavy Vehicle Regulator] would administer the national heavy vehicle registration scheme including:
>
> - maintaining a national register and collecting registration fees in accordance with the legislation
> - administering a scheme for regulating heavy vehicle standards and inspections in accordance with the legislation, including *determining inspection, roadworthiness test and defect notice regimes …*
>
> *A key role for the NHVR would be in development of guidelines on decision making* in implementing particular areas of the law where industry seeks consistency across jurisdictions, such as the provisions for variations for local productivity enhancement and access to local roads …
>
> *The NHVR would also act as a 'one-stop shop' for heavy vehicle business interactions with government* where, for example, applications for access permits that cover a number of jurisdictions could be made and resolved …
>
> Under Option 4 the national heavy vehicle law would make provision for the issuing of notices for classes of non-general access vehicles and permits for individual non-general access vehicles by the NHVR. *To ensure consistency in decision making, criteria for the making of these decisions … would be set out in the legislation after consultation with jurisdictions and agencies …*
>
> The NHVR would facilitate consistency in services delivered through agreements with jurisdictions agencies … by establishing strategies, performance targets and operating procedures for jurisdictional agencies to implement the compliance and enforcement aspects of the national laws'.[32] [author's emphasis]

This fourth option delivered the most significant benefits when measured against the key objectives for regulatory reform and was the option supported by the ATC.

Accordingly, on 2 July 2009, COAG agreed to establish the NHVR and a national body of law governing the regulation of all vehicles weighing more than 4.5 tonnes. COAG agreed that the basis for the Heavy Vehicle National Law (HVNL) should be the reforms developed by the National Transport Commission (NTC) and its predecessor, the National Road Transport Commission. These reforms were mostly captured in model legislation.

At some point after the Commonwealth RIS, it was recognised that the sheer breadth of legislation slated for inclusion made the timeframes unrealistic. The scheduling pressure, coupled with the complexities that would arise from running two licensing systems (one for light vehicles, one for heavy) led to a decision to remove heavy vehicle driver licensing from the first stage of reform.[33] Consultation with industry reveals a high degree of disappointment and concern that driver licensing was removed from the initial tranche of regulatory reform. There is a clear and unambiguous call from industry stakeholders for driver licensing to be a priority issue in the next wave of reform.

Following the removal of licensing, the following legislation was left for consolidation into the HVNL:

- heavy vehicle registration Acts

---

[32] Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement*, May 2009, pp. 74–75.

[33] It should be noted that a consistent approach to driver testing and competency continues to be pursued through the Registration and Licensing Taskforce and that heavy vehicle driver licensing is included in the National Partnership Agreement.

- heavy vehicle registration regulations
- Australian Vehicle Standards Rules regulations
- heavy vehicle charges Acts
- mass and loading regulations
- oversize and overmass vehicles regulations
- restricted access vehicles regulations
- higher mass limits regulations
- Compliance and Enforcement Bill 2003
- Intelligent Access Program Act
- heavy vehicle driver fatigue
- heavy vehicle speeding compliance Acts
- alternative compliance legislation (accreditation).

All of these reforms have been approved by the ATC (and its predecessors) and subsequently enacted, in whole or in part, by the states and territories. The NTC has also developed guidelines for the concessional mass limits and National Heavy Vehicle Accreditation Scheme reforms. Guidelines for the administration of vehicle registration and the operation of escort and pilot vehicles have also been developed. The NTC is currently working on projects relating to performance-based standards, accreditation and road pricing reform. It is expected that these projects will result in agreed reforms that may need to be reflected in legislation.

Once approved, the HVNL will be the primary source of regulation for heavy vehicles in Australia. However, it will not regulate such matters as transport of dangerous goods, traffic laws or public/passenger transport regulation. The legislation is to be implemented by January 2013.

The NTC is working closely with the National Heavy Vehicle Regulator Project Office on the development and implementation of the new national system, which will achieve the following:

- efficiency—a common set of laws for heavy vehicles for all states and territories
- safety—a national safety monitoring and reporting system dedicated to heavy vehicles
- productivity—ability to provide quick responses to changing industry trends and needs
- services—a single point of contact for all heavy vehicle regulation in Australia
- independence—the NHVR will be an independent statutory authority
- compliance and enforcement—a unified strategy and approach
- registration—a national heavy vehicle registration system
- transparency and accountability—with review for key decision making.

3. Nature of the problem

The model laws were developed over the past two decades or so as part of the push towards harmonising vehicle regulation. Harmonisation involved the National Transport Commission (NTC) developing the laws in consultation with the states and territories, with the intent that all states and territories would regulate registration, licensing and allied processes in the same way. However, the model laws in themselves had no power; they required enactment at the jurisdictional level to take effect.

Problems have arisen because the model laws have been adapted to reflect individual state and territory concerns and environments. Differences in legal and law enforcement systems, drafting preferences, local requirements and operational realities have meant that sometimes laws have been partially implemented, or not implemented at all. In other instances, local productivity variations have gone beyond thresholds given in the model laws. Consequently, despite significant progress towards national consistency, important variations remain.

The lack of a single administering body leaves operators to navigate a maze of government bodies for important decisions around registration, accreditation, vehicle conditions and access. There is no single repository of expertise for industry to refer to. Hence, operators seeking road access often face ambiguity when identifying appropriate decision makers and where to lodge an application. The divergent roles of transport agencies and the road manager may be unclear, and operators may face long delays in determinations. Rights of review have not been enshrined in law, and administrative mechanisms are inconsistent. Consequently, letters of complaint are often addressed to ministers, chief executives and other officials thought to be relevant, in the hope of a favourable response. Operators may 'shop around' within and between departments in search of advice and information that best suits them.

Variations in law create particular problems for interstate operators. Even relatively small distinctions in regulation have compliance and enforcement consequences for cross-border operators. The more diversions within law, the more resources interstate operators must expend on understanding and maintaining compliance. As expressed by the National Road Transport Association (NatRoad):

> *In the regulation of the heavy vehicle industry … the problems arise from the multiplicity of regulations rather than from whether there is a need for any regulation. Industry agrees that there is a need for regulation … however, having different sets of rules across jurisdictions increases the administrative burden of compliance. As a result, some drivers may not comply because it is complicated and time consuming, while other drivers may attempt to comply but fail to do so due to a lack of understanding of what is required. Both forms of noncompliance impose a threat to road safety.*[34]

The current costs of compliance are considerable. NatRoad estimates that the typical driver of heavy trucks receives approximately three days of compliance training per year. With 44 000 interstate drivers, this equates to 132 000 days of compliance training, at a total cost of $17 780 000.[35] An operator wishing to cross a border into Western Australia may be a member of up to three accreditation schemes, all with fees and entry requirements (although efforts have been made to streamline the associated auditing and compliance regimes).

Variations in regulations have direct impacts on productivity for operators in cross-border regions. A study into the Sunraysia region (with borders in New South Wales, Victoria and South Australia) explored how wine producers in the region are, in effect, forced to comply with the 'lowest common denominator' regulation. The most efficient vehicle for transporting the grapes would be a road train, but these are not currently permitted on a stretch of highway linking two of the states and used by the carrier. Consequently, wine producers use less

---

[34] Castalia Strategic Advisors, *Securing a national approach to heavy vehicle regulation—report to the National Road Transport Operators Association*, February 2009, p. 23.

[35] ibid., p. 20.

efficient semitrailers, leading to more trips, more emissions and higher consumer prices. 'If it is assumed that 50 per cent of grapes sourced need to cross borders and are using semi-trailers rather than more efficient road trains, then the cost to the wine industry, in the region, is around $1.6 to $2 million per annum'.[36]

Border crossings are a 'high-stress' node in the transport network.[37] According to industry sources, drivers who cross borders experience considerable 'compliance stress', with attendant health risks. Although this stress is non-quantifiable and has no direct economic impact, it influences drivers' quality of life and on-road focus. It could also conceivably be a risk factor in fatigue management.

The current complexity of the system (although perhaps based on local conditions in some instances) is a natural barrier to expansion. It creates an incentive for operators to stick to operations within their home jurisdiction because of lack of time and resources to devote to mastering the different regulatory regimes. This provides a competitive advantage to incumbents and to larger operators with the resources to devote to acquiring such mastery.

The widely divergent regimes also create equity issues. Transport operators across states and territories are subject to different regulatory impacts. As explained in Section 9.4, on heavy vehicle inspections, in Western Australia, there are fewer than 0.1 inspections per heavy vehicle each year, whereas, in the Northern Territory, there are 1.4 inspections per heavy vehicle per year. Operators pay different fees for similar services, are subject to different technical requirements, are granted varying levels of access for the same vehicles seeking to operate on similar infrastructure, and incur divergent penalties for the same offences.

A significant volume of the submissions received during the public consultation phase made the point that the National Heavy Vehicle Regulator (NHVR) must assume the regulatory duties currently overseen by the states and territories and not duplicate them. Simply adding a further layer of regulation on top of the existing structures will do nothing to address duplication, confusion and variance, and will in all likelihood exacerbate them. This was variously expressed as a fear of a 'ninth regulator' or a 'regulator without teeth'. As one stakeholder put it, 'it will not be acceptable for the NHVR to become a 9th regulator that is itself hamstrung by persistent national inconsistencies'.[38] Furthermore, effective administration of the Heavy Vehicle National Law requires a commonality of understanding between the regulator, drivers, operators, jurisdictions and enforcement bodies about what precisely the law means in practice.

These fears notwithstanding, industry was generally enthusiastic about the potential for the regulator to assume functions and services that currently exist only in embryonic form or not at all. These include a genuinely national chain-of-responsibility investigation and enforcement function, developing network access databases and improving national mapping.

Issues of duplication, red tape, confusion, stress, equity and competitiveness need to be understood against the backdrop of freight task to be fully appreciated. By 2030, the total national road freight task is expected to be 1.8 times its 2008 level.[39] Importantly, it is the *interstate* road freight task that will drive this growth—interstate task is expected to be 2.3 times the current level in 2030 (Chart 5).

---

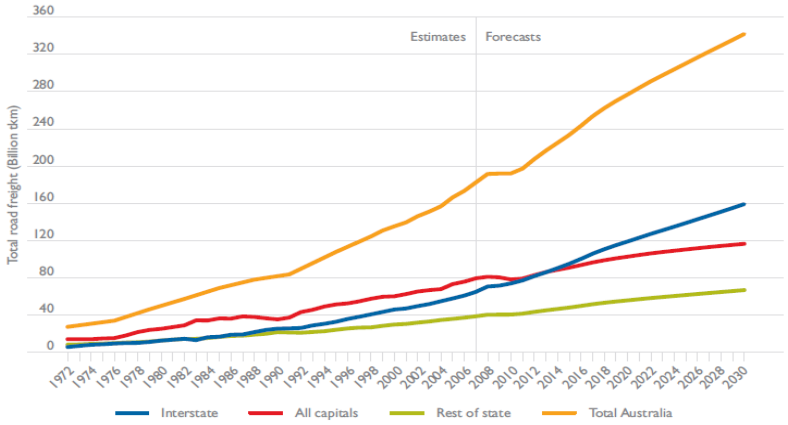
[36] Australian Logistics Council, *The cost impact of regulation disparity in cross border regions—a study encompassing the 'Sunraysia/Riverland region',* March 2009, p. 18.

[37] Castalia, *Securing a national approach to heavy vehicle regulation—report to the National Road Transport Operators Association (NatRoad),* February 2009, p. 22.

[38] NatRoad response to Heavy Vehicle National Law draft Regulatory Impact Statement, 13 May 2011, p. 8.

[39] Department of Infrastructure and Transport, *Road freight estimates and forecasts in Australia: interstate, capital cities and rest of state,* research report 121, 2010, p. v.

Chart 5: Road freight forecast 1972–2030[40]



Note: From 1972 to 2007, estimates; while from 2008–30, forecasts.

Generally, the proportion of total road freight that is interstate is forecast to grow in each state and territory during 2008–2030, while the proportion that is rest-of-state road freight is forecast to decline.[41] It is therefore crucial that cross-border variations in road freight regulation be minimised.

[40] ibid., p. 8.

[41] Department of Infrastructure and Transport, *Road freight estimates and forecasts in Australia: interstate, capital cities and rest of state*, research report 121, 2010, p. 6.

4. Regulation Impact Statement structure and methodology

The 2009 Commonwealth Regulation Impact Statement (RIS) made the case for establishing a National Heavy Vehicle Regulator (NHVR) that would administer the entire body of the Heavy Vehicle National Law (HVNL), run the registration scheme, develop decision-making guidelines on matters such as road access, and act as a one-stop shop for heavy vehicle business with government. The task for the National Transport Commission (NTC) and states and territories was to review the existing model laws and undertake a comprehensive stocktake of all known variations from those model laws. Nine 'stocktake' workshops with representatives from the states and territories were conducted, where variations were tabled and discussed.

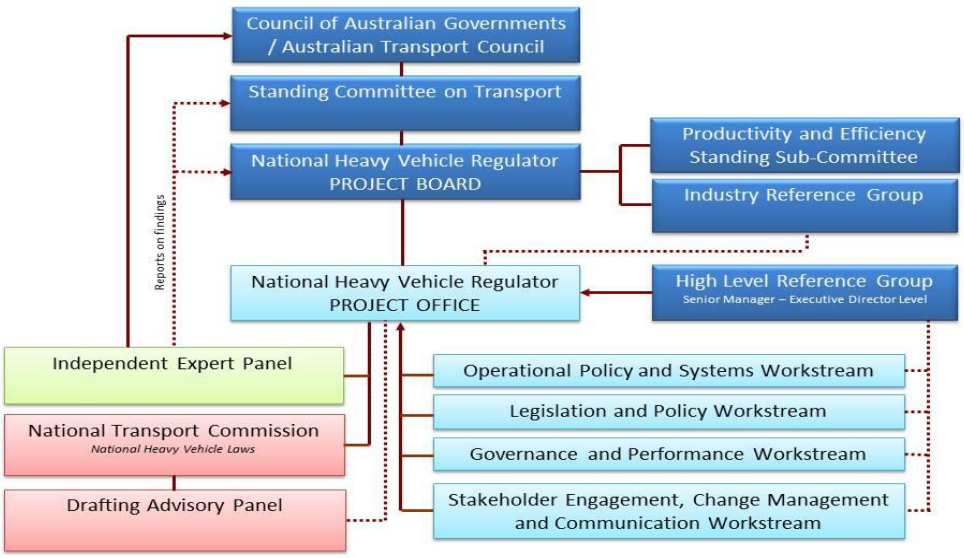
In all, 368 issues were identified that required resolution for the national law. In the vast majority of cases, the jurisdictions and the NTC were able to reach consensus on a recommendation for how the national law should operate. In most cases, the model law was retained.

Reconciling each departure from the model law back to a single national position has widely divergent impacts. Some of the proposed resolutions result in no, or low, net competition impacts and low to medium net compliance costs. Through consultation at the state and territory level, a clear consensus on the preferred approach was generally reached. Consequently, these items have not been subject to an options analysis. The low- to medium-impact items are discussed in Chapter 8. They follow the recommended Office of Best Practice Regulation (OBPR) structuring principle of identifying the problem, stating the objective of government action, outlining the options (where applicable) and making a recommendation for consideration.

By agreement with the OBPR, recommendations of a more contentious nature are collected in Chapter 9. They tend to attract higher compliance costs and medium to significant competition impacts. Typically, there are various options for the best way forward. Industry and other stakeholders were requested to pay particularly close attention to these items and to provide their views in submissions to the NTC.

Guidance from several groups has been important in developing recommendations or options on how the variations can be resolved. The governance structure for decision making and reporting relationships is shown in Chart 6.

Chart 6: Decision-making and reporting structure



The role of the Independent Expert Panel, the High Level Reference Group (HLRG), industry and the Drafting Advisory Panel are briefly described below. The recommendations in this RIS reflect the deliberations and advice of these groups and the response of industry and stakeholders to the draft consultation RIS. The recommendations will be put to the Standing Committee on Transport and Infrastructure (SCOTI) via the Transport and Infrastructure Senior Officials' Committee (TISOC) for consideration and approval.

4.1 Independent Expert Panel

The Independent Expert Panel was convened by the ATC in June 2010 to give particular attention to the areas of fatigue management, compliance and enforcement, and some aspects of registration. For these issues, robust debate had failed to produce a consensus among the jurisdictions. In such cases, it was judged best for an independent panel working outside government, with specific expertise, to provide advice to guide decision making.

Matters that were referred to the expert panel are listed below.

4.1.1 Fatigue management

- 16 hours as an outer limit for driving hours under advanced fatigue management operations.
- Use of short rest breaks and split-rest breaks in standard fatigue management.
- Completion of work diaries (including in relation to a distance from base).
- Management of fatigue and driving hours within occupational health and safety frameworks.

4.1.2 Compliance and enforcement

- Application of licence and registration sanctions for non-severe breaches of mass, dimension and load restraint requirements.
- Application of a 'three strikes' (suspension of registration) policy for speeding offences.
- Detention of noncompliant vehicles for mass, dimension and load restraint breaches.

- Application of a 'reasonable steps' defence for those with a duty in the chain of responsibility to prevent driving while fatigued.
- Enforcement of compliance for vehicles 'seen on a road', rather than on a road or road-related area.

4.1.3 Registration

- Effectiveness of annual inspections for renewal of registration.
- As an alternative approach, identification of any existing special risks that may require an annual inspection and cannot be effectively managed in a more cost-effective way.

The panel met a number of times to discuss the issues and the available evidence. It consulted directly with the states and territories, industry and the NTC to understand the extent of, and reasons for, variations from the model laws. The panel studied the available Australian and international research in order to make evidence-based decisions, and reached a consensus on all the issues. In drawing its conclusions:

> *'The panel has adopted safety as its primary yardstick and therefore has evaluated the evidence and applied its expertise using a risk based approach. In reaching its conclusions, the Panel has, of course, also taken into account transport productivity, justice policies, operational practicalities, enforcement practicalities and compliance costs'.*[42]

The panel provided an interim report to the ATC on 24 September 2010; its interim findings and recommendations were reflected in the draft RIS. This updated RIS incorporates the final recommendations included in the expert panel's final report to the ATC. The panel's recommendations were accepted by the ATC at its meeting on 20 May 2011.

4.2 High Level Reference Group

The HLRG consists of senior officials (typically executive directors or senior managers) representing the six state and two territory transport authorities, the Australian Government and the NTC. The group met regularly to debate high-level policy issues. Their expertise was needed to consider significant issues in relation to the NHVR. The group has considered about 50 issues, including higher mass limits, custom plates, spray suppression, exemptions and special-purpose trailers.

4.3 Industry consultation

The heavy vehicle industry has been kept informed of developments through scheduled forums, website updates and targeted meetings. In September 2010, an NHVR forum was held in Newcastle to update industry on the objectives and principles of the NHVR and its role in productivity and safety.[43] The forum provided an opportunity for industry to hear first-hand what the national law was likely to contain and the preliminary recommendations of the expert panel. A second forum was held in Western Australia in November 2010.

An Industry Advisory Group was formed to provide views on key strategic issues affecting heavy vehicle road transport regulation and the implementation of the NHVR, particularly in relation to productivity, efficiency and safety.

The draft RIS was released on 28 February and was available for comment until 6 May 2011. Sixty-two written submissions and one verbal submission were received.

Following the release of the draft RIS, 18 forums were held across the country to explain the intent of the proposed law and the likely impacts. The forums, which attracted around 780 stakeholders, included question-and-answer sessions that provided attendees with direct access to the regulatory bodies developing the laws. Evaluation sheets were provided at each forum to enable stakeholders to express their questions, comments and concerns in writing.

---

[42] Independent Expert Panel on Heavy Vehicle Policy, April 2011, p. 2

[43] The forum was held on 16 September 2010 and was facilitated by the Independent Expert Panel, the project board and the NTC.

The question-and-answer sessions and the evaluation forms have all been considered in the development of this updated RIS.[44]

Key stakeholders, such as the Australian Trucking Association, Australian Livestock Transporters Association, NatRoads, the Australian Logistics Council, the National Farmers' Federation, the Australian Local Government Association and the Transport Workers Union, have been directly consulted.

4.4 Drafting Advisory Panel

The Drafting Advisory Panel consists of government officials with policy and legal expertise. The panel was convened to scrutinise the law and to resolve drafting issues. Typically, these issues were not contentious, nor were they considered to significantly impact industry, the regulator or the public. In most cases, the issues were of a minor technical or policy nature, with impacts so low as to defy quantification.

These items have been progressively released into the public domain via the NTC website from September 2010, and are summarised in Appendix A of this document.

4.5 Other review processes

The sheer breadth and complexity of the issues under consideration has necessitated other review processes that are running in parallel with this RIS. These include projects to develop a new penalty regime for existing penalties and clarifying vehicle classification definitions for heavy vehicle charges.

The penalties project aims to create a set of consistent penalties for every offence in the HVNL. Unfortunately, as the penalties project is a discrete piece of work, the timelines for its completion differ from those of this RIS. In the meantime the initial HVNL will contain Queensland penalties for each offence. The NTC will be managing the project, but significant industry and government consultation will be central to the development of the penalties. A discussion paper will be released in early 2012 for public comment. Details of the penalties forward work plan has been included in the Explanatory Memorandum document.

Major work is under way to resolve anomalies in heavy vehicle charges that have become apparent, particularly since the introduction of differential trailer registration charging on 1 July 2009. It became very clear during the course of public consultation on the draft RIS that A-trailer charging is of particular concern to industry and requires swift resolution. The heavy vehicle charges project aims to eliminate these differences (where possible) through consultation and amendments to the Model Heavy Vehicle Charges Act. This work is likely to continue through 2012.

[44] Please see Chapter 10 (Consultation).

5. Scope and limitations

This Regulation Impact Statement (RIS) is circumscribed in that, rather than considering new policy or process, it consolidates a raft of model laws that have been in existence for some time and that have all previously been subject to impact analysis. This consolidation process means that some of the issues raised by stakeholders during consultations are outside the scope of this RIS. These include:

- issues with A-trailer registration
- the Safe Rates initiative
- technical matters relating to vehicle design
- heavy vehicle driver licensing (it is acknowledged that this is a high-priority issue for industry and needs to be addressed in the second wave of reform)
- the nature of the relationship between the regulator and the states and territories, and how this will be funded
- the nature of the relationship between the state police forces and the regulator.

Since the model laws have been subject to previous analysis, their implications and benefits are largely known. In some instances, the impacts were derived as long ago as 1993 (registration) and may have altered over time due to process re-engineering and new technologies. In other instances, the impacts were determined very recently (e.g. heavy vehicle speeding compliance) and can be confidently extended to this analysis. Some of the elements, such as decision-making frameworks that incorporate rights of review, are entirely new.

In order to quantify the impacts of any potential changes to existing model law, and to update previous analysis, the Centre for International Economics (CIE) was commissioned to undertake a cost–benefit analysis. The analysis operates on two levels. The first level considers the package of laws in its totality and presents an aggregate view of costs and benefits; the findings are included in Chapter 6 (Combined impact analysis). The second level drills down into specific items in the 'high impact items' section to provide a finer grained analysis of options and implications.[45] The CIE's findings are referenced throughout the RIS and are reproduced in their entirety as Appendix B. The states and territories provided key data in relation to vehicle inspections, accreditation, vehicle transfers, permits, unpaid fines and number plates. The assistance of the states and territories in locating, verifying and providing these data is gratefully acknowledged.

It is important to note that the CIE's remit related to costs and benefits of changes to the law. It excluded the costs of transitioning to and operating the regulator. This costing exercise was undertaken by KPMG in a separate exercise. KPMG's findings are summarised in this RIS to provide more information about costs and should be considered against the gains quantified by the CIE.

Economics, however, tells only part of the story, albeit an important one. Some of the impacts are qualitative in nature and revolve around nebulous attributes such as confidence, certainty, equity, stress and practicality. Although dollar values can partially be attributed to these qualities, they tend to defy quantification. However, they are tremendously important elements of the reform agenda. The qualitative impacts are explored in the narrative and should be considered in tandem with the economics to obtain a complete picture of the Heavy Vehicle National Law.

As indicated in Chapter 1, this RIS does not set out to make the case for the National Heavy Vehicle Regulator. Stakeholders interested in this are referred to the 2009 Commonwealth

[45] The CIE's cost-benefit analysis at this level excludes new offences and the Queensland RAV permit model because the decision to look in more detail at these elements proceeded from industry consultation after the scope of work had been agreed and the work had commenced.

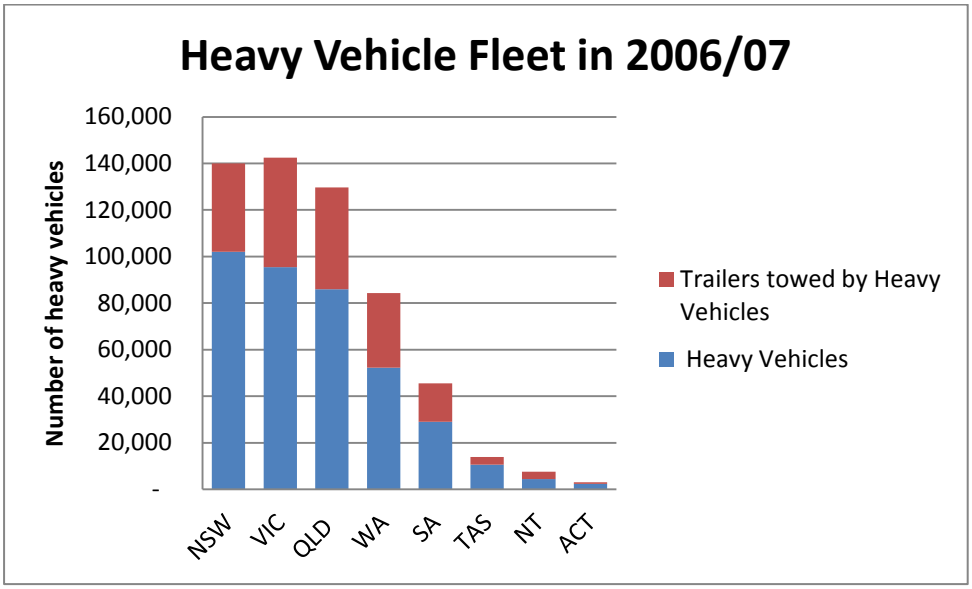
RIS. This RIS concerns itself solely with the implications of the law that will be administered by the regulator.[46]

[46] Department of Infrastructure and Transport, *Road freight estimates and forecasts in Australia: interstate, capital cities and rest of state*, research report 121, 2010.

6. Combined impact analysis

In 2007, there were around 566 000 heavy vehicles in the Australian fleet, comprising trucks, buses and trailers, as shown in Chart 7.[47]

Chart 7: Australian heavy vehicle fleet in 2006–07



The Heavy Vehicle National Law (HVNL) will impact on the operation of this fleet, its operators, drivers, allied industries, other road users and local communities. To quantify impacts of the proposed national law, the Centre for International Economics (CIE) considered existing studies such as the Productivity Commission's 2006 inquiry report, *Road and rail freight infrastructure pricing*, and previous Regulation Impact Statements (RISs). This is methodologically appropriate because the impacts of a national approach have largely already been articulated through such studies and have been subject to standard consultation, oversight and review processes. Consolidating the model law into a single body of national law consolidates these known benefits. The Productivity Commission found that:

> *… to realise the benefits of a national road freight transport market, it is important that road freight operators not be subjected to additional and unnecessary compliance costs and burdens arising from regulatory variations across jurisdictions. All remaining regulatory inconsistencies, overlaps or duplication between jurisdictions should be identified and further efforts made to develop nationally consistent and coordinated approaches.*[48]

In order to gain a sense of the economic benefits possible through returning to a single, national law, the benefits articulated in previous Regulation Impact Statements and other studies were attributed to the reconciliations proposed in the law. The studies suggest an estimated total accumulated net benefit to the economy of $12.433 billion.[49] Table 4 apportions the costs and benefits of this $12 billion (NPV) across the 368 variations that need to be reconciled in the national law.

The table lists the various divergences by heading and differentiates between the medium–high-impact items (shown in the pink-banded 'RIS variation' row) and low-impact changes. Potential impacts considered are compliance costs (for industry), enforcement administration costs (for government), safety, environment (noise and carbon emissions) and productivity.

---

[47] The 2007 data are the most recent comprehensive Australian Bureau of Statistics data available. The trailer figures charted here have been derived from those data.

[48] Productivity Commission Inquiry report, *Road and rail freight infrastructure pricing*, no. 41, 22 December 2006, p. 306.

[49] See Centre for International Economics, *Benefit-Cost Analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.15

Impacts are expressed in net present value ($NPVb) terms. (For a fuller discussion of economic impacts, see Appendix B.)

Table 5: Indicative gains from a single national approach to regulation

Legal issues	*Number*	*Economic impacts (NPV, billion dollars)*						*Sum (NPV, billion dollars)*
		Savings						
		Compliance cost (on industry)	*Enforcement administration cost (on regulators)*	*Safety*	*Environment*		*Productivity*	
					Noise	*$C0_2$.e*		
Registration law	30	**0.150**	**0.050**					**0.200**[a]
RIS variation	*7*	*0.035*	*0.012*					*0.047*
AVSRs	24	**0.075**	**0.025**					**0.100**[a]
RIS variation	*1*	*0.068*	*0.023*					*0.090*
Mass and loading	17	**0.075**	**0.025**					**0.100**[a]
RIS variation	*1*	*0.004*	*0.001*					*0.006*
RAVs	22	**0.840**	**0.210**	**0.140**	**0.070**	**0.140**	**5.700**	**7.000**[b]
RIS variation	*2*	*0.720*	*0.180*	*0.120*	*0.060*	*0.120*	*4.800*	*6.000*
IAP	33	**0.139**	**0.035**	**0.023**	**0.012**	**0.023**	**0.924**	**1.156**[c]
RIS variation	*4*	*0.093*	*0.023*	*0.015*	*0.008*	*0.015*	*0.619*	*0.774*
NHVAS	12	**0.099**	**0.033**				**0.198**	**0.330**[d]
RIS variation	*2*	*0.008*	*0.003*				*0.017*	*0.028*
Compliance and enforcement	74	**0.050**	**0.013**	**0.125**			**0.063**	**0.250**[d]
RIS variation	*6*	*0.005*	*0.001*	*0.013*			*0.006*	*0.025*
Fatigue CoR	68	**0.200**	**0.050**	**0.500**			**0.250**	**1.000**[e]
RIS variation	*6*	*0.020*	*0.005*	*0.050*			*0.025*	*0.100*
Speeding CoR	16	**0.050**	**0.013**	**0.125**			**0.063**	**0.250**[d]
OSOM	43	**0.042**	**0.011**	**0.007**			**0.238**	**0.298**[c]
RIS variation	*3*	*0.021*	*0.005*	*0.004*			*0.119*	*0.149*
CML	4							
HML	13	**0.210**	**0.053**	**0.035**	**0.018**	**0.035**	**1.400**	**1.750**[c]
RIS variation	*2*	*0.180*	*0.045*	*0.030*	*0.015*	*0.030*	*1.200*	*1.500*
Other business	12							
TOTAL	1–368	**1.930**[f]	**0.516**[f]	**0.955**[g]	**0.099**[g]	**0.198**[g]	**8.735**[h]	**12.433**
RIS variations	*34*	*1.154*	*0.298*	*0.231*	*0.083*	*0.165*	*6.786*	*8.718*

AVSR = Australian Vehicle Standards Rules; CML = concessional mass limit ; CO2-e = carbon dioxide equivalents; CoR = chain of responsibility; HML = higher mass limits; IAP = Intelligent Access Program; NHVAS = National Heavy Vehicle Accreditation Scheme; OSOM = oversize and overmass; RAV = restricted access vehicle

a Based on NTC (personal communication) distribution of Castalia (2009) estimates.

b Based on NTC (2010) performance-based standards (PBS) RIS estimates. PBS is a subset of RAV impacts; with RAV impacts assumed to be double the PBS estimates.

c Proportionally smaller than RAV NTC (personal communication).

d Proportionally smaller than fatigue NTC (personal communication).

e Based on NTC fatigue RIS (2002).

f Based on Castalia (2009). [50]

g Based on NTC (2010) PBS RIS proportions.

h Based on conservative interpretation of Productivity Commission (2006) numbers. [51]

As shown in Table 4, the single largest area of gain ($7.0 billion) is expected in restricted access vehicle (RAV) regulation. The gains from PBS ($3.6 billion) reported in the PBS RIS are a subset of these gains. Small gains to safety, noise and carbon emissions will come from larger vehicles conducting fewer trips.

The next largest area of gain is expected to derive from reproducing model higher mass limits law in the national law. However, the productivity gains they will deliver are expected to be only about a quarter of those relating to RAV regulations. As with RAVs, the anticipated gains will be delivered through new decision-making frameworks.

Of the 368 divergences to the model law requiring resolution, about 90 per cent are of a relatively minor technical nature. They are important to help scaffold the sorts of economic gains likely from establishing national regulation. They do this by underpinning the regulator's administrative integrity, authority and effectiveness to bring about productivity gains and to achieve economies of scale and scope in compliance, administration and enforcement costs. Based on the attribution exercise presented here, reconciling these divergences might be considered necessary to achieve around 30 per cent of expected gains.

Reconciling the other 34 divergences is needed to more directly open the way for the substantial productivity gains expected from removing the problems associated with fragmented regulation of the heavy vehicle sector. Based on the attribution exercise, these may be responsible for around 70 per cent of the potential gains. The proportion of benefits expected from the medium–high-impact items compared with the low-impact items (included as Appendix A) is shown in Chart 8.

Chart 8: Proportion of benefits by impact

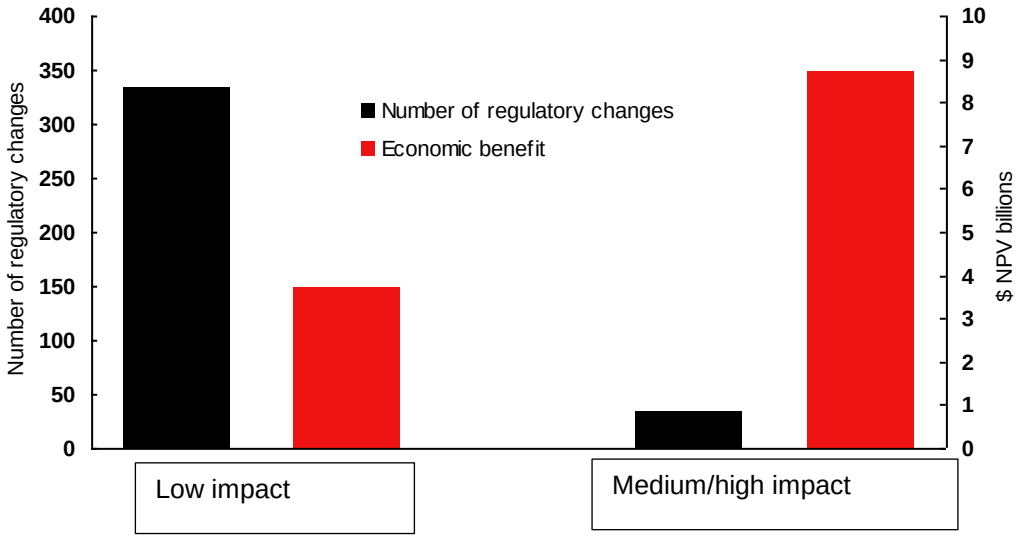
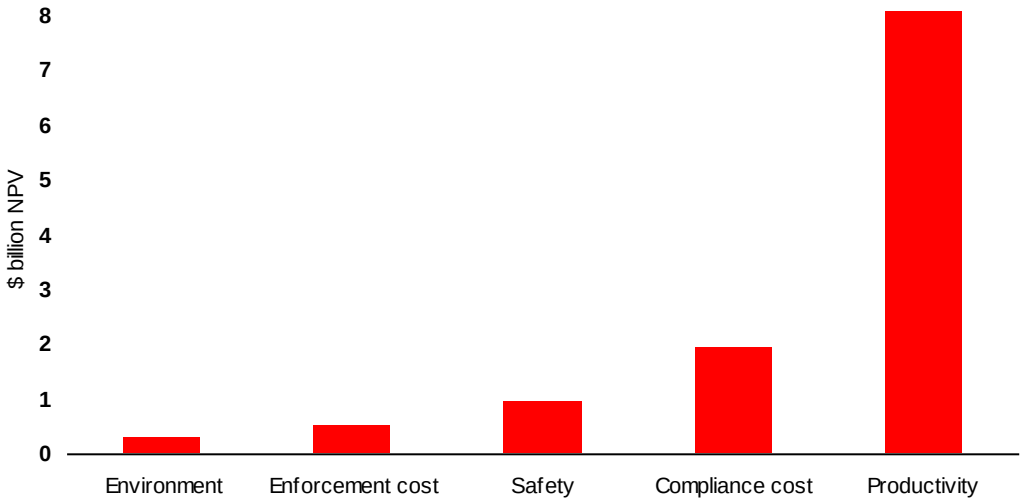


Chart 9 suggests where the greatest impacts are likely to be felt. It clearly indicates that the impacts will largely relate to productivity.

[50] Castalia Strategic Advisers, *Securing a National Approach to Heavy Vehicle Regulation, Report to the National Road Transport Operators Association (NatRoad)*, 2009

[51] Productivity Commission Inquiry report, *Road and rail freight infrastructure pricing*, no. 41, 22 December 2006

Chart 9: Relative magnitude of net benefits by economic areas (indicative)



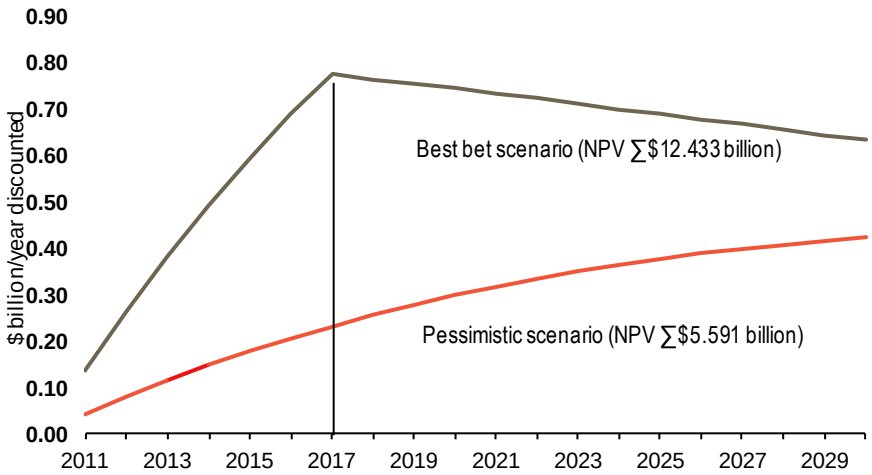
It is important to note that these gains represent what is possible under a pure National Heavy Vehicle Regulator model where jurisdictions implement the HVNL *without change.* **Every departure from the pure model represents a reduction in potential gains and a likely increase in costs**. Industry cautioned very strongly against such departures during the consultation phase of the RIS, with one stakeholder noting that

> *'it would be a concern…if there is an expectation that a jurisdiction could not only allow for "productivity variations" but also unilaterally insert its own provisions into the National Law. There should be no jurisdictional derogations contained in the HVNL and the law passed by the Queensland Parliament should be adopted by all jurisdictions'.*[52]

Where jurisdictions have signalled they will diverge from the national law, this has been noted in the text of the RIS.

To take account of the risk of persisting variations, and recognising that cultural and administrative change will take time, a 'pessimistic' and a 'best bet' scenario are charted below. This shows the pattern of expected net benefits over twenty years according to both scenarios.

Chart 10: Pattern of expected net benefits over twenty years



[52] Australian Logistics Council submission dated May 2011.

Chart 10 suggests a best bet scenario of annual benefits peaking at around $0.75 billion a year in 2017 and averaging around $0.6 billion a year for twenty years. However, if the phase in is slower and more gradual accumulated net present value benefits would amount to only $5.591 billion.

Table 6 below suggests how these 'pessimistic' net benefits are apportioned across the legal variations.

Table 6: Indicative net benefits of legal reconciliations in 20 year NPV terms ($b); pessimistic scenario

Legal issues	*Count*	*Economic impacts*						*Sum*
		Savings						
		Compliance cost	*Enforcement admin cost*	*Safety*	*Environment*		*Productivity*	
		On industry	*On regulators*		*Noise*	*C_2e*		
		$NPVb	$NPVb	$NPVb	$NPVb	$NPVb	$NPVb	$NPVb
Registration law	30	**0.067**	**0.022**					**0.090**
RIS variation	*7*	*0.016*	*0.005*					*0.021*
AVSR's	24	**0.034**	**0.011**					**0.045**
RIS variation	*1*	*0.030*	*0.010*					*0.040*
Mass & loading	17	**0.034**	**0.011**					**0.045**
RIS variation	*1*	*0.002*	*0.001*					*0.003*
RAV's	22	**0.378**	**0.094**	**0.063**	**0.031**	**0.063**	**2.518**	**3.148**
RIS variation	*2*	*0.324*	*0.081*	*0.054*	*0.027*	*0.054*	*2.159*	*2.698*
IAP	33	**0.062**	**0.016**	**0.010**	**0.005**	**0.010**	**0.416**	**0.519**
RIS variation	*4*	*0.042*	*0.010*	*0.007*	*0.003*	*0.007*	*0.278*	*0.348*
NHVAS	12	**0.045**	**0.015**				**0.089**	**0.148**
RIS variation	*2*	*0.004*	*0.001*				*0.007*	*0.012*
C & E	74	**0.022**	**0.006**	**0.056**			**0.028**	**0.112**
RIS variation	*6*	*0.002*	*0.001*	*0.006*			*0.003*	*0.011*
Fatigue CoR	68	**0.090**	**0.022**	**0.225**			**0.112**	**0.450**
RIS variation	*6*	*0.009*	*0.002*	*0.022*			*0.011*	*0.045*
Speeding CoR	16	**0.022**	**0.006**	**0.056**			**0.028**	**0.112**
OSOM	43	**0.019**	**0.005**	**0.003**			**0.107**	**0.134**
RIS variation	*3*	*0.009*	*0.002*	*0.002*			*0.054*	*0.067*
CML	4							
HML	13	**0.094**	**0.024**	**0.016**	**0.008**	**0.016**	**0.630**	**0.787**
RIS variation	*2*	*0.081*	*0.020*	*0.013*	*0.007*	*0.013*	*0.540*	*0.675*
Other business	12							
TOTAL	1 - 368	**0.868**	**0.232**	**0.430**	**0.045**	**0.089**	**3.928**	**5.591**
RIS variations	*34*	*0.519*	*0.134*	*0.104*	*0.037*	*0.074*	*3.052*	*3.920*

Corroboration that the indicative net benefits from legal reform will lie somewhere between the 'pessimistic' and 'best bet' scenario is provided by the Productivity Commission's study into road and rail freight infrastructure pricing.[53] The Commission identified four reform areas needed to unlock productivity two of which – reducing regulatory fragmentation and replacing

[53] Productivity Commission Inquiry report, *Road and rail freight infrastructure pricing*, no. 41, 22 December 2006,

prescriptive regulations with performance-based regulations – are clearly consistent with the aims of the heavy vehicle reform. According to the Centre for International Economics:

> *If the benefits were distributed evenly across each of the four areas of reform, reducing regulatory fragmentation alone might deliver 25 per cent of the $30 billion gain (around $7.5 billion). This provides one indicator of the considerable potential net gains from a national approach to heavy vehicle regulation. But this is likely to be a conservative estimate because under a national regulator, reducing fragmentation is likely to open the way to achieve other reforms such as those relating to prescriptive standards and appropriateness of regulation. In time gains larger than $7.5 billion (NPV) might plausibly be expected. It is also likely to be conservative because little or any of these gains have been taken up since the Productivity Commission report.*[54]

The important point is that regardless of which scenario is applied – best bet or pessimistic – the gains are significant and are corroborated by extrapolation from the Productivity Commission's work.

[54] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law,* September 2011, p. 11

7. Transitional and operational costs of the regulator

As noted earlier, this Regulation Impact Statement (RIS) is concerned with the impacts of reconciling state-based variations from the model laws back to a single national approach. However, it is appropriate to include the forecast costs of establishing and maintaining the National Heavy Vehicle Regulator (NHVR) to give a more complete picture of possible net gains under the national system.

KPMG undertook a costing of the regulator and, on the basis of currently available evidence, deduced the following:[55]

- Total development costs, including NHVR policy and projects review and amendment of existing laws and governance, would be $23 417 000. There was considered to be 'semi-strong' evidence for 96 per cent of these costs.
- Total estimated implementation costs, including functions such as registration, oversize and overmass, restricted access vehicles, higher mass limits and vehicle standards, is $60 764 000. There was considered to be 'semi-strong' evidence for 66 per cent of these costs. It is important to note that most jurisdictions were not able to forecast implementation costs in relation to information technology (IT) systems and that IT costs would largely be additional to the $60.7 million identified.
- Forecasted ongoing costs, including 21 standardised functions, would be around $170 963 000 per year. There is considered to be 'strong' evidence for 62 per cent of these costs. Of the forecast ongoing costs, New South Wales accounts for almost 44 per cent.

Therefore, total development and implementation costs are currently estimated at around $84 million, and ongoing costs at around $171 million per year. IT costs would be additional to this. There may be costs associated with disaggregating heavy vehicle law from light vehicle law and a loss of economies of scale through their separate administration. These costs are not yet known.

The exact ongoing costs will become clearer as the operational model is refined.

[55] KPMG, *Cost consultancy—jurisdictional costs to regulate heavy vehicles*, stage 3 report, September 2010.

8. Medium impact variation analysis

Reconciling each departure from the model law back to a single national position has widely divergent impacts. Some of the proposed resolutions result in no or low net competition impacts and low to medium net compliance costs. Through consultation at the state and territory level, a clear consensus on the preferable approach was generally reached; therefore, there are no options presented for these items. The 'medium-impact' variations are discussed in this chapter. Their combined economic impacts, along with the high-impact items, are reflected in Table 4.

8.1 Custom plates

Current model law: *Road Transport Reform (Heavy Vehicles Registration) Act 1997*, s. 9b

Heavy Vehicle National Law: Heavy Vehicle (Registration) National Regulation, Regulation 18

SUMMARY

Custom plates have evolved to become valuable consumer items.

The percentage of custom plates assigned to heavy vehicles is around 5 per cent.

To retain economies of scale, it is proposed that custom plate manufacture, sale and marketing remain with the jurisdictions.

The National Heavy Vehicle Regulator (NHVR) will maintain a register of custom plates.

Custom plates will not be transferable between states.

8.1.1 Problem, objectives and discussion

In recent years, number plates have evolved from purely functional identifiers ('standard plates') to desirable consumer objects known as 'custom' or 'personalised' plates. Custom plates enable the individual to stipulate, within reason, the alpha–numeric syntax on their plate and to design plate colours and symbols in accordance with their personal taste or to reflect a corporate branding. In Queensland, there is an option for a standard-issue plate to be 'customised', not for aesthetic reasons, but to enable better fleet management in large transport companies. In these instances, when the plates corrode due to acid washing or general wear and tear, the same syntax can be issued against the vehicle, thereby delivering administrative efficiencies to fleet managers.[56] Custom plates are also used for government vehicles such as the police (in Victoria) and public transport buses (in Tasmania).

In some jurisdictions, the custom plate has so decoupled from the operation of a vehicle that a 'right to display' the plate, rather than a requirement to affix it to a vehicle, is the regulated commodity. For example, in Victoria under the Victorian *Road Safety Act 1986*:

> Registration number rights may be sold to any person, whether or not eligible to be the registered operator of a vehicle. (s. 5ac2)
>
> The rights referred to in subsection (a) may be transferred to any other person, or otherwise dealt with, by the owner of those rights; and (e) form part of the property of the estate of the owner on his or her death. (s. 5AD2[d])

[56] These are not 'right to display' plates. The plate remains the property of the registering authority.

The total number of custom plates issued to heavy vehicles to date is difficult to gauge. The total number issued since 2004–05 in jurisdictions able to extract these data is listed in Table 5.

Table 7: Custom plates issuance

Jurisdiction	Custom plates issued to heavy vehicles since 2004–05	Custom plates as a percentage of all heavy vehicle plates issued in jurisdiction since 2004–05
Northern Territory	839	n.a.
Queensland	~10 000	9.66
South Australia	1838	3.7
Tasmania	~550	6.12
New South Wales	2891	2.9
Western Australia	5030	7.9

n.a. = not available

The problem requiring government action is fourfold. First, while the model regulations recognise that the registration authority may enter into an agreement with a registered operator to issue custom plates (see Model Regulation 20), the model law makes no provision for the ownership of the 'right to display':

> Devices, plates or documents issued by the registration authority for the purpose of authorising the use of a heavy vehicle remain the property of the authority. (s. 15)

Second, each state has, until now, been responsible for allocating the unique syntax for plates (both standard and custom). In some instances, the same combination of letters and numbers is known to have been issued more than once.[57] This duplication must be addressed if the register is to fulfil the function of linking a vehicle with the person responsible for it. (To minimise duplication in the future, custom plates will not be transferable between jurisdictions.)

Third, custom plate profits have become a source of revenue for government.[58] Unlike standard plates, custom plates are an explicitly 'for profit' venture. So, for example, the Victorian *Road Safety Act 1986* states that 'the price at which registration number rights may be sold … is not required to be related in any way to the cost to the Corporation of providing any service' (s. 5Ac[4]). Some jurisdictions sell the custom plate outright, whereas others charge an annual fee. New South Wales is the only jurisdiction to have a specific heavy vehicle custom plate**.** Occasionally, some jurisdictions also 'auction' desirable plates to the highest bidder. For example, in Victoria, the 2010 AFL plate auction fetched returns of $515 to $5300 per plate.

Lastly, the custom plate 'business' has become increasingly sophisticated, using marketing and distribution tools more commonly seen in the private sector. In many jurisdictions, custom plate operation is contracted out, in whole or in part, to the private sector. Unpicking and refashioning these arrangements may prove complex. Moreover, decoupling heavy vehicle custom plates from light vehicle plates generally may compromise the economies of scale possible through existing arrangements.

Under the model law, one of the functions of registration is to 'maintain a register of heavy vehicles in accordance with the regulations' (s. 9(b), *Road Transport Reform [Heavy Vehicles Registration] Act 1997*). Although the model law does not make the point explicitly, 'the focus

[57] The same syntax in different states is not considered to be duplication, because the state identifier (VIC, NSW, WA, etc.) is taken to be part of the 'unique identifier'.

[58] Custom plate profits are not generally remitted in their entirety to the registering authority. More commonly, they are returned to the consolidated fund. In Western Australia, part of the proceeds are remitted to the Road Trauma Trust fund administered by the police.

of the Register is to identify the natural person or corporation responsible for the operation of the vehicle on the road network, and to provide a unique identity for each vehicle'.[59]

The 'unique identity' is given in the form of an alpha–numeric syntax recorded in the register, printed on a number plate and affixed to the vehicle. The number plate provides compliance and enforcement officers and traffic cameras a means of identifying infringing vehicles. Various state Acts have made explicit the link between the number plate and identity management. For example, s. 5 of the Victorian *Road Safety Act 1986* includes as one of the purposes of registration 'to provide a method of establishing the identity of each motor vehicle or trailer which is used on a highway and of the person who is responsible for it'.

The NHVR will carry out the duties of a national heavy vehicle registrar. It will therefore maintain the register of vehicles and issue number plates. To achieve this, combinations available for issue to vehicles weighing more than 4.5 tonnes will need to be recorded in a single national database that recognises the existing variety of number plate combinations used by jurisdictions. Business system solutions will need to be developed to establish such a database, as well as syntax for vehicles registered under the Heavy Vehicle National Law (HVNL).

8.1.2 Outcome

Existing jurisdictional arrangements for the sale of plates will continue, subject to NHVR approval for assigning these plates to a heavy vehicle. The NHVR will record in the register of heavy vehicles details of the custom plates used on heavy vehicles. The NHVR will operate as the registrar for standard heavy vehicle plates.

8.2 Regulating driver fatigue through occupational health and safety law

Current model law: National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007

Heavy Vehicle National Law: Heavy Vehicle National Law, chapter 6; Heavy Vehicle (Fatigue Management) National Regulation

SUMMARY

Despite the introduction of national heavy vehicle driver fatigue legislation, Western Australia continues to regulate driver fatigue through state-based occupational health and safety (OH&S) law.

Evaluating transport and OH&S law is not a matter of choosing between alternatives because OH&S law continues to apply to the long-distance road transport industry in all jurisdictions.

The expert panel sees merit in both options and that compliance and enforcement (C&E) functions could be done under either regulatory regime. The key issue is that there is adequate funding and authority to carry out C&E functions.

Driver fatigue will be retained within transport law.

Western Australia will continue to regulate fatigue through occupational health and safety law.

8.2.1 Problem, objectives and discussion

The management of fatigue risk for long-distance road transport in Australia generally falls under road transport regulation. Western Australia is an exception to the norm, preferring to manage commercial driver fatigue standards through the Occupational Health and Safety Regulations 1996. The Western Australian Heavy Vehicle Accreditation Scheme (HVAS) has been operational since 2002 and is mandatory for individuals and organisations that:

- operate a B-double or road train, or
- operate a truck and trailer weighing more than 42.5 tonnes gross mass, or
- operate under a concessional loading scheme, or

[59] *Administrative guideline: National Driver Licensing & Heavy Vehicle Registration Schemes 2.3.1.*

- require an annual notice or permit, or
- require more than four single trip permits (oversize and overmass only), and
- perform transport tasks for hire or reward, including interstate operators.[60]

This has led to two different fatigue management systems and attendant questions about relative road safety performance, productivity, compliance costs and barriers to entry.

However, there are key differences between the two approaches, as noted by the expert panel. These differences are summarised in Appendix C. The most notable of these differences is in the operating limits. Under advanced fatigue management (AFM), drivers can work a maximum of 154 hours in 14 days; under the Western Australian system, a driver can work 168 hours in 14 days. Western Australia argues that the longer hours reflect the state's geographical reality; with long distances between rest stops and remote-area livestock operations, it is not always possible to work within the AFM limits. Western Australia is also of the view that the fatigue system is holistic, emphasising rest and sleep as opposed to simply 'managing hours'.

Unlike the national system (the National Heavy Vehicle Accreditation Scheme—NHVAS), the Western Australian system is one of mandatory accreditation for all commercial heavy vehicle operators that meet the criteria listed above. Also unlike the NHVAS, the Western Australian system requires the operator to meet the requirements of both the fatigue *and* the maintenance modules. As at October 2010, 3749 Western Australian operators were accredited under the Western Australia HVAS, all subject to compliance checks.[61]

Previous Regulation Impact Statements (RISs) have quantified the costs and benefits of national approaches to fatigue management on the assumption that Western Australia would retain its OH&S laws. Therefore, Western Australia remaining outside of the national system does not change the anticipated costs and benefits outlined in previous reports.

Evaluation of the relative worth of each regulatory regime needs to take account of the fact that the issue is not a choice between two alternatives. OH&S regulation already applies to the long-distance road transport industry in all jurisdictions. All parties in the transport industry have OH&S obligations in all state jurisdictions. These require reciprocal duties of care to maintain health and safety, which include fatigue risk management.

Unlike OH&S law, transport law deals directly with the management of the wider gamut of transport issues (weights, speeding, etc.). It is particularly important in protecting road and bridge assets that are not specifically covered by OH&S law. Transport law also has benefits for fatigue risk management because of specific enforcement systems that have been developed over many years by transport regulators in consultation with the transport industry.

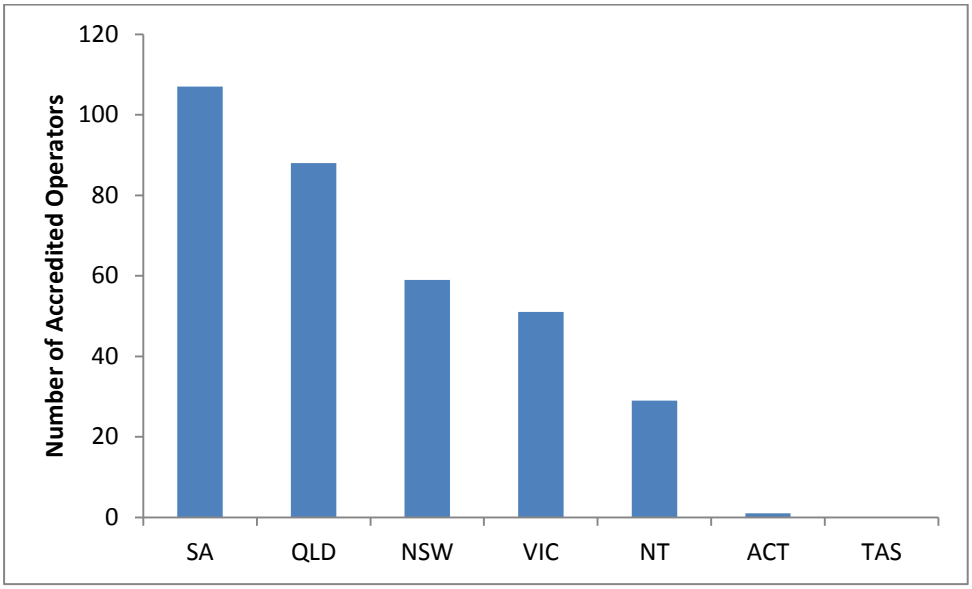
One factor that has not been considered in the previous RIS is whether the existence of two accreditation schemes presents a barrier to entry for industry or creates additional imposts for interstate operators. (It should not be overlooked that there is a third scheme—TruckSafe—in the mix. Approximately half of the vehicles accredited under TruckSafe are also accredited under the NHVAS.)[62] As at October 2010, 335 interstate operators were accredited under the Western Australian HVAS, as shown in Chart 11.

[60] Accreditation does not apply to vehicles such as buses, special-purpose vehicles and agricultural equipment, or vehicles with a gross vehicle mass of 8 tonnes or less.

[61] Operators are subject to an annual compliance audit and random audits. Main Roads Western Australia undertook 220 random audits of accredited operators in 2009 (*Main Roads Western Australia annual report 2009*, p. 44). Accredited operators are also required to submit a compliance statement annually.

[62] Rufford et al., *Analysis of the safety benefits of heavy vehicle accreditation schemes*, Austroads, May 2008, p. ii.

Chart 11: Interstate operators accredited under the Western Australian HVAS, October 2010



If these operators were also to be accredited under the NHVAS, they would be subject to two sets of fees and enrolment requirements, although the auditor certification is now common to both schemes (and to TruckSafe). Interestingly, however, the limited data available suggest that operators accredited under the NHVAS tend to operate intrastate rather than interstate:

> The travel statistics…indicate that the total amount of travel (million tonne-km) of Victorian, New South Wales and Queensland [NHVAS] registered vehicles undertaken in other states is small and consequently the effect of out-of-state travel is also small. *In addition, the data that was available showed that accredited vehicles generally travel less out-of-state than non-accredited vehicles*.[63] [author's emphasis]

This choice of one scheme over another may simply reflect operational preference—that there is sufficient work within the one jurisdiction and therefore little motivation to expand across borders. It may also reflect the existence of the Federal Interstate Registration Scheme, which applies exclusively to interstate operators. Equally, however, it may reflect an unwillingness to navigate the complexities of multiple accreditation schemes and, for Western Australian operators, the differential requirements regarding spray suppression. There is good anecdotal evidence that the former is certainly an issue for operators. Research undertaken in 2006 found 'an overwhelming view from trucking companies that the number of schemes for different purposes added an unnecessary complexity to accreditation. They indicated a strong preference to a convergence of schemes and even a single national scheme. This was the view put forward by TruckSafe as well'.[64] This is also the view expressed by operators attending the National Heavy Vehicle Industry Forum in Newcastle in September 2010.

The expert panel has concluded that both OH&S and transport law approaches to fatigue have merit. In some ways, OH&S law could be seen as better, in theory, with its emphasis on due diligence. On the other hand, transport regulation is much better resourced for C&E in most jurisdictions, and chain-of-responsibility provisions in effect impose a type of due diligence requirement on all those involved in the transport task.

As it is understood that the NHVR is likely to contract out compliance functions to jurisdictions, at least in the short term, the panel believes that this could be done under either of the regulatory regimes. For example, the panel notes that in Western Australia the compliance effort is shared quite effectively between Worksafe and Main Roads staff. The most critical issue is that there is adequate funding and authority to ensure that it is effectively carried out.

---

[63] Rufford PG & Baas PH, *Policy review of road transport heavy vehicle accreditation, discussion paper*, NTC, November 2006, p. 9.

[64] ibid., p. 7.

8.2.2 Outcome

Driver fatigue will be retained within transport law. This recommendation was put to the Australian Transport Council (ATC) on 20 May 2011 and endorsed. Western Australia will continue to regulate fatigue through occupational health and safety law.

8.3 Short rest defence under standard hours fatigue management

Current model law: National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007, s. 47

Heavy Vehicle National Law: Heavy Vehicle National Law, s. 222

SUMMARY

The model law provides a defence for a driver operating under standard hours who could not take a 'short rest' break if a suitable rest place was not available and the driver took the break within 45 minutes.

Victoria and New South Wales diverged from the law and did not allow the defence.

The expert panel believes the defence to be reasonable. It will be retained in the national law.

8.3.1 Problem, objectives and discussion

Section 47 of the model law provides a defence for a driver operating under standard hours who could have avoided a standard hours offence by taking a short rest break. The defence applies if a suitable rest place was not available at the proper time and the driver took the break within 45 minutes at the next suitable rest area.

Victoria and New South Wales did not implement this provision of the model law, which resulted in a variation. Their reasoning was that the defence is too difficult to enforce, and drivers and schedulers should take account of the availability of suitable rest places when scheduling trips. There was also a concern that the defence might become 'as of right'. The advice of the Independent Expert Panel was sought in resolving this divergence.

The main purpose of the model law is to provide for the safe fatigue management of regulated heavy vehicle drivers while they are driving on a road. The relationship of fatigue to road safety is discussed in greater detail in Section 9.2 (Advanced fatigue management). The 'standard hours' module is the default operating practice for most operators. It sets out the legally acceptable periods of work and rest. Operators seeking greater flexibility in their hours than those allowed under standard hours must be accredited under the NHVAS for either basic fatigue management (BFM) or AFM.

8.3.2 Outcome

The expert panel believes that the defence is reasonable and has seen no evidence that supports the exclusion of the defence from the national law. The provision will therefore be retained. This recommendation was accepted by the ATC at its meeting on 20 May 2011.

8.4 Split rest defence under basic fatigue management

Current model law: National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007, s. 50

Heavy Vehicle National Law: Heavy Vehicle National Law, s. 225

SUMMARY

A driver operating under BFM has a defence for delaying a seven-hour continuous rest break if a split rest break is taken instead, under certain conditions.

Victoria diverged from the law and did not allow the defence.

The expert panel believes the defence to be reasonable. It will be retained in the national law.

8.4.1 Problem, objectives and discussion

Section 50 of the Heavy Vehicle Driver Fatigue Regulations (the 'model law') provides a defence for a driver operating under BFM who delays taking a seven-hour continuous rest break and instead takes a split rest break. The rest break can only be split into one six-hour and one (or more) two-hour components (so the split cannot, for example, be taken as two four-hour breaks).

The defence applies if the driver can demonstrate that they are the sole driver of a heavy vehicle being driven under BFM, they took a six-hour continuous rest break and a two-hour continuous rest break within the same 24-hour period, and they did not take a split rest break in the previous 24-hour period.

Victoria did not implement this provision of the model law, resulting in a variation. Victoria's reasoning was that the defence could not be justified from a road safety perspective. The advice of the Independent Expert Panel was sought in resolving this divergence.

The main purpose of the model law is to provide for the safe fatigue management of regulated heavy vehicle drivers while they are driving on a road. The relationship of fatigue to road safety is discussed in greater detail in Section 9.2 (Advanced fatigue management). BFM provides greater flexibility in operating hours than is available to drivers under the 'standard hours' module and requires accreditation under the NHVAS.

8.4.2 Outcome

The expert panel believes that the defence is reasonable and has seen no evidence that supports the exclusion of the defence from the national law. The provision will be retained in the national law. This recommendation was accepted by the ATC at its meeting on 20 May 2011.

8.5 Work diary

Current model law: National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007, s. 56

Heavy Vehicle National Law: Heavy Vehicle National Law, ss. 261, 262, 263

SUMMARY

The model law stipulates that drivers engaged in work beyond a 100-km radius from a home base must carry a work diary.

The allowable radius has been varied in some states: in Tasmania, a 0-km rule applies; in Queensland, a 200-km rule applies.

The expert panel is not aware of any evidence that links the work diary limit to the incidence of heavy vehicle crashes.

In the interest of national consistency, the 100 km radius rule will be retained in the national law. Tasmania has signalled that it will derogate to retain its 0km rule.

8.5.1 Problem, objectives and discussion

The Heavy Vehicle Driver Fatigue Regulations state that a driver must carry a work diary if they are engaged in work that extends beyond a 100 km radius from the driver's base (see s. 56(1)). The base is defined as the place from which the driver normally works or, if that location is not recorded, the garaging address of the vehicle (s. 55). Problems have arisen because of divergences from the '100-km radius' rule.

Queensland has extended the 100-km limit to 200 km on the basis of greater distances within the state and a desire to minimise the regulatory burden (although OH&S umbrella laws still require the completion of fatigue prevention measures). In contrast, Tasmania employs a 0-km rule, arguing that fatigue management is a 'time on task' issue rather than a 'distance from home base' issue. Many Tasmanian operators conduct several short trips of less than 100 km per day that cumulatively could result in fatigue equal to or greater than that incurred on a 100-km-plus trip. Tasmania has signalled that it will derogate to retain the 0-km rule.

New South Wales is similar to Tasmania in that it requires all drivers of regulated heavy vehicles to use work diaries. However, there are two exemptions: one for primary producers driving within a 160-km radius (a historical hangover from a 100-mile rule) and one for drivers within 100 km of their home base. These exemptions are given effect through notices published in the government *Gazette*. New South Wales advises that it intends to amend its law to remove the second exemption, bringing all but primary producers into line with the model law.

The advice of the Independent Expert Panel was sought in resolving this divergence.

The main purpose of the model law is to provide for the safe fatigue management of regulated heavy vehicle drivers while they are driving on a road. The relationship of fatigue to road safety is discussed in greater detail in Section 9.2 (Advanced fatigue management). The work diary is a record-keeping device used to 'count time'. As set out in s. 57 of the model law, it must contain key pieces of information for each day of operation, including the base and time zone, time and place of work–rest transition, odometer reading, and total work and rest time.

8.5.2 Outcome

Having considered the arguments advanced by Queensland and Tasmania, the expert panel considers that such arguments 'could be applied to most of the other jurisdictions, the majority of which have adopted the 100 km limit. The Panel is not aware of any research evidence that links the work diary limit to the incidence of heavy vehicle crash rates. Consequently, to assist drivers and transport companies manage fatigue in a straightforward, consistent manner across borders, a national limit of 100+km will be adopted.[65] This recommendation was accepted by the ATC at its meeting on 20 May 2011. Tasmania will derogate to retain its 0km radius rule.

8.6 'Reasonable steps' defence to prevent driving while fatigued

Current model law: National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007, ss. 23, 28, 29

Heavy Vehicle National Law: Heavy Vehicle National Law, ss. 199, 200, 560

SUMMARY

The model law makes suggestions about administrative procedures that may indicate that sufficient care was taken to prevent a driver driving while fatigued.

New South Wales has extended this to create a positive obligation to annually identify and assess risk management practices to manage fatigue.

The expert panel recognises that New South Wales was motivated by a desire for greater certainty in fatigue management.

However, the variation could ultimately limit the ways in which fatigue is managed.

The model law will be retained.

8.6.1 Problem, objectives and discussion

Section 28 of the Heavy Vehicle Driver Fatigue Regulations outlines a driver's duty to avoid fatigue. Section 29 imposes a duty on a party in a chain of responsibility to prevent driver fatigue. Subsection 29(1) refers to a party taking 'all reasonable steps' to ensure that a driver on the road is not driving while fatigued. Section 23 outlines how a party in a chain of responsibility (for example, a scheduler or consignor) may demonstrate that they are taking all reasonable steps as a defence to prosecution. It outlines what practices and procedures *may* indicate that sufficient care was taken to prevent a driver driving while fatigued.

New South Wales has varied the model law by imposing an additional duty on parties to the chain of responsibility. Section 53 of the New South Wales Road Transport (General) Regulation 2005 imposes a duty on all parties in the chain of responsibility to at least annually identify and assess risk management practices to manage fatigue. This section creates a

[65] *Independent Expert Panel on Heavy Vehicle Policy report*, Australian Transport Council Meeting, 20 May 2011, p. 17.

positive obligation, as opposed to the optional 'reasonable steps' process specified in the model law.

The model law does not limit or mandate the manner in which a party may prove that they took reasonable steps. The model law does not specify how an operation manages the risk of heavy vehicle driver fatigue. New South Wales's provision arguably limits the flexibility of parties to prove that they took reasonable steps, and limits the way in which fatigue is managed. This approach does not account for the variation in the business practices of the heavy vehicle industry and may impede productivity in some cases.

The advice of the expert panel was sought in forming a recommendation as to whether the New South Wales variation should be included in the national law. The panel acknowledged the motivation driving New South Wales's variation: genuine uncertainty around the fatigue chain-of-responsibility laws and their implications, and a desire to shore up operator confidence. The panel concluded that this uncertainty was best resolved through 'the National Heavy Vehicle Regulator and National Transport Commission working with jurisdictions, to make a much more comprehensive effort to develop plain English, sector specific and principles-based fatigue risk identification and management guides'.[66]

The heavy vehicle driver fatigue national model legislation was approved by the ATC on 25 August 2008 to provide for the safe fatigue management of regulated heavy vehicle drivers while they are driving on a road. The law applies to both drivers of regulated heavy vehicles and those whose activities influence the conduct of drivers of regulated heavy vehicles in such a way as to affect the driver's fatigue when driving on a road.

8.6.2 Outcome

The model law will be retained. This recommendation was accepted by the ATC at its meeting on 20 May 2011.

8.7 'Three strikes' policy

Current model law: Not applicable—'three strikes' was not covered in any model law

Heavy Vehicle National Law: Not applicable

SUMMARY

'Three strikes' was introduced to deter recidivist speeding.

It was targeted at vehicle registration rather than driver licensing and implemented in New South Wales, South Australia and Victoria. However, the policy was never included in model law.

South Australia and Victoria have since discontinued this policy. New South Wales sees merit in retaining the policy, arguing that less than 15 per cent of vehicles that received a first strike went on to receive a second, and less than 3.5 per cent received a third.

A lack of comparative data and multiple policy variables make it difficult to establish the success or otherwise of the policy.

It is arguable that chain-of-responsibility provisions mirror the intent of three strikes.

The three strikes policy will not be included in the national law.

8.7.1 Problem, objectives and discussion

The 'three strikes' policy was introduced in 1997 in order to deter recidivist speeding and so respond to concerns about the involvement of speeding heavy vehicles in road crashes. The policy enabled registration to be suspended if a heavy vehicle was detected travelling at 115 km an hour or more for a third time within three years. The '115 km/h strike threshold was motivated principally by the perceived need to align the scheme with speed limiter capability. The principal policy basis for liability … relied heavily on inferring a failure to maintain a speed

[66] *Independent Expert Panel on Heavy Vehicle Policy report*, Australian Transport Council Meeting, 20 May 2011, p. 23.

limiter by the operator from evidence of a speeding breach'.[67] Three strikes marked a departure from traditional compliance and enforcement strategies, in that the impost was targeted at vehicle registration rather than the driver licence.

The three strikes policy was approved by the ATC, but model law was never drafted. The scheme was implemented in New South Wales, Victoria and South Australia, with inconsistencies resulting from different interpretations of the policy. For example, New South Wales extended the policy to cover all vehicles weighing more than 4.5 tonnes, when it was originally intended to cover vehicles weighing more than 12 tonnes. New South Wales considers that the policy has been effective because less than 15 per cent of vehicles that received a first strike received a second, and less than 3.5 per cent received a third.

A determination is now required as to whether the policy has been sufficiently effective to justify its inclusion in national law. The view of the expert panel was sought in making a recommendation.

The three strikes policy was designed to deter speeding through the threat of vehicle registration sanction, which, in the case of heavy vehicles, would severely impact business viability. As noted above, New South Wales takes the view that the policy has been successful. However, 'no information has been obtained regarding the number [of] vehicles that have had their registration suspended under the policy'.[68] Furthermore, lack of comparative data means that it is not possible to determine whether the number of vehicles receiving second or third strikes was higher, lower or the same as the situation before the policy was introduced. In other words, demerit points or warnings may have been equally effective in prompting behavioural change. Quarantining the policy's impact from other strategies, such as speed cameras and educational campaigns, is also highly challenging.

South Australia's experience suggests that enforcement has been problematic because information about the vehicle is stored on a separate database from information about the driver. Tracking and correlating data have led to delays in identifying vehicles and prosecution, thereby limiting the policy's overall effectiveness.

The panel has concluded that there is insufficient empirical data to justify the policy's inclusion in national law. Moreover, it is arguable that the intent of three strikes has been captured in chain-of-responsibility legislation, which extends culpability beyond drivers to include consigners, schedulers, operators and others. Under this policy, all individuals and corporations involved in the transport task share a duty to take 'reasonable steps' to ensure that the driver does not commit a speeding offence while on the road.

It is, however, acknowledged that three strikes provides a means by which operators can be advised of on-road driver infringements, which is not currently possible under other policy frameworks.

New South Wales has signalled that it will derogate to retain the three strikes policy.

8.7.2 For consideration

The 'three strikes' policy will not be included in the national law. This recommendation was accepted by the ATC at its meeting on 20 May 2011.

8.8 Higher mass limits eligible vehicles

Current model law: National Transport Commission (Road Transport Legislation—Higher Mass Limits) Regulations 2006, part 1, clause 2

Heavy Vehicle National Law: Heavy Vehicle (Mass, Dimension and Loading) Regulation, National Regulation, s. 3, parts 1, 2

SUMMARY

[67] National Transport Commission, *Speed compliance of heavy vehicles: review of three strikes scheme and speed limiter requirements, discussion paper,* September 2007, p. 6.

[68] *Independent Expert Panel on Heavy Vehicle Policy report*, Australian Transport Council Meeting, 20 May 2011, p. 20.

Higher mass limits (HML) has considerable potential to deliver productivity gains, with a potential reduction in road freight costs of $498 million annually, and a pavement rehabilitation cost reduction of $11.2 million annually.

However, these benefits have not been realised due to state and territory implementation variations and infrastructure (mainly bridge) issues.

Extensive consultation between the states and territories has failed to arrive at consensus on an agreed table of HML eligible configurations.

The model law will be retained. It is acknowledged that most states and territories will introduce derogations to retain their current variations. Over time, as infrastructure improves and the impacts of HML are better understood, it is expected that derogations will be removed.

8.8.1 Problem, objectives and discussion

HML was designed to allow eligible vehicles to load greater capacity, in exchange for alternative compliance and modifications to ensure that vehicles had road-friendly suspension. The policy permitted an additional 0.5 tonnes on a tandem axle group and 2.5 tonnes on a tri-axle group above general mass limits (GML). The policy was highly attractive to industry, with one study estimating that a conventional semitrailer combination could achieve a 9 per cent payload increase, while B-doubles could achieve gains in the order of 13 per cent under the policy.[69]

However, the model law has not been consistently implemented. The model table is reproduced in Table 6, with strikethrough indicating the items, or parts thereof, that are *not* implemented in at least one jurisdiction.

Table 8: HML model table, with state and territory variations

Vehicle configuration
Rigid truck fitted with a tandem ~~or tri drive~~ axle group
~~Rigid truck fitted with a tandem drive axle group towing a trailer that is fitted with a single tandem or tri-axle group towards the rear of the trailer~~ (except for car carriers)
A combination where the prime mover is fitted with a tandem drive axle group and the semi-trailer is fitted with either a ~~single tandem~~ or tri-axle group
Bus fitted with a single drive axle ~~or tandem~~
~~Truck, trailer or~~ bus with six-tyred tandem axle group at the rear
B-double where the prime mover is fitted with a tandem drive axle group and the trailer(s) is fitted with either a tandem or tri-axle group
~~Road trains where the prime mover is fitted with a tandem or tri drive axle group, the semi-trailer is fitted with either a tandem or tri-axle group and the converter dolly is fitted with a tandem axle group~~

Appendix D contains a comprehensive table of the elements that were not implemented by each jurisdiction.

The divergence from the model law stems largely from jurisdictional concerns about fragile infrastructure, specifically bridges. The failure to implement the HML policy in a consistent manner is a source of significant frustration for industry, particularly for those that operate in cross-border regions. Coupling HML with other conditions, such as the Intelligent Access Program (IAP), has further complicated compliance for industry:

> [O]perators feel that the original promise of HML came with considerable baggage that no one fully understood at the time. They still feel that state regulators are pursuing inconsistent agendas and not giving sufficient priority to improved productivity. Operators

[69] Australian Logistics Council, *The cost impact of regulation disparity in cross border regions,* March 2009, p. 26.

on the border are faced with a 'highest common denominator' approach in that they will have to belong to all schemes and participate at the highest level in order to access HML across borders. They consider they bear significant regulatory imposts with little productivity gain to date.[70]

There is also frustration for industry in that, even where HML routes are approved, local councils may still be reluctant to grant access.[71] Lengthy and earnest consultation between the states and territories and the National Transport Commission (NTC) has failed to arrive at a single national position on eligible vehicles. This failure was a source of significant frustration in the industry submissions on the draft RIS.

The primary objective of the HML policy was to increase the efficiency of the current and future freight truck pool by allowing vehicles with road-friendly suspension characteristics to carry heavier loads than they would otherwise be permitted. Road wear at GML with traditional steel-spring suspension is equivalent to road wear at HML with road-friendly suspension.

The road-friendly suspension requirement was the first hurdle given to operators wishing to take advantage of HML. The second hurdle was a requirement for accreditation in the mass management module of the NHVAS. Accreditation requires the operator to develop a quality system that records evidence of weight specific to a vehicle for every trip. The rationale is that the benefits of HML should be the preserve of responsible operators who will not overload and thereby compromise pavements and bridge infrastructure.

The original cost–benefit analysis suggested that HML had the potential to reduce road freight costs by $498 million per year (through fewer trips being required) and to reduce pavement rehabilitation costs by $11.2 million per year (through fewer trips operating at a higher payload).[72] These benefits would be offset by the costs of fitting road-friendly suspension to the eligible vehicle fleet, accelerated bridge upgrades, replacements to accommodate HML (estimated in 1998 at about $75 million annually over eight to ten years),[73] and administration and compliance costs accrued through the NHVAS. It should also be noted that the HML policy assumed that accredited operators would not be subject to on-road enforcement, allowing these resources to be targeted towards non-accredited and higher risk operators.

As noted, the actual application of HML policy has not resulted in 'the same outcome in the same circumstance' across Australia, because jurisdictions have continued to place access restrictions on HML vehicles, often because of infrastructure degradation concerns. It is reasonable to assume that these restrictions have limited the projected benefits of the policy, with one recent study suggesting that 'best estimates are that around 10 per cent of the HML-compliant fleet are regularly benefiting from HML mass increases'.[74] The NTC's 2006 study concluded that, 10 years after their development, around half of the mass and loading provisions and only a third of the oversize and overmass (OSOM) provisions devised to realise gains had been implemented in a consistent manner.[75]

8.8.2 Outcome

As noted above, extensive consultation has failed to produce a nationwide consensus on the parameters of HML. The model law will be retained. Jurisdictions that believe it is too permissive will be required to make local exclusions by way of derogation. Jurisdictions that believe the law does not go far enough could enable local productivity variations by way of notices and permits.

---

[70] Australian Logistics Council, *The cost impact of regulation disparity in cross border regions,* March 2009, p. 28.

[71] This is discussed at greater length in Section 9.1 (Decision-making frameworks)

[72] Economic Associates Pty Ltd for the National Road Transport Commission, *Proposed 'second hurdle' for higher mass limits, Regulatory Impact Statement*, December 1999, p. 24.

[73] National Road Transport Commission, *Regulatory Impact Statement: increased mass limits for road-friendly heavy vehicles,* April 1998.

[74] Australian Logistics Council, *The cost impact of regulation disparity in cross border regions,* March 2009, p. 27.

[75] Keatsdale Pty Ltd, *Review of heavy vehicle mass and loading, oversize and overmass and restricted access regulations*, NTC, May 2006.

Although derogations and productivity variations will not produce 'the same outcome in the same circumstances', they will place the onus on the jurisdiction to expressly exclude certain vehicle configurations from HML operation. Over time, as infrastructure improves and the impacts of HML are better understood, these derogations should be removed.

8.9 Registering codes of practice

Current model law: Road Transport Reform (Compliance and Enforcement) Bill 2003, ss. 178, 179(1), 89 (3)

Heavy Vehicle National Law: Heavy Vehicle National Law, ss. 645, 646

SUMMARY

The current model law provides for the registration of industry codes of practice.

Victoria is the only jurisdiction to have implemented this provision. Other jurisdictions have raised concerns that the process of government registering codes of practice could be taken as an endorsement of that code. The inclusion of the prima facie approach was not preferred by some states due to the onus of proof requirement. Industry argues that codes of practice encourage a low-cost path to compliance, and the prima facie 'reasonable steps' provision gives an incentive to have codes registered.

The law will allow for the registration of industry codes of practices (which can be used as prima facie evidence that reasonable steps had been taken).

8.9.1 Problem, objectives and discussion

The Compliance and Enforcement Bill (the 'model law') provides for industry to register codes of practice with the registering authority. Both the development and the registration of the codes are voluntary but have the advantage of providing industry with a prima facie 'reasonable steps' defence. In the event that the code is complied with *and* the person charged with the offence did not know that noncompliance had occurred, and could not reasonably be expected to have known, the defence applies.

Western Australia and New South Wales have not included the provision for industry codes of practice to be registered in their state law for fear that registration would be taken as an endorsement of the code. Such an endorsement carries a perceived risk that noncompliance liability might shift from the individual or company charged with an offence to the registering authority. Some states and territories did not support the prima facie approach because of the onus-of-proof requirement.

However, the industry view is that codes of practice provide a low-cost path to compliance and that the prima facie 'reasonable steps' provision gives an incentive to have the codes registered.

Industry codes of practice are a form of 'quasi-regulation' that have become popular in Australia and other developed economies since the 1980s. The intent of codes varies between industry sectors but can include alternative dispute resolution, enshrining best practice rather than 'bare-minimum compliance' as the cultural norm, and promoting consumer confidence. From a government perspective, codes have the advantage of being more cooperative and flexible than costly, prescriptive law.[76]

Codes of practice are not intended to simply 're-state' regulation; instead, they are intended to clearly and unambiguously explain 'how we do things around here'. They are an opportunity to embed practice that might exceed regulatory benchmarks in some areas, thereby providing market differentiation, or a mitigation strategy in an area of recognised risk. Industry codes can also provide detail and clarity where the law is expressed in general terms.[77]

The model law is not prescriptive about what an industry code of practice should contain, stating only that the authority *may* register codes (s. 179[1]), *may* revoke such codes

[76] Carroll & McGregor-Lowndes, 'A Standard for regulatory compliance? Industry self-regulation, the courts and AS3806-1998', *Australian Journal of Public Administration,* vol. 60, no. 4, December 2001.

[77] Pearson G, 'The place of codes of conduct in regulating financial services', *Griffith Law Review,* vol. 15, no. 2, 2006.

(s. 179[2]) and *may* register the codes with conditions attached [author's emphasis]. The model law is silent on the evaluative and analytical framework that the authority will use in making such decisions. In Victoria, applications for registering a code are required to be audited by a RABQSA[78] Heavy Vehicle Auditor before submission to VicRoads. It is proposed that, under the HVNL, the regulator will become the registering body. The evaluative framework that it will apply is a matter for the project office in cooperation with the states and territories.

The benefit to industry of registering a code is that an individual along the chain of responsibility charged with an offence has a prima facie defence *if* they complied with a registered code:

> If the person charged establishes that the person had complied with all relevant standards and procedures under a registered industry code of practice, and with the spirit of the code, with respect to matters to which the breach relates, proof of compliance … is prima facie evidence that the person charged had taken reasonable steps to prevent the contravention (s. 89[3]).

In effect, this shifts the burden of proof from the defendant to the prosecution to show that reasonable steps were *not* taken to prevent a contravention. 'Reasonable steps' is intended to give industry confidence that it will not incur punishment for noncompliances with, for example, mass and load restraints if it takes sound precautions and secures the load in accordance with good practice. The argument in favour of registering codes of practice is broadly analogous to that for accreditation:

> The granting of accreditation by the regulator is not an endorsement of the operator as being safe. The regulator is merely attesting to the fact that the applicant has demonstrated the capacity and competence to operate safely by, amongst other things, providing evidence that a rigorous risk assessment has been undertaken and that risk controls have been determined.[79]

The risk that industry codes will reduce safety standards is managed because compliance is not in itself a complete defence. A defendant who complied can still be found guilty of an offence if the prosecution can prove that reasonable steps were not taken. The prosecution may also succeed if the defendant could not prove that they did not know, or could not have been reasonably expected to know, about the breach. The national law can further address jurisdictional concerns about endorsement and liability by including an HVNL provision that the NHVR is not responsible if a party relying on a registered industry code of practice suffers loss or damage as a result of using the code.

To date, three codes of practice have been registered, all of them in Victoria.

8.9.2 Outcome

The model law will be retained.

8.10 Regulation of pilot and escort vehicle drivers

Current model law: National Transport Commission, Administrative guideline: *Pilot and escort vehicle driver accreditation procedures*, October 2004

Heavy Vehicle National Law: Not applicable—this is not captured in legislation

SUMMARY

A 2004 administrative guideline specifies the operational obligations for drivers of pilot and escort vehicles; however, the guideline does not specify eligibility requirements. Consequently, the states and territories have developed their own systems in isolation from one another.

This creates problems at border crossings.

A nationally consistent approach to pilot and escort vehicles will be developed.

[78] RABQSA is the body of auditors formed by the merger of the Registrar Accreditation Board and the Quality Society of Australasia.

[79] National Transport Commission, *Accreditation review: draft policy proposal,* November 2007, p. 8.

In the interim, the following mutual recognition arrangements will apply between states and territories:

- mutually recognise Level 1 pilots

- mutually recognise Level 2 pilots

- mutually recognise 'experienced' Level 1 pilots from New South Wales, the Australian Capital Territory, South Australia and Tasmania as Level 2 pilots, subject to conditions

- establish bilateral arrangements with neighbouring jurisdictions for police and authorised officers to escort loads across jurisdictional boundaries, where the pilot or escort is based in the jurisdiction where the escorted load originates.

Note: The operational details of mutual recognition are still being determined.

8.10.1 Problem, objectives and discussion

The OSOM vehicle reform allowed exemptions from mass and dimension limits but provided that exempted vehicles may be required to be accompanied by an escort or a pilot vehicle. An administrative guideline issued by the NTC in 2004 specified operational obligations for drivers of pilot and escort vehicles;[80] however, the guideline did *not* stipulate eligibility requirements. As a consequence, jurisdictions have developed systems in isolation from one another.

Table 7 summarises the different approaches across the states. Due to the extent of minor details that differ between jurisdictions, it is difficult to provide a summary that is both complete and allows a ready comparison between the jurisdictions.

The table is divided into three main columns: 'Level 1 pilot', 'Level 2 pilot' and 'Escort'. Each successive row outlines the driver eligibility requirements for a different jurisdiction. The two pilot columns allow for the description of graduated pilot accreditation in some jurisdictions, where Level 1 pilot typically does not require accreditation and Level 2 pilot typically does. In jurisdictions where there is either no pilot accreditation or compulsory pilot accreditation, the appropriate column is used to show that.

The table refers to units of competence from various training packages, using their national code numbers.[81] The full names for these competencies are:

- TDTC1097B / TLIC1007C—Pilot or escort oversized and/or overmass loads
- TDTE997B—Use pilot and escort communication
- TDTF1397B—Coordinate breakdowns and emergencies
- TLIF6007A—Control traffic as a pilot vehicle operator
- TDTH297C—Plan and navigate routes
- HLTFA201A—Provide basic emergency life support

[80] National Transport Commission, *Administrative guideline: pilot and escort vehicle driver accreditation procedures*, October 2004

[81] Further information on the units of competence is available at the National Training Information Service at: www.ntis.gov.au.

Table 9: Requirements for acting as a pilot or escort vehicle driver, by jurisdiction

	Level 1 Pilot	Level 2 Pilot	Escort
WA	This level of pilot does not exist. There are, however, no requirements for being an agricultural implement pilot.	TDTC1097B TDTE997B TDTF1397B TLIF6007A HLTFA201A This level of pilot is not required for an agricultural implement. WA recognises Qld accredited pilots, Vic certified pilots, and anyone having demonstrated that they meet the national competencies.	Escorts are wardens who are employed by the police and drive police vehicles. They are granted the power to direct traffic in the course of escorting activities.
NT	There are no requirements for this level of pilot.	TDTC1097B TDTE997B TDTF1397B TDTH297C Plus use of STOP sign.	TDTC1097B TDTE997B TDTF1397B TDTH297C Plus use of STOP sign. Must have experience with at least 10 'two pilot' trips and 5 escort trips as an accredited pilot before upgrading to escort.
SA	There are no requirements for this level of pilot.	This level of pilot does not exist.	Police officer.
QLD	This level of pilot does not exist.	Must have Qld-issued pilot accreditation, which requires passing a 25-question knowledge test.	Must have Qld-issued escort accreditation, which requires TDTC1097B or TLIC1007C. Must have experience with 12 trips as an accredited pilot. Qld recognises escorts that are accredited in another jurisdiction.
NSW & ACT	There are no requirements for this level of pilot.	This level of pilot does not exist.	Police officer.
VIC	There are no requirements for this level of pilot.	TDTC1097B TDTE997B TDTF1397B TLIF6007A Must have experience with 20 trips as a non-certified pilot.	VicRoads enforcement officer.
TAS	There are no requirements for this level of pilot.	This level of pilot does not exist.	Transport inspector or police officer.

The 2004 NTC guideline included the following table (see Table 8) outlining the load dimension conditions that each type of pilot and escort is required to meet in each state and territory.

Table 10: Pilot and escort requirements by jurisdiction

Pilot and Escort Requirements by Jurisdiction								
Dimensions	WA	NT	TAS	NSW & ACT	Vic	Qld	SA	Comments
<3.5m width < 25 m length	No pilot	No pilot	No Pilot	No pilot	No pilot	No pilot	No pilot	
3.5-4.5m width 25-30m length	1LV2	1LV1	1 pilot	1LV1	1LV1	1LV1	1LV1	At this level all jurisdictions require a LV1 however WA require a LV2
4.5-5.5m width 30-35m length	2LV2	2LV2	1pilot+1Esc	2LV1	2LV2	2LV2	2LV1	This level has the greatest number of variations.
>5.5m width >35m length	2LV2 + 1 Esc	2LV2 + 1 Esc	1pilot + 2Esc	2LV1 + Pol	2LV2 + 1 Esc	2LV2 + 1 Pol	2LV1 + 1 Pol	
Notes	LV2 Training and accreditation 30m restriction to urban areas				LV2 Training Experience Accreditation	LV1 knowledge LV2 Training Experience Accreditation	conditions vary from metro to rural/hills	

Legend

LV1	Level 1 Pilot
LV2	Level 2 pilot
Esc	Escort
Pol	Police
m	Metres

As mutual recognition of each state's pilot and escort vehicle approaches is not in effect, this creates problems at border crossings where a pilot–escort configuration may need to be changed. Such changes are sometimes difficult to effect, particularly where a police presence must be scheduled.

The objectives of the 2004 guideline were to:

- effectively outline practical and enforceable guidelines suitable for adoption and implementation by each respective jurisdiction
- reduce the cost of administration for state and territory road authorities in administering pilot and escort vehicle drivers
- provide a simple and flexible framework
- contribute to increasing the safety of travel associated with oversized vehicles requiring accompaniment by a pilot or escort vehicle
- contribute to reducing costs for operators required to employ the services of pilot and escort drivers, particularly where interjurisdictional travel is required.

A 2008 review of the effectiveness of the escort and pilot vehicle administrative guidelines concluded '[i]n overall terms, it is clear that the *Guideline* has been ineffective in achieving

nationally uniform procedures, or encouraging mutual recognition'.[82] The review concluded that there was 'moderate agreement' that the guideline had contributed to safer travel but that it had failed to deliver administrative savings for road agencies or cost reductions for operators.

Broadly, three arrangements have been adopted for the requirements for pilots and escorts:

1. New South Wales, the Australian Capital Territory, South Australia and Tasmania require Level 1 pilots for medium oversize loads and larger loads.
2. The Northern Territory, Queensland and Victoria require Level 1 and Level 2 pilot vehicles, with Level 1 pilots accompanying the medium oversize vehicles and Level 2 pilots supporting the larger oversize vehicles. Queensland and Victoria require accreditation for Level 2 pilots.
3. Western Australia requires Level 2 pilots for all medium and larger oversize vehicles.

All jurisdictions require police or authorised officers to accompany oversize vehicles at the upper end of the risk scale. New South Wales has indicated, at officer level, that they are considering introducing Level 2 pilots to reduce the burden on police resources.

8.10.2 Outcome

The proposal has four key elements:

(1) Mutually recognise Level 1 pilots.

Level 1 pilots accompanying an oversize load across jurisdictional boundaries, with a trip origin in their 'home' state or territory, would be mutually recognised as Level 1 pilots.

(2) Mutually recognise Level 2 pilots.

Level 2 pilots accompanying an oversize load across jurisdictional boundaries, with a trip origin in their 'home' state or territory, would be mutually recognised as Level 2 pilots.

(3) Recognise 'experienced' Level 1 pilots from New South Wales, the Australian Capital Territory, South Australia and Tasmania as Level 2 pilots when travelling into another state or territory, subject to conditions.

Operational details of the experience level and conditions for a Level 1 pilot based in New South Wales, the Australian Capital Territory, South Australia and Tasmania are yet to be determined. An example of the proposed operational conditions to allow for this mutual recognition could include the following:

- When accompanying an oversize load across jurisdictional boundaries, the pilot:
    - is based in their 'home' jurisdiction where the trip originates
    - acquires an approved traffic control training certificate (national competency code TLIF 6007A only)
    - does not operate in capital cities, provincial cities or designated mountainous, hazardous or restricted areas in another jurisdiction.
- An 'experienced' pilot could be defined as a pilot who has escorted a minimum of 20 loads in the past 24 months (this could include permit numbers, specific load description, oversize vehicle registration and date of move).

(4) Establish bilateral arrangements for police and authorised officers.

A police or authorised officer may escort a load across a state or territory boundary provided that the escort commences in the state or territory where the police or authorised officer is stationed and concludes at the closest town or rest area suitable for the load being escorted in the adjacent jurisdiction.

[82] National Transport Commission, *Effectiveness review of the Australian Vehicle Standard Rules and administrative guideline for pilot and escort vehicle driver accreditation procedures,* final report, July 2008, p. 25.

The proposals described above are intended as an interim measure pending the development of a nationally consistent approach to the requirements for pilots and escorts. The proposal would be a step towards national consistency and should not unacceptably prejudice alternatives in relation to the final national position. A project plan to develop a nationally consistent approach to the requirements for pilots and escorts has been approved by Austroads, with Western Australia as the project managing jurisdiction.

8.11 Driver licence sanctions for mass, dimension and load restraint breaches

Current model law: National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006

National Heavy Vehicle Law: Not applicable—it is not proposed to include driver licence matters in the national law

SUMMARY

At present, the C&E model law only permits the courts' discretion to apply licence sanctions for severe mass dimension loading (MDL) breaches. The court may elect to suspend or cancel a licence.

Some jurisdictions have diverged from the model, allowing courts to impose licence sanctions for severe and *minor breaches.*

Given that the HVNL is limited to vehicle registration at this time, it makes sense to remove licence sanctions from the national law and leave them within the states' purview.

8.11.1 Problem, objectives and discussion

The model C&E Bill does not permit court discretion to apply licence sanctions for C&E offences, with the exception of a severe MDL breach. In these instances, a court may suspend or cancel a licence on the grounds that an MDL breach poses a significant risk to safety.

There has been some deviation from the model in the states and territories. Victoria, New South Wales and Tasmania allow courts to impose licence sanctions on drivers found guilty of minor *and* severe MDL breaches, whereas Western Australia does not provide for licence sanctions, even for a severe MDL breach. In practice, it is rare for a court to impose a licence sanction for either a minor or a substantial MDL breach.

The view of the expert panel has been sought in relation to this matter.

Punitive measures under the C&E Bill are designed to deter mass, dimension and loading breaches that can compromise road safety, degrade road infrastructure and confer unfair competitive advantage. The intent is for penalties to be sufficiently weighty to modify future behaviour (suspension) or to prevent further breaches by revoking access to the road network altogether (cancellation).

Although this objective is fundamentally sound, a decision has been taken to limit the HVNL to matters pertaining to the vehicle at this time. It therefore makes sense to quarantine licence sanctions from the national law altogether.

Jurisdictions would still retain the ability to pursue licence sanctions through their local laws. Although in theory this may lead to a greater range of offences and sanctions and a reduction in national consistency, in practice there will be minimal changes because these sanctions are rarely used.

8.11.2 Outcome

The HVNL will be modified to remove licence sanctions. This recommendation was accepted by the ATC at its meeting on 20 May 2011.

8.12 Vehicle registration sanctions for mass, dimension and load restraint breaches

Current model law: National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006

Heavy Vehicle National Law: Not applicable

SUMMARY

Courts may impose registration sanctions for severe MDL breaches under the model law.

Most states and territories have adopted the law; those that have not adopted it (Western Australia and the Northern Territory) have signalled their intention to do so.

The model law will be retained in the national law.

8.12.1 Problem, objectives and discussion

As with driver licence sanctions, the model law does not permit court discretion to apply registration sanctions for C&E offences, except for a severe MDL breach.

All jurisdictions, with the exception of the Northern Territory and Western Australia, have adopted the model law. However, these two jurisdictions have signalled their intention to do so in the future.

The view of the expert panel has been sought in relation to this matter.

Punitive measures under the C&E Bill are designed to deter MDL breaches that can compromise road safety, degrade road infrastructure and confer unfair competitive advantage. The intent is for penalties to be sufficiently weighty to modify future behaviour and prevent recurring breaches.

8.12.2 Outcome

The model law will be retained. This recommendation was accepted by the ATC at its meeting on 20 May 2011.

8.13 Special-purpose trailers

Current model law: Not applicable—the model law is currently silent on special-purpose trailers

Heavy Vehicle National Law: Heavy Vehicle National Law, part 5; Heavy Vehicle (Mass, Dimension and Loading) National Regulation, s. 6, part 1, division 3

SUMMARY

Some trailers, such as amusement rides and drilling-rig trailers, are built for purposes other than carrying a load.

Issuing permits can be problematic because they do not carry a load (and therefore cannot be treated as oversize load-carrying vehicles) and are not motorised (and therefore cannot be treated as special-purpose vehicles [SPVs]).

Victoria has diverged from the model law to broaden the definition of an SPV to cover 'any vehicle … where the primary purpose for which it was built was not the carriage of goods or passengers'.

The Victorian definition will be adopted in the national law to recognise special-purpose trailers.

8.13.1 Problem, objectives and discussion

Some trailers are built for a special purpose other than carrying a load. Examples of special-purpose trailers include:

- amusement rides
- concrete batching plants

- mobile screen trailers
- drilling-rig trailers
- mobile crushing plants
- horse starting gates
- bitumen plants
- wood chippers
- waste mulchers.

Trailers that comply with general mass and dimension limits for trailers may be towed on the road without restriction. However, trailers that exceed a mass or dimension limit must obtain an instrument of approval, such as a permit issued by a road authority, before travelling on the road.

The issue of such an instrument can be problematic. Technically, OSOM special-purpose trailers cannot be treated as oversize load-carrying vehicles because they do not carry a load. Similarly, they cannot be treated as an SPV because, according to the model law definition, an SPV must be a *motor* vehicle.

States and territories have generally managed the problem by allowing certain special-purpose trailers to operate on a Class 1 oversize or overmass permit because they share broadly similar characteristics with these vehicles and are considered to represent an equivalence of risk. Technically, however, special-purpose trailers do not fit neatly into the Class 1 oversize or overmass definition, leading to potential exposure should an accident occur on the road.

Victoria has introduced greater certainty by amending its legislation to broaden the definition of an SPV. The definition now covers 'any vehicle … where the primary purpose for which it was built or permanently modified was not the carriage of goods or passengers'.[83]

In support of this definition, Victoria has developed a special-purpose trailer policy specifying the dimension limits and operating conditions for special-purpose trailers. Victoria issues around 30 permits per year under this provision. It is recommended that the national law be drafted to be consistent with the Victorian provision. The inclusion of a special-purpose trailer definition will not increase the regulatory or administrative burden; rather, it will simply enhance the legal certainty of the existing situation. Operators will have greater certainty about accessing the road network and greater clarity about the conditions associated with this access. The Victorian experience suggests that there may be particular benefits for the construction, earth-moving, mining, logging and primary production industries.

Should the model law be retained and strictly applied, special-purpose trailers would need to be transported by means other than towing, incurring greater costs for operators and creating practical difficulties.

8.13.2 Outcome

The national law will recognise special-purpose trailers.

8.14 Treatment of silage trailers

Current model law: Not applicable—the model law is currently silent on silage trailers

Heavy Vehicle National Law: Heavy Vehicle National Law chapter 1, part 2; Heavy Vehicle National Law, s. 21; Heavy Vehicle National Law, chapter 4, part 5

SUMMARY

The status of silage trailers in the model law is currently ambiguous.

There is uncertainty as to whether a silage trailer is an 'agricultural implement' and thereby exempt from registration.

[83] Road Safety (Vehicles) Regulations 2009, s. 5.

This uncertainty has led to farmers being penalised for towing silage trailers on the road.

Victoria has removed the ambiguity by explicitly defining 'agricultural task'.

A similar definition will be included in the national law to facilitate issuing exemptions relating to silage trailers.

8.14.1 Problem, objectives and discussion

Silage trailers are used by primary producers, generally in the dairy industry, to cart loose green grass or green crops and silage (a moist, fermented grass product that is used as stock feed). The trailers are towed by farm tractors and are typically a tandem-axle pig trailer configuration, with large flotation tyres that carry a large, high-sided bin. Many models exceed 2.5 metres overall width (up to 3.0 metres) and have an aggregate trailer mass of up to 18 tonnes.

In the past, the trailers were predominantly used off-road and so were outside the ambit of transport regulation. However, the trend towards larger consolidated farming enterprises with non-contiguous properties has led to an increase in road travel to move vehicles between properties. While suitable for off-road use, the trailers can present problems when used on-road because of the speed differential in mixed traffic on rural roads, the physical size of the trailer, the potentially heavy mass, and the unknown braking and towing capability. It is therefore desirable to treat silage trailers carefully under the HVNL so that their use may be effectively controlled.

The status of silage trailers under the national model legislation is currently ambiguous. The problem hinges on whether silage trailers are 'agricultural implements' and thereby exempt from registration and attendant costs under the model law. On the one hand, silage trailers would seem to fit the definition of 'agricultural implement' as 'a vehicle without its own motive power, built to perform agricultural tasks'. On the other hand, the model law requires that an agricultural implement not carry a load, thereby excluding silage trailers. More broadly, there is the question of whether 'agriculture' includes activities related to livestock.

The latter point has held sway, meaning that the model law does not exempt silage trailers from registration. This had led to instances of farmers being penalised for towing silage trailers on the road. In Victoria, industry argued that these trailers were a necessary element of the state's primary industry and that the regulations should be amended to legalise their operation. After further consultation, Victoria amended its legislation to define 'agricultural task' as including 'cultivation of land, growing and harvesting of crops *and rearing of livestock'* [author's emphasis]. To make the intent explicit, 'agricultural implement' was extended to include 'agricultural trailer', with a definition of 'a trailer designed to carry a load and used exclusively to perform agricultural tasks'.[84] Victoria has, therefore, in effect legalised the towing of silage trailers on the road while exempting them from the registration requirement.

Victoria has managed the safety implications by declaring agricultural trailers to be 'Class 1 vehicles' and providing VicRoads with the power to exempt trailers from Class 1 provisions by general notice or permit. As such, silage trailers are exempt from requirements relating to mass limits, maximum width, use of freeways and load-carrying restrictions. However, these exemptions are conditional on silage trailers meeting other safety standards set out in the *Victoria Government Gazette*.[85]

The model law is largely silent on the purposes of registration, although subsection 3(3) provides that the Act and the state equivalents 'are intended to improve road safety and transport efficiency, and reduce the costs of administering road transport'. An example of a legislative statement about the purpose of registration is provided in s. 5 of the Victorian *Road Safety Act 1986*, which declares the purposes of registration to be:

> (a) to ensure that the design, construction and equipment of motor vehicles and trailers that are used on a highway meet safety and environmental standards

[84] Road Safety (Vehicles) Regulations 2009, s. 5.

[85] See VicRoads, *Silage trailers information bulletin,* June 2010

(b) to enable the use of motor vehicles and trailers on highways to be regulated for reasons of safety, protection of the environment and law enforcement

(c) to provide a method of establishing the identity of each motor vehicle or trailer that is used on a highway and of the person who is responsible for it.

Only registered vehicles may be used on the road network (highway) unless a specific law otherwise authorises the use of the vehicle. As 'unregistered vehicles', silage trailers are explicitly excluded from use of the road network. In order for current practice (i.e. on-road towing of silage trailers) to be reflected in legislation, silage trailers would need to be brought under the umbrella of vehicles specifically exempt from registration.

8.14.2 Outcome

The definition of 'agricultural task' will be amended to facilitate issuing exemptions relating to silage trailers.

8.15 Obligations to carry accreditation documents

Current model law: National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007, ss. 80A, 86

Heavy Vehicle National Law: Heavy Vehicle National Law, s. 420

SUMMARY

The model law requires that a driver must have a copy of the operator's accreditation certificate and a document signed by the operator stating that the driver meets the requirements as stipulated under the accreditation.

If the driver is found without the accreditation documents, the operator is automatically guilty of an offence. The offence carries a maximum court penalty of $2000 or an infringement of $600.

South Australia has diverged from the model law and removed the strict liability offence, instead requiring operators to take 'reasonable steps' to ensure that drivers are carrying their documents.

A similar provision will be included in the national law.

8.15.1 Problem, objectives and discussion

Sections 80A and 86 of the Heavy Vehicle Driver Fatigue Regulations (model law*)* provide that, at all times while working under an operator's BFM or AFM accreditation, a driver *must* have in their possession a copy of the operator's accreditation certificate and a document signed by the operator stating (inter alia) that the driver meets accreditation requirements.

The existing model law creates a strict liability offence for operators whose drivers do not carry accreditation documents while operating under the operator's BFM or AFM accreditation. Therefore, the operator is 'automatically' guilty of an offence if the driver is found without the accreditation documents. The offence carries a maximum court penalty of $2000 and an infringement of $600. As a strict liability offence, the operator can only use the defence of honest and reasonable mistake of fact to avoid responsibility for the offence.

However, in practice, it would be difficult for an operator to show that they had made an honest and reasonable mistake about their drivers carrying accreditation documents. To defend the offence, the operator would have to prove that they had honest and reasonable grounds for believing that a driver was carrying the documents. In most cases, the operator would only be able to demonstrate that they took reasonable steps to ensure that the driver was carrying accreditation documents. With limited ability to use the defence of honest and reasonable mistake of fact, strict liability may constitute an unfair burden on the operator, given that their power to control the situation is limited and the cost of ensuring full compliance would be unreasonably high.

In implementing the fatigue model law, South Australia removed the strict liability offence for operators in the Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008, instead providing that an operator must take all reasonable steps to ensure that a driver does not

contravene the requirement to carry accreditation documents. In effect, this shifts the burden of proof from the operator to the prosecution and provides the operator with a viable defence. It is proposed to incorporate this amendment into the model law.

It should be noted that the strict liability offence will remain for drivers who are found without the relevant accreditation documents because this is a situation over which they have full control. To date, 74 infringements have been issued for the offence in two states.

The principal objective of a shift from the model law towards the South Australian model is fairness for the operator. The amendment would reduce the burden imposed on the operator, only requiring them to show that they took reasonable steps to ensure that drivers were carrying the documents. This appropriately reflects the level of control operators have over whether a driver is carrying the necessary accreditation documents. The 'reasonable steps' concept is defined within the model law and is an obligation that is familiar to operators.

The proposed change to the model law would not compromise the broader objectives of road safety inherent in fatigue law because the incentive to carry accreditation documents is high since it is important for C&E. For this reason, the proposed change is not expected to increase regulatory burden.

8.15.2 Outcome

The HVNL will require operators to take 'all reasonable steps' to ensure that drivers are carrying their accreditation documents.

8.16 Driver not required to carry documents

Current model law: National Transport Commission (Road Transport Legislation—Oversize and Overmass Vehicles Regulations) Regulations 2006, schedule part 1 1.11

Heavy Vehicle National Law: Heavy Vehicle National Law, chapter 4, part 5, s. 100A

SUMMARY

The model law currently requires drivers of OSOM vehicles to carry a copy of their Class 1 notice or *permit. However, it is only an offence to fail to carry the notice.*

There have been inconsistencies in how states and territories have implemented these requirements, with some making it an offence to carry both a notice and a permit.

Vehicles operating on a Class 1 permits have specific conditions in place to minimise the safety risk posed by their use of the road network. As these conditions are specific to a particular vehicle, it is reasonable to expect that the driver of the vehicle carry a copy of the permit.

As notices apply to a type of vehicle rather than a specific vehicle, there is limited value in mandating that they be carried. It is reasonable to assume that the driver, operator and law enforcement officer would be familiar with the terms of the notice.

The national law will require drivers of Class 1 vehicles operating under a permit to carry the permit. It will be an offence to fail to do so.

8.16.1 Problem, objectives and discussion

Under the current model law, drivers of OSOM vehicles are required to carry (in the driving compartment) a copy of the Class 1 *notice*. While the model regulations do not expressly provide that a driver must carry a *permit*, the practice in most states and territories is to impose this requirement as a condition. Therefore, under the model regulations, a driver who fails to carry a notice or permit is guilty of the offence of breaching the condition of the notice or permit.

There have been inconsistencies in how states and territories have implemented these requirements. Some states have made it mandatory for all drivers of Class 1 vehicles to carry documents and created an offence for failing to comply, regardless of whether operating under a notice or a permit. In other states, the regulator has the power to exempt drivers from carrying documents.

The proliferation in approaches reflects the diversity of OSOM vehicles and the difficulty in securing an approach suitable for all contingencies.

The intention of requiring drivers to carry notices or permits is to simplify the enforcement task, in addition to providing clarity to industry about its compliance obligations. Mandating that drivers of OSOM vehicles carry documents creates a compliance burden for industry that needs to be weighed against the contribution to managing road safety risk and enabling the enforcement of route conditions.

Vehicles operating on a Class 1 permit have specific conditions in place that the regulator considers necessary to minimise the road safety risk posed by their use of the road network. As these conditions are specific to a particular vehicle, it is reasonable to expect that the driver of the vehicle carry a copy of the permit. This simplifies both the compliance and the enforcement tasks, with a driver being able to readily demonstrate they have approval to access the road network and an enforcement officer being able to assess that the driver is complying with the conditions of the permit.

However, vehicles operating under a Class 1 notice are subject to more general conditions for a particular route. While being familiar with the conditions specified in a Class 1 notice, a driver may not necessarily have access to, or carry a copy of, the Class 1 notice because it is not specific to their vehicle. Additionally, it is not unreasonable to expect that an enforcement officer has knowledge of, or access to, the conditions imposed by a Class 1 notice on a particular route.

Accordingly, it is proposed that the national law require drivers operating under a Class 1 permit to carry a copy of the permit and that it be an offence to fail to do so. No such requirement will be placed on drivers operating under a Class 1 notice. This is a change in procedure to the status quo in some jurisdictions, and there may be initial costs associated with providing additional information or training to enforcement officers.

8.16.2 Outcome

- The national law will require Class 1 vehicle drivers operating under a *permit* to carry the permit, and it will be an offence to fail to do so
- Class 1 vehicle drivers operating under a *notice* will be subject to more general conditions for a particular route and, as such, will not be required to carry a copy of the notice unless stated in the notice.

8.17 Returning seized goods

Current model law: National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006, s. 54

Heavy Vehicle National Law: Heavy Vehicle National Law, chapter 9, part 4, s. 502

SUMMARY

The model law requires that, where an authorised officer seizes goods as part of their enforcement duty, they issue a receipt to the person from whom the goods are removed.

However, there is no provision for the return of those goods. This has been left to the states and territories.

Given that the regulator may undertake cross-border chain-of-responsibility investigations, it is desirable that there be a uniform national approach to the seizure and return of goods.

The national law will require the return of seized goods when they are no longer required as evidence or otherwise as part of an investigation.

8.17.1 Problem, objectives and discussion

The C&E model law makes provision for enforcement officers to seize 'records, devices or other things' while exercising their enforcement duties. Section 54 requires that, where goods are seized, the authorised officer or police officer must issue a receipt to the person from whom the goods are removed and, if practical, allow the affected individual reasonable access to the goods. However, there are no provisions in the model law for the return of those

goods. This matter has been left to the jurisdictions to resolve in other legislation. For example, in Victoria, ss. 143 and 144 of the *Road Safety Act 1986* require the return of seized goods or a lifting of embargo orders after three months, if proceedings in relation to the seized or embargoed goods have not commenced.

The right to personal property is fundamental. It is therefore important that, where seized goods are no longer required as evidence, they be returned to the owner as soon as practicable. While existing jurisdictional law already regulates the handling of seized goods, a nationally consistent approach is desirable because many investigations under the regulator, such as chain-of-responsibility investigations, will require cross-border exercise of enforcement powers. A unified approach to the seizure and return of goods will deliver consistent outcomes across the country.

It is not expected that the amendment will result in additional costs or burdens as it simply gives national effect to existing state-based systems.[86]

8.17.2 Outcome

The HVNL will require the return of seized goods when they are no longer required as evidence or otherwise as part of an investigation.

8.18 Restoration of vehicles, combinations or premises

Current model law: National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006, s. 59

Proposed law: Heavy Vehicle National Law, chapter 9, part 5, division 1, s. 523

SUMMARY

The model law currently requires enforcement officers to attempt to repair damage to property occasioned by the 'unreasonable exercise' of their powers.

In some cases, attempts to restore property could further aggravate damage or cause unreasonable delays in returning property to the owner.

South Australia has diverged from the model law to allow a person so affected to elect to receive monetary compensation, rather than have the goods repaired.

A similar provision will be in the national law.

8.18.1 Problem, objectives and discussion

Section 59 of the C&E Bill requires that enforcement officers take reasonable steps to restore property damaged through 'the unreasonable exercise' of their enforcement powers. The officer 'must take reasonable steps to return the vehicle, combination, equipment, load or premises to the condition it was in immediately before the action was taken'.

In certain circumstances, restoration attempts could aggravate the damage or create unreasonable delays in accessing the requisite expertise to make repairs. In such cases, it may be preferable for the person whose property is damaged to elect to receive monetary compensation, rather than attempt to have the goods restored. South Australia has diverged from the model law to enable monetary compensation as follows:

> …the officer must take reasonable steps to return the vehicle, equipment, load or premises to the condition it was in immediately before the action was taken *or, instead, at the option of the operator of the vehicle or the occupier of the premises, the Crown must pay reasonable compensation for the damage caused to the vehicle, equipment, load or premises*.[87] [author's emphasis]

To date, South Australia has not issued compensation in lieu of restoration attempts.

---

[86] It should be noted that data were not available for any relevant jurisdiction on the number of receipts issued for seized goods under the C&E legislation.

[87] *Road Traffic Act 1961*, South Australia, 41J.

The South Australian variation recognises that it may be impractical to attempt to restore damaged property to its original condition. It may also be unreasonable to expect the owner to wait for lengthy repairs to be completed, especially if the property is integral to their livelihood. The variation promotes fairness and equity and is therefore proposed for inclusion in the national law.

The variation makes explicit a legal right that already exists in common law. There is, therefore, unlikely to be a net difference in compensation paid through introducing the variation. Furthermore, instances of officials acting 'unreasonably' in their enforcement duties are rare.

8.18.2 Outcome

The national law will give a property owner the right to compensation for property damaged through the 'unreasonable exercise of enforcement powers'.

8.19 Places where powers can be exercised

Current model law: National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006, s. 27

Heavy Vehicle National Law: Heavy Vehicle National Law, chapter 9, part 3, Division 1, s. 459

SUMMARY

The model law sets out where the powers of authorised persons may be exercised.

New South Wales has extended the power to make directions about the stopping, moving or leaving of vehicles to include any vehicle 'seen on a road'. This may allow an authorised person to follow a vehicle onto private property if they suspect that the vehicle may be in breach of mass and loading limits.

The expert panel believe that the existing power in the national law is sufficient and that there is no evidence justifying the extension of powers. This provision may be in conflict with other parts of the law. The variation will be excluded from the national law.

8.19.1 Problem, objectives and discussion

The C&E Bill sets out where the powers of authorised persons may be exercised. Section 27 specifies that C&E activities with respect to issuing directions for a driver to stop, move or leave vehicles can take place:

(a) on any road, or

(b) in or on any public place, or

(c) in or on any premises occupied or owned by the authority or by any other public authority, or

(d) in or on any premises where the officer is lawfully present after entry under Division 4.

Section 27(2) specifies that the division applies to the driver of a vehicle or combination who is apparently in the vicinity of the vehicle or combination.

New South Wales has introduced a subtle variation to the definition of where C&E powers may be exercised and sees merit in maintaining the variation in the national law. New South Wales's equivalent of s. 27 is s. 135 of the *Road Transport (General) Act 2005*:

(1) This Division applies to a vehicle or combination located:

(a) on any road, or

(b) in or on any public place, or

(c) in or on any premises occupied or owned by the authority or by any other public authority, or

(d) in or on any premises where the officer is lawfully present after entry under Division 4.

(2) This Division applies to a vehicle or combination *seen on any road*. [author's emphasis]

(3) This Division applies to the driver of a vehicle or combination who is apparently in the vicinity of the vehicle or combination.

It is the 'seen on any road' provision that requires clarification. New South Wales uses the provision to enable an officer to enter premises on the basis of sighting a vehicle on the road. Therefore, if an authorised person suspects that a vehicle is overloaded, they may apprehend the vehicle even if it leaves a public road and enters private premises.

The expert panel was asked for its view on whether the variation should be included in the HVNL.

The model law pertaining to C&E is contained in the Road Transport Reform (Compliance and Enforcement) Bill 2003. Its purpose is to introduce a nationally consistent C&E regime to improve road safety and to minimise the adverse effects of road transport on road infrastructure, the environment and the community. Arguably, the ability of an officer to enter private premises to apprehend a vehicle suspected of being overloaded or otherwise unsafe promotes road safety. However, in the view of the expert panel, this power may be in conflict with other parts of the law that expressly limit the authority of officers to enter private property. The panel had difficulty in establishing the extent to which the New South Wales provision makes a material difference in C&E.

8.19.2 Outcome

The variation will not be included in the national law. This recommendation was endorsed by the ATC at its meeting of 20 May 2011.

8.20 Detaining a vehicle

Current model law: National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006, ss. 28, 29

Heavy Vehicle National Law: Heavy Vehicle National Law chapter 9, part 3, division 3

SUMMARY

The model law allows an authorised officer to direct a driver to stop a vehicle until a breach is rectified, but not beyond that amount of time.

New South Wales has introduced a variation allowing authorised officers to 'detain' a vehicle.

The expert panel believes that the existing powers are sufficient. The variation will be excluded from the national law.

8.20.1 Problem, objectives and discussion

The C&E legislation allows an authorised officer to direct a driver to stop a vehicle, either without delay or at the nearest place of convenience (s. 28). The authorised person may also require that the vehicle not be moved or in any way interfered with. Section 29 prescribes the distances that the vehicle may be moved in order for powers to be exercised. The model law allows detention until a breach is rectified, but not beyond that amount of time.

Under s. 48 of the *Road Transport (General) Act 2005*, New South Wales has extended the power to stop a vehicle to 'detain' a vehicle until specified breaches of mass, dimension or load restraint are rectified. The view of New South Wales is that this power promotes road safety and should be included within the model law. The view of the expert panel was sought in resolving this matter.

As noted above, New South Wales takes the view that the power to 'detain' a vehicle promotes road safety outcomes. However, no empirical evidence has been presented to date that proves improved safety outcomes as a direct result of the power. Given the sheer size of some heavy vehicle combinations, the very act of detaining the vehicle might compromise safety because there may be limited availability of places where it may be safely stowed. Liability rests with the state until the breach, if found, is rectified.

Furthermore, the section is problematic in that it allows an authorised officer to act on a presumption that a vehicle is noncompliant and, on these grounds, limit or otherwise circumscribe a person's right to make use of their property. Currently in New South Wales, an authorised officer has complete discretion to detain a heavy vehicle.

It is the view of the expert panel that the model law already allows a vehicle to be stopped until breaches are rectified. 'The panel considers that this provides sufficient authority to ensure that unsafe vehicles or those with the potential to seriously damage road and bridge assets do not continue their journeys. The panel has no evidence that detention beyond this will provide any benefits to the community, but has some concern that restraint of trade or similar outcomes could occur'.[88]

8.20.2 Outcome

The model law will be retained in national law.

8.21 Intelligent Access record retention

Current model law: National Transport Commission (Model Legislation—Intelligent Access Program) Regulations 2006, clause 18(5)

Proposed law: Heavy Vehicle National Law, chapter 7, part 6, ss. 372, 389

SUMMARY

The model law requires that sensitive IAP data be destroyed after one year.

New South Wales has subtly diverged from the model to require destruction of records 'not later than one year', technically making the destruction of important material possible before the close of 12 months.

To manage the risk of premature destruction of IAP data, the model law will be retained in national law.

8.21.1 Problem, objectives and discussion

The IAP is a relatively new program that allows heavy vehicles to have access, or improved access, to the road network in return for monitoring their compliance with specified access conditions. These conditions must include spatial data (i.e. an IAP-approved route) and may include temporal data (times when the vehicle is permitted to use the IAP road), speed data (the maximum speed at which the IAP vehicle may travel on the route) and any other condition of access to the IAP road (e.g. a condition about mass limits). Compliance with these conditions is electronically monitored through a combination of global positioning systems and in-vehicle sensors that transmit vehicle performance data to a third-party service provider for downloading and analysis. In instances where a vehicle is noncompliant with a condition, a noncompliance report is triggered, alerting the IAP service provider to the breach. The service provider must then alert the registering authority to the noncompliance.

Clearly, the sensitive nature of the data collected through IAP requires stringent rules around record keeping, particularly security, integrity and disposal of records. The model law requires that:

> An IAP service provider must take reasonable steps to destroy IAP information (including personal information) … 1 year after the information is collected.[89] (s. 18 [5])

In contrast, New South Wales law stipulates that:

> A service provider must take reasonable steps to destroy intelligent access information … *not later than one year after the information is collected*.[90] [author's emphasis]

---

[88] *Independent Expert Panel on Heavy Vehicle Policy report*, Australian Transport Council Meeting, 20 May 2011, p. 21.

[89] The IAP service provider must, however, keep a copy of a noncompliance report and any data used to generate that report for at least four years after the report is made.

[90] Road Transport (Mass, Loading and Access) Regulation 2005, r. 72O(4).

This is a subtle but important distinction because 'not later than one year' may mean any time within that year. Accordingly, information that could be required as evidence may be destroyed. It is unlikely that destroying this information within a year would make a material difference because, as with the model law, the service provider must still keep a copy of any noncompliance report and the data used to generate that report. These noncompliances are most likely to be of interest to a court. Nonetheless, in order to better manage risk, it is proposed to retain the model law such that information is retained for one year.

The IAP is designed to improve compliance with road transport laws among heavy vehicle road users and the efficiency of road use by heavy vehicles. Authorities may be reluctant to grant access to the road network where enforcement operations are limited and noncompliance could compromise vulnerable road assets. The IAP is one means of giving comfort to authorities that conditions of access are being complied with. Benefits for operators include regulatory concessions in excess of those available to the general road user.

8.21.2 Outcome

The model law will be retained to manage the risk of valuable information being destroyed.

8.22 Administration fees

Current model law: Not applicable

National Heavy Vehicle Law: Chapter 12 Administration Part 12.3 Miscellaneous Division 1

SUMMARY

Different services provided by heavy vehicle regulators attract administration fees. A mechanism is required to enable the regulator to charge these fees.

Fees will be applied using cost-recovery principles through regulation.

8.22.1 Problem, objectives and discussion

Regulators currently charge administration fees for different aspects of heavy vehicle regulation, including the issuing of permits and entry or renewal of a vehicle into the NHVAS modules. These administration fees range from $25 to $150, depending on the regulatory activity. The fees are typically contained within state and territory legislation, and can be indexed on an annual basis with approval from the relevant transport minister.

The HVNL will need to enable the regulator to continue charging these fees. The model laws generally do not address fees, so no national mechanism exists for setting or indexing them. Although the administration fees themselves do not need to be set in the HVNL to be approved by the ATC, the mechanism for setting and indexing requires agreement. The actual fees will need to be ready for the commencement of the regulator on 1 January 2013.

Consistent with current practices, the fees could be prescribed within the national regulations for each regulatory activity. These regulations would need to be approved by the ATC. Having the fees set by regulation will prevent any perceived conflict of interest if the regulator sets its own fees (as suggested in the draft RIS).

8.22.2 Outcome

The administration fees will be set by regulation, applying cost-recovery principles.

9. High impact variation analysis

The items discussed in this chapter are considered to be of a 'high impact' and represent a more significant departure from the current model legislation. They have medium to high competition impacts and medium to high net compliance costs. These items are subject to 'mini RIS' assessments and include options for consideration.

The proposed new decision-making frameworks are an entirely new element proposed for inclusion in the national law, with potentially significant economic impacts. Indeed, the bulk of the productivity gains possible through the proposed Heavy Vehicle National Law (HVNL) will be realised through these frameworks.

Although entirely consistent with the aims and objectives of existing fatigue laws, a new approach to advanced fatigue management (AFM) is proposed to address the low uptake rates and therefore less-than-expected benefits of AFM. State variations in spray suppression devices, vehicle inspections, transfer of vehicle ownership, restricted access vehicle (RAV) permits and three new offences are discussed. These issues could have significant operational impacts for industry. The final item in this chapter relates to unpaid fines for offences unrelated to the operation of the vehicle. This is not expected to create net change for industry from existing approaches but is included because it will generate administrative costs for the National Heavy Vehicle Regulator (NHVR) and is a new element in law.

9.1 Decision-making frameworks[91]

Current model law: Not applicable

Heavy Vehicle National Law: Heavy Vehicle National Law, chapter 4, part 7, chapter 11

SUMMARY

Decisions taken by the registering authorities and road managers have significant implications for operators.

At present, there can be issues around transparency and consistency of decision making. Departures from policy approved by the Australian Transport Council (ATC) and the Council of Australian Governments (COAG) can result in high costs and frustration for industry. There is no formal mechanism for review of access decisions that impacts operators' ability to plan and confidently invest.

The benefit that can be derived from a review process is exemplified by performance-based standards (PBS)—through internal review, access was improved from 55 per cent to 70 per cent. The percentage of vehicles outright denied access fell from 21 per cent to 4 per cent.

Two options were considered: (1) to retain the status quo, or (2) to institute a new decision-making framework consisting of evaluative tools for initial decision making, and review mechanisms for the reconsideration of those initial decisions. The regulator's decisions would be subject to both internal and external review, whereas road manager decisions would be subject to internal review only.

The second option will be adopted in the national law

9.1.1 Problem

Registering authorities and allied bodies such as road managers (where they are separate) are required to make important decisions about access to the road network: granting registration, allowing concessions, specifying routes and vehicle conditions, and issuing permits or notices. These decisions have significant reverberations across the economy in terms of freight productivity, road safety, infrastructure maintenance, public amenity and compliance costs.

[91] The term 'decision-making frameworks' does not appear in the HNVL. The provisions relating to access are found in chapter 4, part 7.

The model laws provide for review of decisions in relation to registration, heavy vehicle driver fatigue and alternative compliance schemes. However, a criticism that is frequently levelled at the existing system is that the evaluative process and evidentiary basis on which access decisions are made can lack transparency, is sometimes inconsistent with agreed ATC and COAG policy and is not subject to review. Operators seeking a permit may be unclear as to who is the relevant decision maker and with whom to lodge their application. The form and point of application varies within and between states, and it is often difficult to know the status of an application or when a decision will be made. Operators may not be given reasons for decisions that can impede their ability to plan and confidently invest. Furthermore, they may wait for an unreasonably long time for determinations.

Experience with the PBS scheme illustrates the point well. The intent of PBS is that, if a vehicle design is considered by the PBS Review Panel (PRP) to be consistent with ATC and COAG policy, it should be granted access to the PBS network. In practice, vehicles approved by the PRP have no guarantee of access to the road network once they are operational. The following case study provides an example of the frustration and resource intensity involved in negotiating current access regimes.

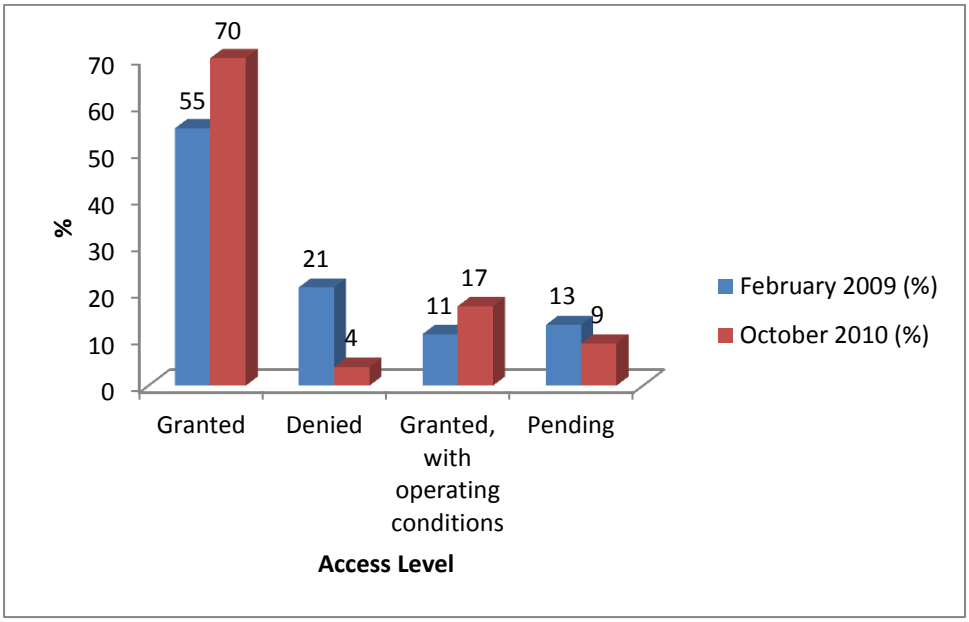
Case study: Access inconsistency across states and territories for the same PBS-approved vehicle

A PBS customer who operates a general-access, PBS-approved vehicle in a number of states has found that the process differs across states and is inconsistent with the intent of the PBS.

- Jurisdiction 1
  - Applied for in-principle approval mid-December 2008 .
  - In-principle approval granted early February 2009.
  - Road authority advised that I would need to have vehicle inspected by heavy vehicle inspection station to ensure that it was built to design and state/territory standards. I advised that an independent engineer had certified these vehicles for PBS and questioned the need for this process.
  - PBS permit issued early April 2009 for PBS design loading of 48.5 tonnes.
  - No road restrictions, general access at full weight.
  - Not able to operate vehicle with extendible trailer extended to full 48.5 tonnes at present—43.5 tonnes still applies.
- Jurisdiction 2
  - Contacted jurisdiction in late May 2009 regarding process to operate vehicle in that particular state/territory.
  - Reply received on the same day.
  - Permit to operate at PBS-approved combination 20 m issued less than two weeks later.
  - No road restrictions, general access at full weight.
  - Advised that combination could also operate when extended >20 m at full 48.5 tonnes as per OD (over dimension) guidelines.
- Jurisdiction 3
  - Contact made with jurisdiction by email late May 2009 regarding process to operate in that particular state/territory.
  - Advised that approval to operate in that state/territory is not automatic, even though PBS Review Panel has approved the design.
  - Road authority advised that the vehicle design would need to go to bridge engineers, and then local councils need to give approval to operate on their roads.
  - Informed that local councils have not agreed to twin-steer prime movers.
  - Full PBS-approved design load of 48.5 tonnes would only be allowed on B-double routes.
  - Contacted road authority regarding the typical locations, including approximately 15 local council areas, that these vehicles may operate in. Also noted that customers require drop-offs to various work sites, which cannot be planned. Outlined requirement also for use of extendible trailer extended able to operate at same PBS-assessed mass.
  - Road authority advised that separate council approvals would be needed for each area in which the vehicle is to operate.
- Jurisdiction 4
  - Jurisdiction advised that an overmass/overweight permit would need to be applied for.
  - Have requested forms to be sent; however, no further contact has been made.

In October 2009, 55 per cent of PRP-approved vehicles were granted access, while 21 per cent were denied, due to the inconsistent application of regulations by the states and territories. These include the application of non-ATC approved pavement vertical loading standards and the fitment of additional equipment such as Intelligent Access Program (IAP), side under-run protection, mass monitoring and electronic stability control. Following an internal review process, access was granted to 70 per cent of vehicles by February 2010. The change in status of PRP-approved vehicles between October 2009 and February 2010 is shown in Chart 12.

Chart 12: PRP-approved vehicle access levels, February 2009 to October 2010



There is currently no legislative provision for reviewing access decisions. Consequently, operators may write letters of complaint to ministers, chief executives and other officials in the hope of a more favourable response. Judicial review may be available, but is limited to review of the *process* rather than an examination of the *merit* of the decision. It is often prohibitively expensive. For example, in Queensland an applicant would need to apply to the Supreme Court. While some agencies do have internal review mechanisms for access decisions, none have formal administrative review procedures inclusive of external review, such as by the Victorian Civil Administrative Tribunal (VCAT).

The absence of a review mechanism understandably makes operators wary of further investment in innovative schemes like PBS, even though these are precisely the policy directions most likely to yield productivity gains from the existing infrastructure. Indeed, since the convergence of new technologies and alternative means of compliance are likely to spearhead most future productivity gains, it is important that operators have the confidence to embrace them.

The disconnection between nationally agreed policy and on-the-ground application arises for several reasons: some fiscal, some technical and others cultural. If an important asset is degraded in the course of its use, the cost of upgrade may fall to the road manager (often a local council), whereas the benefits of access accrue solely to the operator and their customers. The council may not be in a financial position to repair and upgrade infrastructure. (At present, local government is responsible for more than 80 per cent, by length, of all roads in Australia.)[92] This quandary may only be fully addressed through a comprehensive pricing reform mechanism, which is beyond the scope of this Regulation Impact Statement (RIS).[93] Expertise in highly technical matters such as pavement analysis and bridge formulae may not be available in-house at local councils and may be costly to purchase. Even where expertise does exist, the engineers providing advice may feel personally and even legally responsible if an asset to which they have granted access is subsequently damaged. Councils may also emphasise rate payers' public amenity concerns over operators' access requirements.

The end result is a tension between a 'protect and preserve' mentality and a 'use and extend' motivation. A carefully thought-out and consistently applied evaluative framework can go some way to addressing this tension.

[92] Submission from the Australian Local Government Association, 4 May 2011.

[93] Pricing reform is being pursued through the COAG Road Reform Plan.

9.1.2 Objective

The objective is to promote evidence-based, consistent and transparent decision making in the following areas of key importance to industry:

- registration (including registration of vehicles, suspension and cancellation of registration, conditions of registration and refusal of registration transfer)
- accreditation of operators (including suspending and cancelling accreditation)
- exemption permits and notices (including suspending and cancelling permits, notices and conditions)
- vehicle access decisions.

The central importance of quality decision-making processes to the national reform was articulated in the 2009 RIS, which stated:

> A key role for the NHVR would be in development of guidelines on decision making in implementing particular areas of the law where industry seeks consistency across jurisdictions, such as … access to local roads.[94]

The success or failure of the regulator largely hinges on its ability to promote robust and transparent decisions regarding access, because this is where the greatest productivity benefits are to be had.

9.1.3 Options

Two options were considered for how decision making could be approached within the context of the HVNL:

(1) The status quo remains.

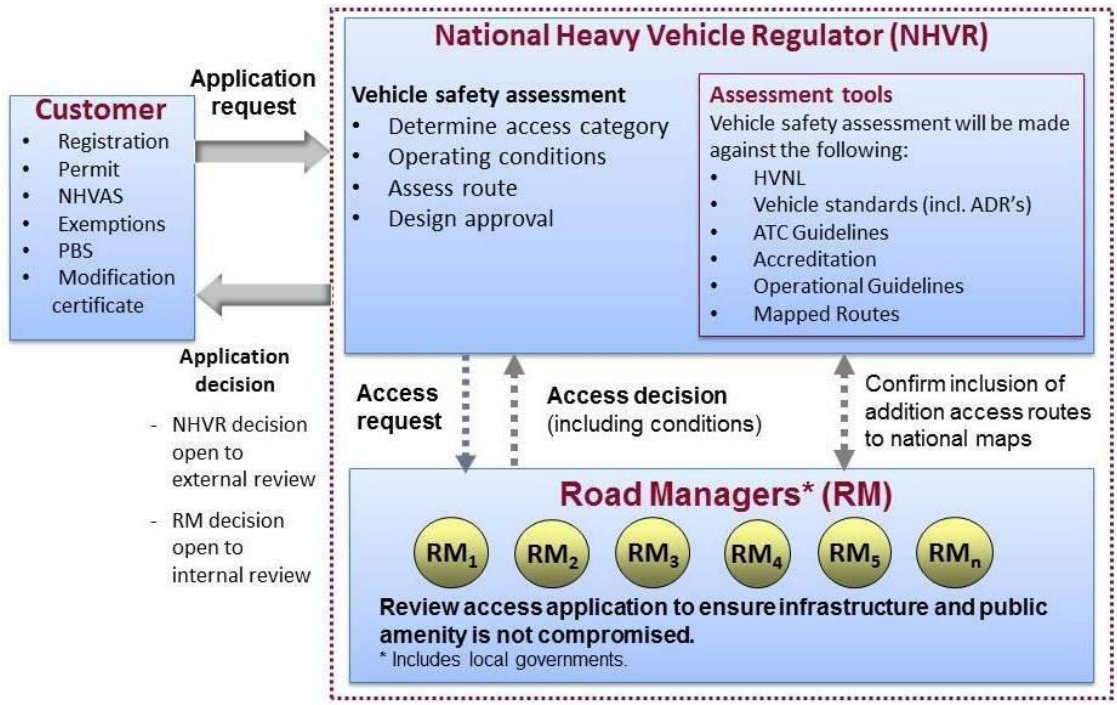
(2) A new decision-making framework is instituted, consisting of evaluation tools for the initial decision and a review process for reconsideration of the initial decision where requested by industry.

Under the second option, a new decision-making framework would be developed. This framework would delineate the respective roles and responsibilities of the regulator and road manager, provide a suite of evaluative tools for initial decisions (particularly around access), and provide a review process for reconsideration of those decisions when desired by industry. The regulator will be required to seek the road manager's consent to the grant of a mass or dimension authority (i.e. a notice or permit). The road manager may refuse consent only if it believes that access will 'cause damage to road infrastructure' or 'adversely affect public amenity' and that there is no way this can be managed by a road condition. The road manager may request that the regulator impose a stated vehicle condition on the notice or permit. The decision regarding a vehicle condition rests with the regulator.[95] The demarcation between the NHVR and the road manager in terms of decision making is shown in Chart 13.

[94] Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement,* May 2009, p. 74.

[95] A vehicle condition relates to the configuration and operation of the heavy vehicle and its equipment (other than IAP equipment). A road condition cannot be a vehicle condition.

Chart 13: Decision making relationship between the NHVR and the road manager



The evaluative tools would be developed by the regulator and made available to road managers. These evaluative tools would include ATC-approved guidelines and comprehensive network maps, bridge formulae, vehicle categorisation processes, pavement analyses and policy relating to vehicle mass, dimension and standards. They would also include national guidelines on a range of factors that need to be considered when granting access, thereby broadening the assessment context beyond the local boundary. Road managers must have regard to the guidelines approved under ss. 119 and 136 when deciding whether to grant access. This would need to be premised on an infrastructure upgrade program along the lines of that recommended in the 1998 review of higher mass limits (HML).[96]

In addition to these evaluative tools, review mechanisms will be built into the system. The review system can operate on two levels: internal and external. Internal review provides applicants with a process for having a decision reviewed by the original decision-making body. It requires that reasons for a decision be provided to an applicant within a certain timeframe and gives the agency opportunity to make a new decision following the review. In external review, the applicant has access to an independent arbiter, generally a tribunal or a court. The body can substitute the agency's decision or return the matter to the original decision maker to have it remade. Ideally, the review mechanism should be accessible (affordable, informal and timely) and responsive to the person using the system.[97] The arbiter would be the administrative courts already operating within the states—for example, VCAT (Victoria) and the State Administrative Tribunal in Western Australia.

It is proposed that, in the first instance, the review mechanism work as follows: all decisions regarding registration, accreditation and vehicle conditions would be subject to internal review and external scrutiny; and road manager decisions would be open to internal review only.

This option is likely to promote greater industry confidence than the status quo because an aggrieved party will have access to an independent, external arbiter for matters within the

[96] National Road Transport Commission, *Regulatory Impact Statement: increased mass limits for road-friendly heavy vehicles*, April 1998.

[97] *Better decisions: review of Commonwealth merits review tribunals*, report no. 39, AGPS, Canberra. 1995, p. 11.

purview of the regulator. Internal review of road manager decisions represents an advantage over the existing system in that reasons for decisions will be given within set timeframes (three months is proposed in the HVNL).

Although external review of road manager decisions may be introduced in time, it is not feasible at this juncture. Councils would be required to source second opinions and legal expertise likely to be outside their budgetary reach. There is a risk that introducing external review could prompt road managers to curtail 'as of right' access, rather than incur the costs of challenges to access decisions. It is precisely this curtailment that option 2 attempts to avoid through a hybrid model of review that will, in time, build trust and confidence.

9.1.4 Impact analysis

Option 1

The first option retains the status quo. Therefore, whereas registration, accreditation and heavy vehicle driver fatigue decisions will be open to review, access will not be. While limiting direct costs in comparison with option 2, this will impact confidence and potentially make industry wary of embracing or investing in new technologies and alternative forms of compliance. Nor will it deliver 'the same outcome in the same circumstances', because road managers will continue to make decisions in isolation from one another and without the benefit of a formal review process. The issues of limited road manager resources to access technical expertise and infrastructure upgrade will remain.

Retaining the status quo would greatly compromise the capacity to realise the potential benefits of the national system.

Option 2

The cost–benefit analysis estimates the productivity benefits that could accrue from improved access for the PBS, RAV, HML, and oversize and overmass (OSOM) fleets. The approach taken in the analysis was to:

- establish the magnitude of technically possible productivity improvements that might be achieved by substituting currently restricted high-productivity vehicles for lower productivity vehicles used at present
- determine the share of vehicles and freight task that might be affected
- assess the uptake of such opportunities by freight operators
- convert all the above quantitative measures into average national labour, capital and variable input productivity improvements for the heavy vehicle sector
- assess the impacts of these on industry income and national gross domestic product (GDP), using a computable general equilibrium model to take account of direct and flow-on benefits to the whole economy.[98]

Implicit in the benefit calculation is the assumption that the new decision-making framework will promote access.

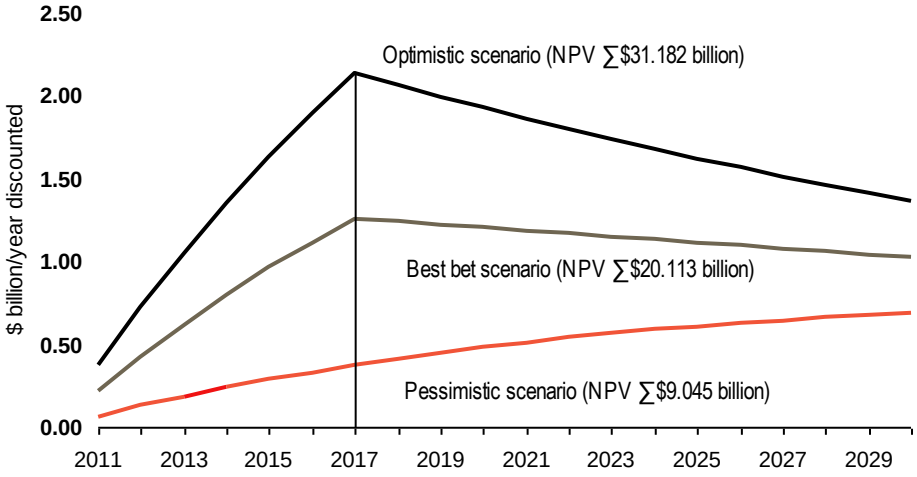
However, as noted by the cost–benefit analysis, it is difficult to accurately predict the extent to which the new framework will increase access. At one extreme, greater access to evaluative expertise and infrastructure funding could encourage road managers to take full account of the productivity benefits for heavy vehicle operators. At the other extreme, road managers may be reluctant to risk infrastructure degradation or reductions in public amenity, which would result in no better road access. These uncertainties have led to the construction of scenarios along an optimism–pessimism spectrum.

Chart 14 indicates the cumulative benefits in net present value (NPV) terms over 20 years for each of the fleets considered by the cost–benefit analysis. (The reader interested in the analysis of each type of fleet is directed to Appendix B, where the cost–benefit analysis is

[98] An alternative measure of welfare in a computable general equilibrium context is the equivalent variation, which is conceptually closer to the consumer surplus measure used in partial equilibrium analysis. For the simulations used in this study, the equivalent variation is around 83 per cent of GDP.

reproduced in its entirety.) The fleets reflected here are RAV, OSOM, HML and IAP, with RAV fleets (of which PBS is a subset) delivering the bulk of the gain.

Chart 14: Indicative relative gains: cumulative benefits in NPV terms over 20 years[99]



Under a pessimistic scenario, with a slow take-up rate and conservative application of data, NPV of $9 billion is delivered; a best-bet scenario delivers around $20 billion in NPV. [100]

Although uncertain, the evidence presented here suggests that, while a number of outcomes are plausible, in all cases, the potential gains from establishing a decision-making framework are likely to be very large.

Additional gains are possible from increased road safety and reduced carbon emissions. These are likely to be relatively small but positive. They could increase the net benefits by around 6 per cent.[101] There is also a considerable policy advantage, in that the regulator will be in a position to track access decisions across the country. This will provide an understanding of the reasons for the decisions taken, upon which basis recommendations for infrastructure or research programs could be made.

It is not anticipated that greater access would negatively impact on road safety because:

> no productivity gains assessed here come from moving from rigid to articulated trucks. They come from moving from smaller to larger articulated trucks doing fewer road kilometres which have the potential to lower accidents and greenhouse gas emissions, so additional benefits in terms of road safety and lower emissions are more likely to be the case.[102]

The disadvantage of option 2 over the status quo is largely one of cost. The cost is likely to be incurred in four major ways:

1. upgrading infrastructure that may be required to promote access
2. developing, updating and communicating the evaluative tools that will underpin the decision-making framework
3. internal and external review for decisions made by the regulator

---

[99] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 43. The difference in the overall 'pessimistic' scenario ($5.56b) and the decision making framework 'pessimistic' scenario ($9b) reflects the fact that the decision making framework is entirely new, i.e. it has not been present in law before and so has not been subject to a RIS of the kind used to attribute potential benefits.

[100] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 43.

[101] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 44

[102] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 43

4. internal review for decisions made by the road manager.

In 1998, when increased mass limits for road-friendly heavy vehicles were first assessed, the cost of upgrading bridges to support the policy was about $75 million per year of new funding over a period of about eight to ten years.[103] Inflating these costs to 2010 dollars using the national consumer price index (CPI) implies infrastructure costs of around $803.8 million in NPV terms (using a discount rate of 7 per cent).[104] The upgrading project was agreed to by the ATC subject to bridges on national highways and local government bridges being entirely funded by the Australian Government, and bridges on state/arterial roads being funded equally by the states/territories and the Australian Government. It appears that the funding model was not endorsed. Therefore, it is reasonable to assume the investment is still required to facilitate access.

The same study went some way to costing the evaluative and technical tools required to support increased mass limits in general. The types of costs considered included:

- bridge design checks
- bridge load testing
- bridge approach upgrading
- replacement of narrow bridges
- placing speed and load limit signs on local road bridges
- bridge condition monitoring.

The up-front implementation cost was estimated at $58.7 million for rural areas and $5.1 million for urban areas, with the bulk of the cost falling on local government. Estimated ongoing administration and implementation costs were $6.1 million for rural areas and $2 million for urban areas each year. Inflating these costs to 2010 dollars using the national CPI implies costs of $196.6 million in NPV terms over 20 years (using a discount rate of 7 per cent).[105]

Costs for internal and external review will depend on the volume of reviews initiated by industry; this will be driven by the extent to which industry has confidence in the original decision-making process. A 'worst case' cost scenario would see every RAV (inclusive of PBS), HML and OSOM decision subject to internal review. In the cost analysis undertaken by KPMG, the jurisdictions estimated their combined transitional (implementation) costs for these areas as shown in Table 9.

Table 11: Current state and territory costs for OSOM, RAV and HML vehicles [106]

Vehicle Area	Cost
Oversize and Overmass	$ 2,309,000
Restricted Access Vehicles	$ 2,050,000
Higher Mass Limits	$ 1,990,000
	$ 6,349,000

Under the 'worst case' scenario, if all of these decisions were subject to review, conceivably the costs would be incurred again—that is, the cost of internal review for all of these fleets would be $6 349 000, or around $59.6 million over 20 years in NPV terms (using a discount rate of 7 per cent).[107] If 20 per cent of decisions were subject to internal review, the cost

[103] National Road Transport Commission, *Regulatory Impact Statement: increased mass limits for road-friendly heavy vehicles,* April 1998.

[104] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.47

[105] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.45

[106] KPMG, *Cost consultancy—jurisdictional costs to regulate heavy vehicles*, stage 3 report, September 2010, p. 5.

[107] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.46

would increase by around $1.2 million ($11.9 million in NPV terms), and if 50 per cent were subject to review, the cost would increase by around $3.2 million ($29.8 million in NPV terms).[108] Not only would the regulator, states and territories need to fund these costs, agencies may need to direct resources away from frontline service delivery to internal review, which would anger customers and place strain on already stretched services. There will conceivably be a relationship between the perceived robustness of the initial decision and the volume of internal review, which makes a strong case for solid up-front investment in the evaluative tools.

As with internal review, the volume of external reviews requested will be influenced by the perceived adequacy of the initial decision-making framework. Where an external review is triggered, it is general practice that the agency whose decisions are under review contributes to this cost. This will impact agency budgets. As an indicator of the costs of external review, VCAT has an annual budget of around $37 million and hears around 85 000 cases. This translates to an average per-case cost of around $435. There were around 99 000 new registrations in Victoria in 2010. As a general rule, new registrations are not particularly contentious, but even 10 per cent of these decisions subject to external review would represent a cost of around $4.3 million.[109] There are currently around 566 533 heavy vehicles registered in Australia. If 10 per cent of these vehicles were subject to external review on a registration matter—and costs across the nation were broadly comparable to those incurred by VCAT—the total cost would be $24.6 million. In NPV terms, the cost could potentially be $231.7 million over the period 2011 to 2030 (using a discount rate of 7 per cent).[110]

The relative net gains between costs and benefits will depend on many uncertainties, including the perceived adequacy of the decision-making framework and the volume of internal and external reviews.

The cost–benefit analysis concludes that:

> Although uncertain, the evidence presented here suggests that while a number of outcomes are plausible, in all cases, the potential gains from establishing an effective national assessment and access framework are likely to be very large.[111]

9.1.5 Outcome

The national law will include new decision-making frameworks.

9.1.6 Summary of benefits, costs and unknowns (Table 10)

BENEFITS

- Productivity gains of between $9 billion in NPV over 20 years (pessimistic/low scenario) and $31 billion in NPV over 20 years (optimistic scenario), with a best-bet scenario of around $20 billion.[112]

COSTS

- Infrastructure upgrade estimated at $803 767 313 in NPV over 20 years.[113]
- Development and maintenance of evaluative tools estimated at $196 billion in NPV over 20 years.[114]

---

[108] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.46

[109] 9900 new registrations at $435 each.

[110] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.47

[111] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.44

[112] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.43

[113] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.43

[114] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.46

- Internal review costs under the worst-case scenario of $59 687 049 in NPV over 20 years.[115]
- External review costs of around $231 680 377 in NPV over 20 years. [116]
- This gives total costs of $1.29 billion in NPV over 20 years. [117]

Table 12: Benefit-to-cost comparison for new decision-making frameworks

	Low scenario	Medium scenario	High scenario
Scenarios: GDP based			
Benefits (NPV $billion)	9.1	20.1	31.2
Costs (NPV $billion)	1.3	1.3	1.3
Benefit:cost ratio	7.0:1	15.5:1	24.0:1
Net benefit (NPV $billion)	7.8	18.8	29.9
Scenarios: based on equivalent variation plus safety and environmental benefits			
Benefits (NPV $billion)	8.2	17.9	27.8
Costs (NPV $billion)	1.3	1.3	1.3
Benefit:cost ratio	6.3:1	13.8:1	21.4:1
Net benefit (NPV $billion)	6.9	16.6	26.5

GDP = gross domestic product; NPV = net present value

UNKNOWNS

- The extent to which new decision-making frameworks will promote access.
- The length of time that the new process will take to deliver improved access.
- The amount of confidence that industry will have in internal and external review processes.
- Impact of future road pricing reform.

9.2 Advanced fatigue management

Current model law: Heavy Vehicle Driver Fatigue Bill 2007, s. 52

Heavy Vehicle National Law: Heavy Vehicle National Law, chapter 6, part 4, s. 227

SUMMARY

Under current model law, operators approved under AFM can work at 'outer limits' of 16 hours. New South Wales and Victoria felt that this constituted an unacceptable risk and have reduced the outer limit to 15 hours.

Western Australia has not adopted the heavy vehicle fatigue laws and instead operates its own system under occupational health and safety (OH&S) laws.

This issue was referred to the expert panel, whose view is that risk reaches an unacceptable level at 12 hours, rendering the debate over 15 or 16 hours largely redundant.

The expert panel recommended the introduction of a risk-based system with 'offsets and countermeasures', whereby operators show how they intend to manage risk to a level

[115] Centre for International Economics, Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 46.

[116] Centre for International Economics, Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 47.

[117] Centre for International Economics, Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 47.

commensurate with standard hours. Templates showing how this can be done will be freely available. Scheme owners will commit to approving applications where risk is equivalent to standard hours.

Implementing these changes requires an overhaul of the current AFM system if it is to deliver the potential benefits outlined in the original RIS, where AFM take-up was expected to be in the order of 11 300 drivers in 5500 fleets (in fact, only 21 operators have been approved for AFM to date). The current system is considered expensive and slow, and has a high rejection rate.

The expert panel's recommendation will be adopted in the national law.

9.2.1 Problem

The AFM system was introduced in 2008 in all states and territories except Western Australia (which operates its own fatigue management system under OH&S laws), Tasmania and the Northern Territory (which have not yet implemented the model law). The system sets operating 'outer limits' for drivers of heavy vehicles at 16 hours of work in 24 hours, with mandated rest breaks as shown in Table 11.

Table 13: AFM work and rest breaks

Total period	Maximum work time	Minimum rest time
In any period of ...	*... a driver must not work for more than ...*	*... and must have the remainder of that period off work, with at least ...*
24 hours	**16 hours**	**6 continuous hours stationary** rest time (or, in the case of a two-up driver, rest in an approved sleeper berth), or **8 hours stationary** rest time (or, in the case of a two-up driver, rest in an approved sleeper berth) taken in no more than 2 blocks
14 days (336 hours)	**154 hours**	**2 x 7 continuous hours stationary** rest time between 10 pm on a day and 8 am on the next day, using the time zone of the driver's base
28 days (672 hours)	**288 hours**	**4 x 24 continuous hours stationary** rest time

The 16-hour 'outer limit' is more permissive than operating conditions allowed under the other fatigue management options, standard hours and basic fatigue management (BFM), and thereby represents a potential productivity benefit to industry. In order to legally operate in this more productive way, operators must be accredited under the National Heavy Vehicle Accreditation Scheme (NHVAS) and have systems in place to manage the safety risks of longer operating hours.

The only way in which the outer limits can legally be exceeded is through ministerial exemption. 'An example could be to allow very remote operators (for example, livestock transporters) some flexibility to occasionally go beyond AFM limits on the basis that the operation is very remote (lower risk to other road users), and enforcement capability is extremely limited'.[118]

The outer limits were not designed as standard operating practices. Rather, they were designed to accommodate unforeseen contingencies (for example, the delays a driver might incur in waiting for the loading or unloading of their freight, over which they have little control) and emergencies, and to reflect the geographical reality of some remote parts of the country where rest stops are not always readily available within the stipulated break periods.

Notwithstanding the 'worst-case scenario' intent of the outer limits, they are considered an unacceptable risk in Victoria and New South Wales; both diverged from the model law in their

[118] National Transport Commission, *Heavy vehicle driver fatigue final Regulatory Impact Statement*, 2006, p. 20.

state regulations and instead set their outer limits at 15 hours. Consequently, operators crossing borders from one of these jurisdictions into South Australia, the Australian Capital Territory or Queensland are bound by inconsistent approaches to fatigue, with attendant frustrations and compliance exposure risk. These inconsistencies have been exacerbated by differences in how time is counted across the states and uncertainty around what constitutes 'rest' and 'work'.[119] New South Wales and Queensland have counted a 24-hour period as commencing from the previous long rest break, whereas South Australia and Victoria have counted from any previous rest break.

> '…the Panel concluded that the tension between 15 and 16 hours – along with several other unresolved tensions in relation to the Driver Fatigue laws – stemmed from the fact that the new laws place a heavy emphasis on demonstrated risk management systems by the truck operator and effective oversight of such systems by regulators as a means of complying with the law, and there have been problems with the development and implementation of these systems'.[120]

The view of the expert panel is that the jurisdictional debate about whether fatigue outer limits should be set at 15 or 16 hours is largely redundant because the evidence suggests that fatigue-related risk escalates sharply at 12 hours.

> There is clear research evidence derived from crash studies that the risk of a heavy vehicle and driver being involved in a crash increases rapidly for work (driving plus non driving) periods beyond 12 hours.[121]

The panel further concluded that the entire AFM system requires an overhaul to reduce barriers to entry and mitigate procedural problems impacting on productivity and safety. The cost of entry to the AFM program is prohibitively high—consultancy services to help prepare documentation, plus company time to support the application, run to between $10 000 and $20 000.[122] Ongoing costs for system maintenance are estimated at around $250 per month.[123] Industry must also fund training for drivers and schedulers. A random sample of the 35 registered training organisations that currently have one of the two fatigue units of competence on their scope reveals course costs of between $130 and $200.[124]

Heavy vehicle operators who wish to undertake cross-border operations under AFM are subject to more stringent regulation than those operating within one jurisdiction only. The rationale for this additional impost is not articulated in previous RISs but presumably reflects an assumption of greater kilometres travelled and higher attendant risk. Such applications must include the advice of a 'registered fatigue expert' and are forwarded by the state authority to the Fatigue Authorities Panel (FAP) for consideration. The role of the registered fatigue expert is 'to verify that the proposed system, provided that it is followed, is safe'.[125]

The pool of such experts available to industry is small—there are currently four registered fatigue experts: two in South Australia and two in Victoria; three represent one organisation.[126] The limited number of available experts probably reflects the specificity and relative rarity of the credentials required. These credentials include a postgraduate tertiary qualification relevant to a work-related field, at least five years' experience in a field of research relevant to work-related fatigue, and publication of peer-reviewed academic research. Registered fatigue expert advice can cost between $10 000 and $12 000.

---

[119] It should be noted that the 'counting time' issue is outside the terms of reference for the expert panel and was resolved through a separate process.

[120] Independent Expert Panel on Heavy Vehicle Policy report to the ATC, April 2011, p. 4

[121] ibid.

[122] ibid., p. 3

[123] National Transport Commission, *Heavy vehicle driver fatigue final Regulatory Impact Statement*, December 2006, p. 36.

[124] Search for registered training organisationss delivering TLIF1007C and TLIF6307A on the NTIS, 22 September 2010. 10 per cent of the providers were randomly selected.

[125] See Fatigue Authorities Panel rules, 30 (1), 'Information for prospective fatigue experts: registration as a fatigue expert with the Fatigue Authorities Panel (FAP)', fact sheet, March 2009, p. 1 (<www.ntc.gov.au/filemedia/bulletins/InformationforProspectiveFati.pdf>).

[126] See <http://www.ntc.gov.au/viewpage.aspx?documentid=1819>. Accessed 22 September 2010.

Having expended the considerable outlay to secure AFM accreditation, industry then faces 'a high degree of uncertainty over application approval or rejection once prepared; and [l]ong approval wait times due to Fatigue Assessment [sic] Panel deliberations'.[127] For example, at the August 2010 FAP meeting, an application originally reviewed at the October 2009 meeting remained on the agenda. The expert panel considers that the lengthy delays in decision making reflect 'lack of fatigue risk assessment skills on the panel and concern over the potential political implications of a decision'.[128] Consequently, at the time of the August 2010 FAP meeting, there were only 10 approved interstate operators: two from Victoria and eight from Queensland.[129]

As noted earlier, Western Australia has not adopted the national heavy vehicle fatigue laws and instead operates its own system under OH&S laws. The RISs completed in the past have generally determined costs and benefits on the assumption that Western Australia would probably continue to operate its own system. The expert panel has spent considerable time with Western Australian stakeholders learning how the system works and how some of its elements of sound practice can be incorporated into the national system.

Taking all of these factors into consideration, the expert panel concluded that 'the model law is supportable, but only if there are effective risk management and oversight systems in place'.[130]

9.2.2 Objectives

The objective of the fatigue module within the NHVAS is to better manage the safety risks involved in fatigue. Fatigue is recognised as one of the most significant causes of fatality and serious incidents on Australian roads. The characteristics and impacts of fatigue for heavy vehicle operators and other road users were extensively canvassed in the *Beyond the midnight oil* Senate inquiry into fatigue risks in transport.[131]

> Through this report, it became clear that fatigue was first and foremost a health and safety matter—a matter to be addressed by reasonable hours of work balanced by rest, and by implementing [a] training culture change and robust systems within a trucking business; transparent and auditable systems which could then be oversighted by jurisdictions, supported by the professional opinions of relevant scientists.[132]

The level of impairment induced by fatigue is broadly similar to that induced by alcohol use. For most drivers, levels of impairment equivalent to the Australian legal blood alcohol limit (0.05 g per 100 mL of blood; 0.05 per cent) are found after 17 to 19 hours without sleep, and equivalent to the impairment from a blood alcohol limit of 0.1 per cent after 24 to 27 hours.[133]

The National Road Safety Strategy estimates that fatigue is implicated in 20–30 per cent of deaths on the road and around 8 per cent of total serious injuries.[134] There were 142 deaths involving articulated trucks in Australia in 2009.[135] Using the National Road Safety Strategy estimates, this would put the number of deaths where fatigue is a factor and articulated trucks are involved at between 28.4 and 42.6. In 2006, fatigue-related crashes were estimated to cost the community around $306 million per year.[136]

---

[127] Independent Expert Panel on Heavy Vehicle Policy report to the ATC, April 2011, p. 3.

[128] ibid.

[129] FAP meeting agenda for 11 August 2010.

[130] Independent Expert Panel on Heavy Vehicle Policy report to the ATC, April 2011, p. 4.

[131] Australian Parliament, *Beyond the midnight oil: an inquiry into managing fatigue in transport,* October 2000.

[132] *National transport reform Independent Expert Panel on Heavy Vehicle Policy report,* report to the 32nd ATC meeting 24 September 2010, p. 4.

[133] National Transport Commission, *Heavy vehicle driver fatigue final Regulatory Impact Statement*, December 2006, p. 5.

[134] Standing Committee on Transport, *National Road Safety Strategy 2011-2020,* draft, December 2010, p. 8.

[135] Department of Infrastructure and Transport, Bureau of Infrastructure, Transport and Regional Economics, *Fatal heavy vehicle crashes Australia quarterly bulletin,* Jan–March 2010, p. 3.

[136] National Transport Commission, *Heavy vehicle driver fatigue final Regulatory Impact Statement*, December 2006, p. 6.

9.2.3 Options

Four options for how jurisdictional differences in outer limits could be managed were considered:

1. Remove the model clause so that the national law does not specify an outer limit, but conserve the Victorian and New South Wales outer limit of 15 hours by administrative means (that is, not approve AFM hours with more than 15 hours per 24-hour period).

2. Have the national law specify an outer limit of 15 hours. (Extensions to the limit will be allowable under the aegis of a productivity variation for those jurisdictions that require it.)

3. Adopt the model clause in its current guise (16 hours).

4. Introduce an entirely new approach to AFM as recommended by the Independent Expert Panel.

9.2.4 Impact analysis

The first three options would result in very little net change because there are very few operators accredited under the AFM and only seven in Victoria and New South Wales combined (two of whom operate interstate). However, none of these options would address the high costs of entry, delays in decision making, lack of transparency and political risk aversion besetting current practice. It is clear that the current AFM system has not been adopted to the extent anticipated in the 2006 RIS. The take-up of AFM was expected to be in the order of 11 300 drivers in 5500 fleets.[137] In fact, only 21 operators have been approved for AFM to date—not even 1 per cent of the anticipated take-up rate. More applications have been rejected (26) than approved. Therefore, the estimated annual net benefits of $143 million anticipated from the fatigue reforms may be compromised by the low uptake rates for AFM.[138] These benefits were calculated as follows:

- reduced fatigue-related crash costs—trucks: $270 million per year
- reduced fatigue-related crash costs—buses: $36 million per year
- reduced OH&S incident costs—trucks: $8 million per year
- reduced OH&S incident costs—buses: $2 million per year
- total benefits: $318 million per year.

Other benefits for which it was not possible to derive a dollar value were identified as:

- improved business systems, resulting in cost savings to operators
- improved working conditions and less risk of injury or death for drivers
- recognition of the problem by the insurance industry; savings in insurance costs to operators
- a national approach to fatigue management, reducing uncertainty for operators.

The annual recurrent costs were estimated at $174 million, yielding annual net benefits of $143 million if full compliance were achieved.

It is difficult to isolate the impact of the low uptake rate of AFM on the projected benefits.

The expert panel proposes a new approach to AFM based on the principles of 'risk trading' and a classification system to enable an operator to assess the level of risk of any given operation. The intent is that any application must have a level of risk identical to the level of standard hours risk. In other words, although the driver may be working for longer than the 12 hours permissible under standard hours, the risk must be managed to a level commensurate with standard hours through the use of countermeasures, such as only operating in daylight hours, increased opportunities for rest, and longer reset breaks.

---

[137] ibid., p. 103 (p. 31 of the RIS gives the figure at 5600 fleets). It is not clear from the RIS how long it was expected to take to achieve the uptake rate. However, costs were calculated over a 10-year period with an assumption of full compliance.

[138] ibid., p. 61.

The expert panel has identified seven principles that are essential for effective fatigue risk management, as shown in Table 12.

Table 14: Principles for effective risk management

Principles	Reason for the principle	Reason for fatigue risk levels
Work-related Rest Breaks		
1. Ensure sufficient time in breaks during work periods	Long shifts of driving, especially on rural roads, are highly monotonous. We know that people have great difficulty maintaining performance under very monotonous conditions.	The standard hours requirement of a 15-minute continuous work-related break in every 5:30 hours provides less within-trip break time than the WA requirement for 20 minutes in 4:20 hours. The latter is regarded as low risk, the standard hours limit as medium risk, and less frequent within trip breaks as high risk.
2. The more frequent breaks from driving, the better	There is good evidence that frequent breaks from a monotonous task will help to maintain good performance.	Longer work periods need more frequent rest breaks. Breaks should be taken early to prevent the build-up of fatigue, rather than waiting until the driver is too tired for a short break to be useful.
Recovery break		
3. Ensure sufficient sleep: long breaks between shifts should allow at least 7 hours sleep opportunity	Long-distance driving is a high-risk activity for fatigue. We need to make sure that drivers are 'fit for work' before long trips. It is important that drivers begin each long trip as rested and fresh as possible, since fatigue will inevitably build up while driving. By making sure that drivers are as rested as possible at the start of long shifts, we can limit the serious build-up of fatigue. The aim of the recovery break principle is to get a good balance between increasing periods of work and the need for increasing rest time. A continuous break of 7 hours is the minimum needed to obtain sufficient sleep between shifts.	As the work period gets longer, more rest time is needed to ensure that drivers get sufficient sleep. A break of 7 hours is the minimum for drivers to get enough sleep before tackling work periods of more than 12 hours, so this represents high risk. A 7-hour rest break does not mean 7 hours sleep opportunity. This break also includes time for drivers to do other activities related to personal needs, even if out on the road. For this reason, only allowing 7 hours between long shifts is a high fatigue risk because drivers will become sleep-deprived over consecutive shifts. Longer rest periods will increase the likelihood that drivers will get sufficient sleep and will control fatigue better on long shifts.

Principles	Reason for the principle	Reason for fatigue risk levels
4. Ensure adequate sleep at night: sleep opportunities at night are preferred	There is strong evidence that night sleep produces the best sleep to help recovery from fatigue. Day sleep is far less effective in managing fatigue, and longer rest periods are needed to get the same benefit as sleep obtained at night.	One of the best ways of managing high levels of fatigue is to ensure that drivers get night-time sleep opportunity. Work shift schedules that maximise night sleep opportunity will lower fatigue risk.
5. Long trips should not finish in the 00:00 to 06:00 hours period	We know that driving during the midnight-to-dawn period has the highest risk of fatigue and fatigue-related crashes for all drivers. Controlling the timing of work shifts to avoid the combination of tired drivers who are in the last few hours of their trip and the midnight-to-dawn period will greatly assist in managing driver fatigue and crashes.	Fatigue risk increases with every additional shift that involves the end of the shift occurring in the 00:00 to 06:00 hours period. Low-risk fatigue management will involve no shifts ending in the 00:00 to 06:00 period, medium risk will involve some shifts ending in this period, and high risk will involve more than half of shifts ending at this time.
6. Work opportunities should not be too long	There is a strong relationship between increasing time at work, especially driving, and increasing fatigue. Long shifts will inevitably lead to higher fatigue risk. We know that increasing time awake decreases the capacity to perform quickly and accurately.	Increasing work shift length will increase fatigue. The standard hours limit on total work opportunity of 12 hours (13 hours including work-related breaks) is, by definition, low risk. As work opportunity time increases, so will fatigue risk. The limit of 17 hours work opportunity (including work-related breaks) is set based on evidence that 17–18 hours without sleep results in performance equivalent to 0.05 blood alcohol levels.
Reset breaks		
7. Prevent accumulation of fatigue with reset breaks between work sequences	Over consecutive trips, fatigue will accumulate simply due to the constraints on when sleep occurs and the length of the sleep time	Frequent reset breaks will keep fatigue risk at minimum levels. Fatigue risk will increase with increasing time between reset breaks.

Principles	Reason for the principle	Reason for fatigue risk levels
	available. A regular 'reset' break of at least 30 hours that includes at least two night-sleep periods between 00:00 to 06:00 is needed to allow drivers the opportunity to 'catch up' on rest time. The 30-hour break, if taken at home, also has the benefit of allowing drivers to catch up on home and family life activities.	

These principles are the basis for a 'risk classification system' that identifies rest break, recovery break and reset break practices as either low risk (a score of 1), medium risk (a score of 2) or high risk (a score of 3). Adding up the total provides the level of indicative, overall risk. This system is preliminary at present and will be further refined by the project office over the coming months. The scoring criteria will be weighted and more sophisticated than suggested here. At this stage, however, it is envisaged that an indicative score of 11 or less would be considered a managed risk.

Table 15: AFM scoring criteria

Principles	Low fatigue/safety risk (score = 1)	Medium fatigue/safety risk (score = 2)	High fatigue/safety risk; absolute limit (score = 3)
Work-related rest breaks: breaks within work opportunity (WO) to manage fatigue while driving			
1. Ensure sufficient time in breaks during work periods	≥90 minutes total break time in WO	≥75–89 minutes total break time in WO	≥60–74 minutes total break time in WO
2. The more frequent breaks from driving, the better	≥15 mins in every 3 hours	≥15 minutes in every 4 hours	≥15 minutes in every 5 hours
Recovery breaks: sleep opportunities between work opportunities (WOs) to prevent build-up of fatigue between shifts			
3. Ensure sufficient sleep: Long breaks between long shifts should allow at least 7 hours sleep opportunity	Long rest breaks are >9 hours	Long rest breaks are 8–9 hours	Long rest breaks are 7–8 hours

Principles	Low fatigue/safety risk (score = 1)	Medium fatigue/safety risk (score = 2)	High fatigue/safety risk; absolute limit (score = 3)
4. Ensure adequate sleep at night: sleep opportunities at night are preferred	All sleep opportunities include 00:00 to 06:00 hours period	More than half of sleep opportunities include 00:00 to 06:00 hours period	Less than half of sleep opportunities include 00:00 to 06:00 hours period
5. Long trips should not finish in the 00:00 to 06:00 hours period	No WOs end in 00:00 to 06:00 hours period	Less than half of WOs end in 00:00 to 06:00 hours period	More than half of WOs end in 00:00 to 06:00 hours period
6. Work opportunities (i.e. work plus rest breaks) should not be too long	<13-hour WO between long rest breaks	13–14-hour WO between long rest breaks	>14–17-hour WO between long rest breaks
Reset breaks: breaks in sequences of work opportunities to eliminate fatigue build-up			
7. Prevent accumulation of fatigue with reset breaks of at least 30 hours (including two night periods, 00:00-06:00 hours) between work sequences	≤3 days (72 hours) between reset breaks	≤7 days (≤168 hours) between reset breaks	>7 days (>168 hours) between reset breaks

As is clear from the table, work opportunity of up to 17 hours is possible under intensively managed circumstances, as per the current Western Australian system. This may provide sufficient inducement and flexibility for Western Australian drivers and operators to adopt the proposed AFM system.

The expert panel envisages that a series of sector-specific templates will be developed between now and the commencement of the regulator, based on the risk classification system. These will be publicly and freely available, thereby reducing operator reliance on costly consultative services. The NHVR will replace the 'Scheme Owners Group' as the approving body. Applications that fall well within the range of what is considered a managed risk will be approved without recourse to further approvals. However, applications that are considered borderline or otherwise contentious will be referred to a newly convened Fatigue Expert Group, consisting of an NHVR representative, an industry representative and three to four fatigue experts. Approval will be given for 12 months in the first instance and further extended to 36 months, dependent on a satisfactory audit outcome.

Preliminary costings of the new system are outlined in Table 14.

Table 16: Estimated development and recurrent costs for the new AFM system

New fatigue system	***Cost ($)***
Development and implementation	
Fatigue experts to develop templates and other materials	10 000
Review of NHVAS (fatigue) standards, accreditation guides and business rules to ensure consistency with new approach	64 000
Review of units of competence to ensure consistency with new approach	250 000
Selection and constitution of FEG (administration, correspondence, etc.)	10 000
Reconstitution of accrediting bodies through the NHVR	10 000
Advice and communication to industry stakeholders, including guidelines, industry forum, etc.	50 000
Advice and communication to other stakeholders (registered fatigue experts, Fatigue Authorities Panel, etc.)	20 000
Research and development of RIS	114 000
Total development and implementation costs	558 000
Recurrent (per year)	
Jurisdictional costs	30 000
FEG fatigue expert costs	16 000
Template update and library expansion	10 000
Total recurrent costs	56 000
Total	
Net present value[a]	1 136 793

FEG = Fatigue Expert Group; NHVAS = National Heavy Vehicle Accreditation Scheme; NHVR = National Heavy Vehicle Regulator; RIS = Regulation Impact Statement

a Over 20 years, using a discount rate of 7 per cent

Although it is outside the terms of reference of the expert panel, it is clear from industry submissions that state and territory variations in how time is counted are causing tremendous confusion and frustration for operators and drivers. A recommendation has been made to the ATC that the model law approach to counting time be adopted, effectively the New South

Wales and Queensland methodology of counting from the last long rest break. Further work is being undertaken by the NHVR Project Office and the National Transport Commission (NTC) to provide greater clarity around concepts like 'work' and 'rest'. It should also be noted that several industry submissions claimed that fatigue is best managed through 'safe rates' that tackle the root, structural causes of unsafe driving. The Safe Rates proposal is currently under consideration by the Australian Government Department of Education, Employment and Workplace Relations.

9.2.5 Outcome

Option 4—the overhaul of the AFM system and the introduction of a 'risk trading' system will be introduced in the national law.

9.2.6 Summary of benefits, costs and unknowns

BENEFITS

- Risk must be commensurate with standard hours.
- Lower entry costs for operators. Current costs are estimated at around $10 000 to $20 000 per application. Registered fatigue expert advice for those wishing to operate interstate can cost between $10 000 and $12 000.
- Freely available, sector-specific risk classification system templates.
- More timely approval process.
- Greater certainty of application outcome.

COSTS

- Development costs of around $558 000.
- Recurrent cost of around $56 000 per year.

UNKNOWNS

- Level of uptake of the new system (Western Australia has signalled its intention to continue to operate its state-based fatigue regime through OH&S laws).
- Time to develop and upload a library of material for use by operators and drivers.
- Impact of the new system in promoting the $143 million in potential benefits identified in the 2006 driver fatigue RIS.
- New South Wales has signalled that its support of the new system is contingent on further analysis demonstrating sound safety outcomes.

9.3 Spray suppression

Current model law: National Transport Commission (Road Transport Legislation—Vehicle Standards) Regulations 2006, rule 33

Heavy Vehicle National Law: Heavy Vehicle (Standards) National Regulation, r. 21

SUMMARY

Australian Vehicle Standard Rule (AVSR) 33 requires B-doubles to be fitted with spray suppression devices for road safety reasons.

Spray suppression devices cost around $1500 to be fitted, and have annual maintenance costs of around $250.

Western Australia and the Northern Territory did not adopt the AVSR. Consequently, B-doubles in those jurisdictions are not required to have spray suppression devices fitted. However, should these vehicles operate in the eastern states, they would be required to fit the devices.

The scientific evidence suggests that spray suppression devices built to the standard are currently of limited effectiveness in real-world conditions. It is therefore questionable if the

nearly $55 million in capital costs and $9 million in annual maintenance spent to date represents a justifiable expense.

Two options were considered: (1) to remove the requirement for spray suppression from the AVSR, with a longer term plan to develop a standard that works in real-world conditions; and (2) to retain the standard but to allow mutual recognition between the states and territories.

Option 1 will be adopted in the national law.

9.3.1 Problem

Australian Design Rules (ADRs) govern the design and construction of new vehicles for operation in Australia. AVSRs ensure that ADRs continue to be applied 'in service' and cover combinations, modifications and maintenance.

AVSR 33 requires B-doubles to be fitted with spray suppression devices complying with Parts 1 and 2 of British Standard AU200-1984 *Spray reducing devices for heavy goods vehicles*. The rationale for spray suppression on B-doubles was that these vehicles have a larger number of wheels than other vehicles operating in built-up areas, so they would produce a larger amount of spray when operating on wet roads. This would result in reduced visibility, with consequent safety risks. A spray suppression requirement was therefore included in the AVSRs. However, the requirement was never subjected to a separate cost–benefit analysis but was simply included in a package of reforms that were sound in aggregate.

Western Australia and the Northern Territory diverged from the AVSR and did not implement the requirement. Consequently, B-doubles garaged in Western Australia or the Northern Territory must either limit themselves to 'home garaging' operations or incur the costs of modifying to the standard in order to operate interstate.

The hub of the problem is whether spray suppression devices on B-doubles built to the British standard deliver the safety benefits that justify their inclusion in the AVRS.

When B-doubles were introduced in Australia, they prompted considerable debate about their safety due to their greater mass and dimensions and their multi-articulated design. The eastern states took longer to adopt B-doubles because of their greater urbanisation and traffic density in areas that would be open to B-double operation. The risk of car–truck conflict generated some adverse public opinion and a general wariness over their introduction.

Accident data suggest that these fears were largely baseless—insurance data show that moving freight on a B-double is four times safer than a six-axle semitrailer, primarily because fewer trucks are required and they are driven on good-condition roads by experienced drivers.[139] However, without the benefit of hindsight, additional controls were applied to B-doubles to manage perceived safety risks, of which spray suppression was one. B-doubles now account for around 3.24 per cent of the heavy vehicle fleet.

The extent to which spray suppression built to the British standard actively contributes to the safety objective appears to be minimal to nil. An increasing list of international research projects objectively conclude, through scientific testing, that spray suppression devices are ineffective in improving visibility. (This is not to say that the British standard is ineffective, but that research has uncovered *no device* that could be proven to be effective.) A summary of the research is included as Appendix E. In brief, however, the United States National Highway Traffic Safety Administration (USNHTSA) has considered the issue and reported to Congress three times: in 1988, 1994 and 2000. The USNHTSA has repeatedly concluded that there is no proof that devices that reduce spray under laboratory conditions do so in real-world, on-road conditions. A literature review conducted by the National Road Transport Commission similarly concluded that there is no research to definitively support the effectiveness of spray suppression devices.

Even supposing that a case *could* be made for the effectiveness of spray suppression devices, the contribution that this would make to road safety is difficult to determine. Various independent statistical analyses conducted in the United States over the past 50 years found

[139] 'COAG backs B-triple network', fact sheet, see www.ntc.gov.au/filemedia/bulletins/COAGBacksBTripleNetworkJul07.pdf.

that heavy vehicle–induced spray was a factor in only a fraction of 1 per cent of crashes. However, there are methodological complexities that urge caution in forming too firm a conclusion on the basis of these data.

9.3.2 Objective

The objective is that spray suppression will promote visibility for motorists sharing the road with B-doubles and therefore manage safety risks.

9.3.3 Options

Two options were considered:

1. Exclude the AVSR 33 spray suppression requirement from the national law and review the development of a new, effective standard that delivers real-world benefits at some point in the future.
2. Retain the current AVSR 33 in model law and allow for mutual recognition of existing local exclusions.

9.3.4 Impact analysis

Option 1

Under this option, AVSR 33 would be excluded from the national law. B-doubles would therefore no longer be required to fit the device. The advantage of this option is that it is consistent with the available research, which suggests that safety would not be adversely affected, and it would result in a reduced annual maintenance cost to B-double operators in the eastern states. New operators would no longer be required to pay $1500 to have their vehicle fitted with spray suppression devices. Operators conservatively estimate that each B-double spends around $250 per year on maintenance.[140] In addition, there is an opportunity cost of $2000 in foregone revenue from a day off the road.[141]

The annual compliance costs associated with spray suppressions devices are shown in Table 15.

Table 17: Compliance costs associated with spray suppression devices

	B-double fleet (no.)[a]	*New purchases (no.)[b]*	*Capital costs ($'000)[c]*	*Maintenance costs ($'000)[d]*	*Opportunity cost ($'000)[e]*	*Total costs ($'000)*
2010	11 840	2 368	–	–	–	–
2011	12 209	2 737	4 106	3 052	6 105	13 262
2012	12 590	2 749	4 123	3 147	6 295	13 565
2013	12 982	2 760	4 141	3 246	6 491	13 877
2014	13 387	2 773	4 159	3 347	6 693	14 199
2015	13 804	2 785	4 178	3 451	6 902	14 531
2016	14 234	2 798	4 197	3 559	7 117	14 873
2017	14 678	3 181	4 771	3 670	7 339	15 780
2018	15 136	3 206	4 809	3 784	7 568	16 161
2019	15 607	3 232	4 848	3 902	7 804	16 554
2020	16 094	3 259	4 889	4 023	8 047	16 959
2021	16 596	3 287	4 930	4 149	8 298	17 377
2022	17 113	3 316	4 973	4 278	8 556	17 808
2023	17 646	3 714	5 571	4 412	8 823	18 806
2024	18 196	3 756	5 634	4 549	9 098	19 282
2025	18 764	3 799	5 699	4 691	9 382	19 772

[140] As estimated by industry in direct consultations with the CIE.

[141] Centre for International Economics, Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 50.

	B-double fleet (no.)[a]	New purchases (no.)[b]	Capital costs ($'000)[c]	Maintenance costs ($'000)[d]	Opportunity cost ($'000)[e]	Total costs ($'000)
2026	19 349	3 844	5 766	4 837	9 674	20 277
2027	19 952	3 890	5 835	4 988	9 976	20 799
2028	20 574	3 938	5 906	5 143	10 287	21 336
2029	21 215	4 356	6 533	5 304	10 607	22 444
2030	21 876	4 417	6 626	5 469	10 938	23 033

[a] Based on an estimated annual growth rate of 3.1 per cent used in the PBS RIS. [b] Includes replacement to old vehicles (assuming a five year useful life) and new additions to the fleet. [c] Assumes a cost of $1500 for all new vehicles. [d] Assumes annual maintenance costs of $250. [e] Assumes each B-double spends quarter of a day per year off the road as a direct result of spray suppression devices at an opportunity cost of $2000 per day.

The present value of future cost savings associated with removing the requirement to have a spray suppression device fitted to B-doubles is estimated at around $186.2 million (in 2010 dollar terms, using a discount rate of 7 per cent) over the 20 years to 2030.[142]

While there would be no net gain in option 1 for Western Australian and Northern Territory operators from a modification cost perspective, a barrier to their entry into eastern states markets would immediately be removed, potentially increasing the 5 per cent of the Western Australian fleet that currently operates interstate.

The disadvantage is largely one of public perception. The idea that B-doubles are relatively unsafe has been a feature of the debate since B-doubles were introduced into Australia. A recent study confirmed that the public believes that B-doubles are more dangerous than semitrailers.[143] Spray suppression is seen as one way of mitigating this safety risk. Regardless of how empirically justifiable this perspective may be, it *enhances the feeling of safety* to have the spray suppression devices attached to the vehicle. Working from Office of Best Practice Regulation (OBPR) figures on accident costs, the Centre for International Economics (CIE) estimates that, for the safety benefits of spray suppression devices to outweigh the associated compliance costs, they would need to be directly responsible for reducing the cost of road crashes involving trucks by around 0.4 per cent in 2011.[144] None of the available studies have established such a link.

The option leaves open the idea that laboratory conditions may be replicated in real-world conditions at some point in the future—something that has eluded designers and researchers to date.[145] Even if this is possible, there will be a considerable time lag until it becomes implementable. If it does prove possible, there will certainly be additional costs for the Western Australian and Northern Territory B-double fleet, in the order of $795 000 in capital cost and $132 500 in annual maintenance costs.[146]

Option 2

Under option 2, jurisdictions would operate under mutual recognition. Therefore, Western Australian and Northern Territory B-doubles would be permitted entry into other states without the requirement to have spray suppression devices fitted. This is an administratively simple arrangement that can be instituted immediately and would have no net change on current requirements.

The disadvantage is that it imposes eastern states vehicles to a cost burden not imposed on Western Australian and Northern Territory vehicles. The nearly 12 000 B-doubles that currently operate on eastern states roads have collectively invested $17.7 million dollars in

[142] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, pp. 50 - 51

[143] Synovate, *Understanding public perceptions of road freight*, July 2010.

[144] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p.52

[145] New South Wales has provided evidence relating to spray suppression systems built to the European standard.

[146] 530 B-doubles incurring $1500 capital cost and $250 maintenance cost. The B-double data derive from 2007 ABS data.

spray suppression devices, at a total maintenance cost of $2.9 million to date.[147] These costs are outlined in Chart 15.

Chart 15: Spray suppression costs for B-doubles, as at 2007



To continue to require this level of outlay in the absence of research consensus on safety benefits is unlikely to promote investment in the B-double fleet. Furthermore, eastern states operators will be at a productive disadvantage because their vehicles will require off-road spray suppression maintenance, as indicated in option 1. The cost–benefit analysis supports option 1 over option 2.

New South Wales has signalled that it supports the retention of the model law with regard to spray suppression.

9.3.5 Outcome

The requirement for spray suppression devices will be excluded from the national law.

9.3.6 Summary of benefits, costs and unknowns

BENEFITS

- Reduced capital cost for eastern states operators of $1500 per vehicle.
- Reduced maintenance cost of around $250 per vehicle per year.
- Eastern states providers no longer subject to $2000 in annual foregone revenue from having the vehicle off the road.
- Present value of future cost savings is estimated at around $186.2 million (in 2010 dollar terms, using a discount rate of 7 per cent) over the 20 years to 2030.[148]
- Western Australian and Northern Territory B-doubles can operate cross-border.

COSTS

- None identified to date.

UNKNOWNS

- Extent to which the public perception of safety is reduced.

[147] The B-double data derive from 2007 ABS data.

[148] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, pp. 50 - 51

- When, or if, a standard that can be replicated in real-world conditions will become available.

9.4 Vehicle inspections

Current model law: National Transport Commission (Road Transport Legislation—Heavy Vehicles Registration Regulations) Regulations 2006, s. 15

Heavy Vehicle National Law: Heavy Vehicle (Registration) National Regulation, r. 10

SUMMARY

Heavy vehicle inspection regimes vary widely across the country; some jurisdictions require annual roadworthiness inspections, whereas others proceed on a risk-managed basis.

The regulatory burden differs from state to state, with fewer than 0.1 inspections per heavy vehicle annually in Western Australia and up to 1.4 inspections per heavy vehicle in the Northern Territory. (The national average is 0.75 inspections per heavy vehicle, although data are not available for Victoria.)

Inspection regimes diverge in terms of cost, provider model (with some states outsourcing the bulk of inspections), audit and control mechanisms, and complementariness of allied services (e.g. registration).

Some progress has been made towards the mutual recognition of inspection regimes, with defect notices able to be cleared anywhere[149] and many interstate transfers no longer requiring inspection in South Australia and Victoria. However, the bulk of the $14.24 million anticipated in benefits for operators through inspection-free interstate transfers in a 1996 RIS has not been realised.[150]

Clear safety outcomes as a result of the various inspection regimes are very difficult to determine. There is evidence that roadworthiness inspection regimes often result in fewer mechanical defects in the vehicle fleet. However, there is no clear relationship between the inspection program and the crash incidence in any given jurisdiction.

Further work will be done to develop a national inspection model. In the interim, while this work proceeds, periodic inspection regimes will remain a matter for the jurisdictions.

If mutual recognition of state-based regimes applies, this means that interstate transfers will proceed without inspection, and defect notices will be cleared anywhere across the country.

9.4.1 Problem

The problem requiring reconsideration of government action is that every jurisdiction uses a different heavy vehicle inspection regime to ensure roadworthiness and to confirm the vehicle's bona fides. The variations include the 'triggers' for inspection (e.g. some jurisdictions require an annual inspection; others use a risk-management approach targeting vehicle age and type), the methodology for assessing vehicle safety and data integrity, inspection costs, service delivery models, and audit and control systems. Nearly 300 000 heavy vehicle inspections occurred across Queensland, New South Wales, Western Australia, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory in the past year, as shown in Chart 16.[151]

[149] There is some confusion about the situation in New South Wales. Industry representatives have claimed difficulty in having New South Wales–issued defect notices cleared outside of New South Wales. However, New South Wales states that they can be cleared through recognised equivalents to an AIS across Australia. Information was not available on how many such recognised equivalents exist.

[150] National Road Transport Commission, *Regulatory Impact Statement: heavy vehicle registration*, August 1996, p. 11. The $14.24 million figure is not directly quoted in the RIS. Instead, the RIS states that a total benefit of $17.8 million will accrue to operators from option 5 (the model closest to what is anticipated in the proposed national law) and that 80 per cent of these benefits will come from interstate transfer reforms. 80 per cent of $17.8 million is $14.24 million.

[151] Inspection data were not available for Victoria.

Chart 16: Total heavy vehicle inspections, 2009–10[152]

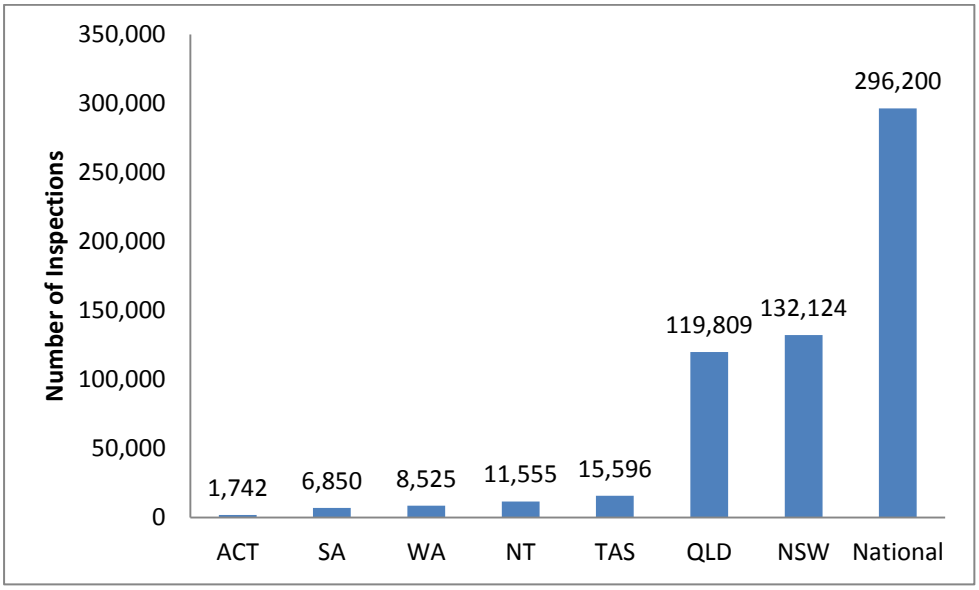
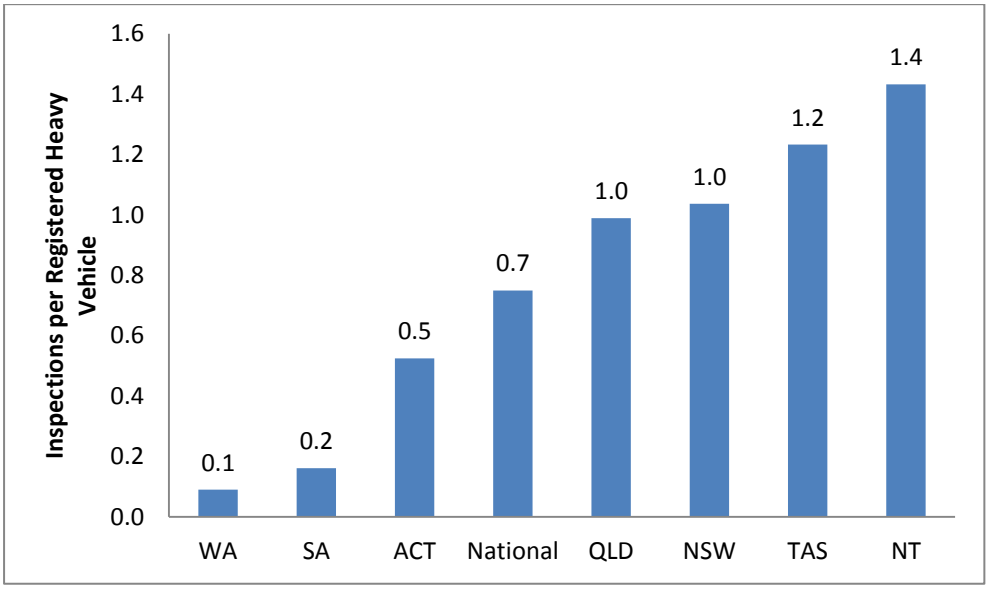


Chart 17 shows the number of inspections that occur for every registered heavy vehicle (including trailers) per state.

Chart 17: Inspections per heavy vehicle, per state, 2007[153]



Clearly, there is a huge variation in approaches to regulation, with fewer than 0.1 inspections per vehicle in Western Australia and up to 1.4 per vehicle in the Northern Territory. The national average (Victoria excluded) is 0.75 inspections per vehicle.

Not only is the inspection regime highly divergent, there is no mutual recognition of inspection outcomes across jurisdictions, with the exception of defect notices.[154] Consequently, a vehicle assessed as roadworthy in one jurisdiction can be subject to further inspection in a new

[152] Data was not available for Victoria

[153] Data was not available for Victoria

[154] There is some confusion about the situation with regard to defect notices in New South Wales. Industry representatives have claimed difficulty in having New South Wales-issued defect notices cleared outside of New South Wales. However, New South Wales states that they can be cleared through recognised equivalents to an AIS across Australia. Information was not available on how many such recognised equivalents there are.

jurisdiction, 'sometimes within days of having an inspection in the previous jurisdiction'.[155] This represents additional costs for operators and loss of productive time.

The model law is generally non-prescriptive in its approach to vehicle inspection, mandating only that an inspection can occur where the vehicle is unregistered. Otherwise, the model law is silent on the mode, frequency or methodology of vehicle inspection:

> (1) The registration authority *may require* a person to present a heavy vehicle for inspection by an authorised person at a time and place specified in a notice in writing served on the person if:
>
> > (a) the person has control over the vehicle and has made an application for its registration, or
> >
> > (b) the vehicle is registered and the person is the registered operator of the vehicle.
>
> (2) A person on whom a notice under subregulation (1) has been served may, not later than 24 hours before the time specified in the notice, request the registration authority to change the time or place of inspection.
>
> (3) The registration authority must consider any request made under subregulation (2) and, if it is reasonable to do so, must notify the person of any change in the time or place of inspection.
>
> (4) A person who fails to comply with a notice under subregulation (1) or a notification under subregulation (3) is guilty of an offence.[156] [author's emphasis]

The states and territories have developed their own inspection regimes, generally through policy rather than regulatory means, and have vastly different approaches to the problem of how to secure roadworthiness and data bona fides. Meaningful comparison is very difficult because of different nomenclature across the jurisdictions and different ways of categorising the inspection types. Table 16 provides a broad summary of the different heavy vehicle inspection 'triggers' across the states and territories.[157] The table is adapted from a recent Austroads study,[158] supplemented by web review and direct consultation with jurisdictions.

[155] Wright SJ, 2006, p. 14.

[156] National Transport Commission (Road Transport Legislation—Heavy Vehicles Registration Regulations) Regulations 2006, s. 15.

[157] Written-off vehicle, vehicle modification and LPG inspections have been excluded from the list.

[158] Austroads internal report, *National recognition of roadworthiness procedures,* IR-185/10, July 2010.

Table 18: Heavy vehicle inspection triggers

Type	NSW		VIC		QLD		WA		TAS		ACT		SA		NT	
	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus
Annual—for renewal of registration or to maintain accreditation	x[159]			x[160]	x			x						x	x	x
Twice yearly		x				x				x[161]						
Change of ownership			x	x												
Interstate transfer with no change of ownership	x	x			x	x	x[162]	x	x	x	x	x	x[163]		x	x
Interstate transfer with change of ownership	x	x	x	x	x	x			x	x	x	x	x[164]		x	x
Risk managed—age										x[165]	x[166]	x[167]	x[168]			

[159] For a full list of heavy vehicles captured, see <www.rta.nsw.gov.au/heavyvehicles/registration/about_hvis.html>

[160] It should be noted that although the VicRoads website states that '… a Certificate of Roadworthiness is generally required when a vehicle is sold or if a used vehicle is to be re-registered. This helps minimise the number of poorly maintained vehicles on the road', direct consultation has confirmed that inspection is not required for renewal of registration for trucks and trailers; see http://www.vicroads.vic.gov.au/Home/Registration/BuySellTransferVehicles/CertificateOfRoadworthiness/

[161] Public passenger vehicles with 10 or more seats; hire-and-drive vehicles with 13 or more seats, and hire-and-drive vehicles with less than 13 seats and more than 15 years old. These provisions may be relaxed for annual inspection on the approval of the registrar if the operator has an excellent inspection record.

[162] If owned for less than 12 months.

[163] More than seven years old and has an unladen mass of 4.5 tonnes or more.

[164] More than seven years old and has an unladen mass of 4.5 tonnes or more.

[165] Public passenger vehicles with less than 10 seats and hire-and-drive vehicles with less than 13 seats that are more than three years old.

[166] Every two years from three years of age.

Type	NSW		VIC		QLD		WA		TAS		ACT		SA		NT	
	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus	Truck and trailer	Bus
of vehicle																
New registration (of unregistered vehicle)[169]	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Unscheduled on-road	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Defect notice or compliance order	x	x	x	x	x	x	x	x	x[170]	x	x	x	x	x	x	x

[167] Every two years from three years of age.

[168] Required for RAVs that are not approved under the maintenance module of the NHVAS.

[169] Generally, vehicles are given a three-month grace period for registration, except in the Australian Capital Territory, where the grace period is 12 months.

[170] Tasmania also conducts audits of fleets that have been issued with defect notices, when resources permit.

Clearly, with the exception of unregistered vehicles and defect notices (which can be issued as a result of a scheduled or random on-road inspection), there is significant variation in what 'triggers' an inspection. South Australia and the Australian Capital Territory are notable for moving away from a 'blanket' inspection approach to one of risk management. In South Australia, age (more than seven years old) and type (RAV vehicles not operating within the NHVAS) are targeted. In the Australian Capital Territory, vehicles more than three years of age are targeted, presumably because this is generally the point at which warranties expire.[171] All jurisdictions use some form of unscheduled 'on-road' inspection.

There is also significant variation in the costs to operators of complying with inspection regimes, as summarised in Table 17.

Table 19: Cost of heavy vehicle inspection across states

	Initial examination	Re-examination, partial inspection, follow-up	'Minor' examination, identity check	Engine change, modifications, design check	Clear defect notice
NSW	$122.90[172]	$61.45	$16.40	$47.60	$122.90
VIC	Not regulated	Not regulated	$39.70[173]		
QLD	$91.70: 4.5–16 tonnes $114.75: Over 16 tonnes $52.00: trailers or semitrailers over 3.5 tonnes ATM				
WA	$140.40	$95.40	$61	$61	
TAS	Not regulated	Not regulated	Not regulated	Not regulated	Not regulated
ACT	$127.20	$13.60	$42.80		
SA	$590: B-double complete $221: Other vehicle over 4.5 tonnes $148: trailer		$54: tier 2 identity check $267: tier 3 $178: car-yard on-site call-out fee for tier 2	$221	$221
NT	$77.00				

In Victoria, the market sets the price; in the other jurisdictions, the fees are prescribed in regulation, ranging from around $80 to nearly $600. In addition, there are ancillary fees such as for temporary movement permits (costing $20.80 in Western Australia and $42.30 in Victoria) and appointment inspections ($15.30 in Victoria). There are also significant differences in ease of compliance with inspection regimes for operators. For example, some states and territories have web-enabled inspection procedures that permit appointments to be booked and paid online. Others have co-located the physical inspection services with allied procedures, such as registration and transfer fee payment, where others require the operator to travel from the inspection site to a service centre to complete the registration process.

[171] It is worth noting that, in Western Australia, a comprehensive study of inspection results for both heavy and light vehicles found that the chance of failing an inspection for vehicles less than three years old is less than 4 per cent. See Jones S, *Vehicle inspections—key information paper for use in the licensing reform plan*, September 2006, v. 7.

[172] Includes 'safety check', 'design check' and 'identity check'. This is the cost for rigid trucks or buses over 5 tonnes tare or any prime mover.

[173] This also covers the appointment fee at the VicRoads Customer Service Centre.

The only heavy vehicle inspection with a degree of mutual recognition is defect notice inspections. The *Administrative guideline for the national driver licensing and heavy vehicle registration scheme* states:

> Registration authorities have reciprocal arrangements for the clearance and enforcement of *Vehicle Defect Notices*. The issuing jurisdiction will send a copy of the defect notice to the home jurisdiction for follow-up action.
>
> Defects may be cleared anywhere in Australia. Evidence of clearance (where required) must be presented to the home jurisdiction.[174]

There is general agreement that this ability to clear defect notices anywhere in Australia is one of the major benefits of the national heavy vehicle registration scheme, as far as operators are concerned.[175] It should also be noted that Queensland has authorised some interstate inspection services in border areas such as Tweed Heads.[176] There is some confusion about whether New South Wales is a party to the mutual recognition of defect notices. Industry representatives have claimed difficulty in having New South Wales–issued defect notices cleared outside of New South Wales. However, New South Wales states that they can be cleared through recognised equivalents to an authorised inspection station AIS across Australia. Information was not available on how many such recognised equivalents exist.

Attempts have been made over the past few years to engender greater consistency through regulatory means and to cut red tape for operators. The National Heavy Vehicle Registration Scheme introduced broad consistency in registration processes and requirements, and the National Exchange of Vehicle and Driver Information System (NEVDIS) has made identity information more accessible, shortening the time taken to inspect interstate vehicles.

However, one of the most significant mooted benefits of the National Heavy Vehicle Registration Scheme, inspection-free interstate transfers, has largely gone unrealised.

> The primary objective, spelt out clearly in both the 1994 Scheme Evaluation and the 1996 Regulatory Impact Statement, was the need to simplify interstate transfers, namely the process of moving a registered vehicle from one jurisdiction to another. This initiative was aimed at reducing costs to both vehicle operators and registration authorities by changing the transfer process from one of cancellation and re-registration in the same name (with all of the normal inspections required for a new vehicle), to one in which the registered operator would only need to notify the new jurisdiction of the vehicle's new address.[177]

Interstate transfers were supposed to deliver the bulk of the scheme's benefits: 80 per cent operator benefits and 30 per cent registering authority benefits. The 1996 heavy vehicle registration RIS suggested that total benefits in the order of $14.24 million would accrue to operators from simplified transfers.[178]

Some of the benefits were realised. Both Victoria and South Australia effectively implemented the simplified interstate transfer system by generally admitting vehicles that remained registered to the same operator without demanding roadworthiness or vehicle identity inspections.[179] Instead, they required only proof of personal identity and garage address.

However, the remainder of the states and territories continued to require vehicle inspections for heavy vehicles that changed their garaging address. There appear to be three reasons for this. First, the administrative guidelines underpinning the Heavy Vehicle Registration Scheme effectively entrenched existing practice, whereby 'transfers' were approached as a cancellation of previous registration and the establishment of a brand new registration.

---

[174] National Transport Commission, *Administrative guideline for the National Driver Licensing and Heavy Vehicle Registration Schemes*, January 2006, 2.6.2.5.

[175] Wright SJ, 2006, p. 18.

[176] The number of inspections under this scheme is very low: 4 in 2005, 4 in 2006, 2 in 2007, 3 in 2008, 3 in 2009 and 3 in 2010.

[177] Wright SJ and Associates Pty Ltd, *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme*, final report, August 2006, p. 11.

[178] National Road Transport Commission, *Regulatory Impact Statement: heavy vehicle registration*, August 1996, p. 11. The $14.24 million figure is not directly quoted in the RIS. Instead, the RIS states that a total benefit of $17.8 million will accrue to operators from option 5 (the model closest to what is anticipated in the proposed national law) and that 80 per cent of these benefits will come from interstate transfer reforms. 80 per cent of $17.8 million is $14.24 million. It should be noted that the RIS also stated that benefits will accrue to operators and enforcement agencies, while costs will fall on registration authorities. This was the case for all options considered, and the option had a positive NPV for heavy vehicles. The 1996 RIS data were still referenced in the 2006 SJ Wright study, leading to an assumption that the data remained generally correct.

[179] South Australia requires an inspection when the vehicle is more than 7 years of age.

> Where a change of *Garage Address* involves a change of state/territory, the *Registered Operator* must cancel the registration and re-register the vehicle in the new state/territory. Any cancellation refunds due will be forwarded to the *Registered Operator* by the former state/territory of registration.[180] [author's emphasis]

The rationale for continuing with previous practice appears to have been to accommodate divergent third-party insurance requirements. Jurisdictions where private providers supply compulsory third-party insurance would struggle to institute a 'swings and roundabouts' system whereby the insurance applicable in the previous jurisdiction would stand until the registration was due for renewal.

The second reason why the recommended change did not eventuate was the reluctance of some states and territories to accept the vehicle data contained in NEVDIS because of concerns about the integrity of the data. The possibility that rebirthed or stolen vehicles might enter the jurisdiction through this means is often cited. Inquiries such as the Victorian Ombudsman's *Own motion*[181] report confirm that there are legitimate concerns with the integrity of data, which appear to justify at least some of the concerns about rebirthed and stolen vehicles. However, a recent report concluded that culture and attitude, rather than empirical evidence, accounts for most of the reluctance:

> Unless changes are made to inspection regimes or *perhaps more importantly attitudes such that jurisdictions accept common outcomes*, no national scheme can ever be introduced, even if all inspection manuals were identical and methods of inspection were standardised.[182] [author's emphasis]

Lastly, mutual recognition stumbled because of perceptions of different levels of rigour in the process to determine roadworthiness. There is particular nervousness around the use of non-government inspectors:

> It is clear from discussions with jurisdictions officers … that many jurisdictions are unwilling to accept reports on roadworthiness issued by other jurisdictions, *particularly from authorised private inspectors in other jurisdictions*.[183] [author's emphasis]

The states and territories use a mixture of insourced and outsourced providers to supply inspection services; only South Australia uses a purely insourced model. New South Wales uses a hybrid model consisting of more than 900 government providers operating out of heavy vehicle inspection sites and 700 outsourced heavy vehicle authorised inspection stations (HVAIS) that can undertake some new registrations, interstate transfer of registrations and defect notice repairs.[184] In Victoria, roadworthiness inspections are exclusively performed by 349 private operators (40 of whom solely inspect buses and the remainder of whom inspect all heavy vehicles).[185] Queensland has a Heavy Vehicle Registration Assessment Scheme provided by around 1200 private accredited individuals, largely located in regional areas. Around 6 government providers operate in the Brisbane area.[186] Western Australia has 6 insourced providers and 1 outsourced provider in the metropolitan area, while 96 outsourced providers service the regions. The Northern Territory outsources compliance inspections for up to 24-tonne gross vehicle mass (GVM) rigid vehicles on their initial registration. Tasmania relies exclusively on outsourced providers for all routine inspections of heavy vehicles. Transport inspectors undertake on-road inspections of heavy vehicles.

The nervousness around outsourced inspections stems from their perceived rigour and the potential for a conflict of interest. A private provider has a theoretical interest in finding a fault with a vehicle because it may result in additional work from rectifying the identified fault. Conversely, they may be inclined to overlook a fault where they have already undertaken work on the vehicle. A useful indicator of the truth, or otherwise, of this assertion would be the pass and fail rates of outsourced versus insourced providers. However, it is very difficult to extract these data because some states and territories do not retain pass and fail data, whereas others cannot differentiate the data by outsourced and insourced provider. One of the few sources of evidence on this point derives from a

---

[180] National Transport Commission, *Administrative guideline for the National Driver Licensing and Heavy Vehicle Registration Schemes,* January 2006, part 2, p. 24.

[181] Ombudsman Victoria, *Own motion investigation into Vic Roads registration practices,* June 2005.

[182] Austroads internal report, *National recognition of roadworthiness procedures,* IR-185/10, July 2010, p. 25.

[183] Austroads, 2010, p. 25.

[184] For new registration or transfer of registration from interstate (if not subject to the HVIS). The outsourced HVAIS can undertake repairs specified on a defect notice.

[185] www.vicroads.vic.gov.au/Home/HaveYourSay/ContactUs/OfficeLocationsAndHours.htm.

[186] Advice provided by Ms Adele Carroll, Accreditation Support Officer, HVRAS, 20 September 2010.

2006 Western Australian study that compared pass rates between metropolitan providers (all insourced) with regional providers (all outsourced). The report concluded:

> The differentiation in service delivery models between metropolitan inspections (insourced) and regional inspections (outsourced) does not appear to have resulted in variegated pass and fail rates. Between July 2005 and April 2006, failure rates were 19.99% in regional areas and 20.51% in the metropolitan area. This suggests that regional providers are not using the inspection process as a means of generating additional work (i.e. stringent reporting of defects in the hope that this may generate additional work).[187]

At present, there is no national approach to the selection, training and audit process for outsourced providers. For example, in Queensland, heavy vehicle inspectors must attend a two-day training course at a cost of $235 to be an accredited person. They must update their accreditation each year. In Western Australia, there is no formal training, but all outsourced provider inspection reports are electronically 'audited' by a dedicated team that checks for the accuracy of inputted vehicle details.

Besides the National Heavy Vehicle Registration Scheme, two other initiatives are being progressed to promote national consistency in inspection regimes. Austroads is exploring national recognition of roadworthiness procedures, and the National Motor Vehicle Theft Reduction Council has released best-practice principles for written-off vehicle identity and safety inspections.[188] As both initiatives remain in the early stages, it is difficult to gauge the extent to which they might promote greater consistency or mutual recognition.

9.4.2 Objective

The rationale for vehicle inspections is to ensure the safety of the vehicle and to confirm the vehicle bona fides. The intent of the former is to prevent on-road trauma, and the intent of the latter is to combat vehicle theft and re-birthing. The road safety element is particularly important given the over-representation of heavy vehicles in crashes and the higher risk of severe injury and death where heavy vehicles are involved. For example, a recent New South Wales study found that an individual was three times more likely to die in a crash where a heavy vehicle was involved.[189] The cost to the community of heavy vehicle crashes in 2006 is listed in Table 18.[190]

Table 20: Cost of crashes involving heavy vehicles

	Average cost of crash ($'000)	*No. of crashes involving heavy vehicles*	*Total cost ($ million)*
Fatal crashes	3768	212	798.9
Injury crashes (excluding fatal crashes)	140[a]	19 400	2720.8
Property damage only crashes	10	32 000	318.1
Total			3837.8

a Estimated as the average of the cost of an injury crash involving hospitalisation ($265 770) and the cost of an injury crash not requiring hospitalisation ($14 728)

Given the significant safety impacts from heavy vehicle crashes, the objective of an inspection at initial registration is clear: to confirm that the vehicle is sufficiently roadworthy to access the road network. It also enables the regulator to record the vehicle's identity markers (vehicle identification number—VIN, chassis number, etc.) and to allocate a unique syntax through a number plate linking the vehicle to a registered operator. As stipulated in the *Road Transport Reform (Heavy Vehicles Registration) Act 1997*:

---

[187] Jones SA, *Vehicle inspections key information paper for use in the licensing reform plan*, v. 7, September 2006, pp. 43–44. It should be noted that these data relate to both light and heavy vehicles.

[188] See Austroads internal report, *National recognition of roadworthiness procedures*, IR-185/10, July 2010; and Oswin J, *Best practice principles for written-off vehicle identity and safety inspections*, May 2010.

[189] New South Wales Auditor General, *Improving road safety—heavy vehicles*, May 2009, p. 14.

[190] Centre for International Economics, 2011, p. 51.

> The focus of the *Register* is to identify the natural person or corporation responsible for the operation of the vehicle on the road network, and to provide a unique identity for each vehicle.[191]

The rationale for an initial inspection at the point of registration is fairly clear. The effectiveness of some other types of vehicle inspection, such as for annual re-registration, is more difficult to establish, as discussed below.

9.4.3 Impact analysis

The case for annual vehicle inspection derives from an inferred link between a vehicle defect, the likelihood of a crash and the ability of an annual inspection to identify a defect and therefore prevent a crash caused by mechanical failure. Establishing these inferred links in scientific terms is difficult. The most recent comprehensive study of the impact of vehicle roadworthiness on crashes was undertaken by the Victorian Road Safety Committee in 2001. The study did not disaggregate heavy from light vehicles, making it difficult to confidently attribute the findings to heavy vehicles. The committee noted a paucity of evidence and lack of common reporting structures, making a definitive conclusion difficult. Nonetheless the committee found:

> The data on fatal and serious injury crashes for the period 1994–1999 shows that:
>
> 1) 0.79% of unroadworthy vehicles caused the crash;
>
> 2) 0.50% of unroadworthy vehicles contributed to the crash; and
>
> 3) 2.26% of unroadworthy vehicles possibly contributed to the crash.
>
> These figures indicated a total defect involvement rate of 3.55% in crashes.[192]

A more recent Austroads study (again considering light and heavy vehicles together) concluded that:

> It is apparent that vehicle defects are not a cause of more than a small percentage of crashes, and that tyres are likely to be the cause of a crash in more than 50% of crashes that involve a defective vehicle. It is not surprising, therefore, that the rates of fatality crashes do not show any correlation to the periodicity of roadworthiness inspections. It appears that vehicle age is not an influence on the likelihood of a car being involved in a casualty crash. It also appears that all jurisdictions require inspection of a similar set of core items during roadworthiness inspections.
>
> *Given the limited influence of defects in crashes, it would be extremely difficult to mount an argument that any different standard to which vehicles are inspected in different jurisdictions has any influence on crash causation*. In other words, it would be difficult to justify any outcome of a national roadworthiness system that relied on requiring a particularly stringent standard to be met at an inspection. A corollary is that it is most unlikely that there would be any road trauma benefits arising from having a national roadworthy recognition system.[193] [author's emphasis]

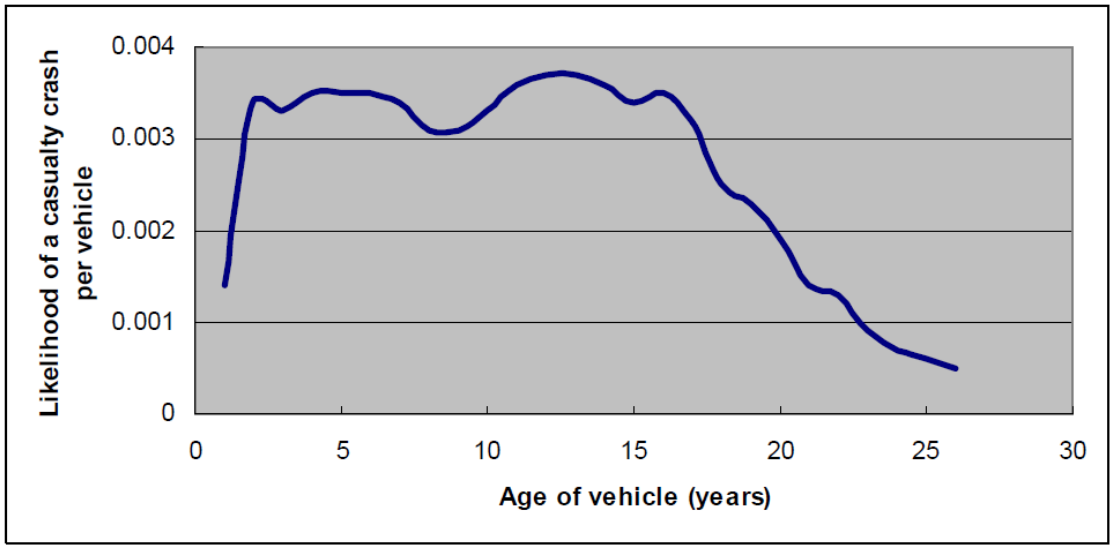
Austroads further concluded that, apart from the first year, the likelihood of being involved in a crash is relatively constant until a vehicle is about 17 years old, when it declines (probably as a result of fewer annual kilometres travelled by these vehicles) (see Chart 18). These data perhaps justify the risk-managed approach adopted by some states and territories.

[191] Administrative guideline: *National Driver Licensing & Heavy Vehicle Registration Schemes 2.3.1.*

[192] Parliament of Victoria, *Inquiry into Victoria's vehicle roadworthiness system*, 2001, p. 5.

[193] Austroads, 2010, p. 24.

Chart 18: Likelihood of a casualty crash by age of vehicle



Studies that focus exclusively on the impact of heavy (as opposed to heavy *and* light) vehicle defects in crashes are not extensive and tend to have statistically insignificant sample sizes. This makes it difficult to draw definitive conclusions from the data. A 1999 Canadian study investigated 208 accidents involving 214 single or multiple heavy vehicle units. It concluded that the proportion of mechanical defects as a causal or contributing factor to heavy vehicle crashes is 13.2 per cent. The braking system was most often the cause, followed by tyres, chassis, lights and signals. Similarly, a 2002 study of heavy vehicles in Norway found that abolishing inspections may result in an increase of 5–10 per cent in the number of heavy vehicles involved in injury accidents. As with the Canadian study, however, the results were 'not statistically significant and highly uncertain'.[194]

The Canadian study also noted there is a high correlation between vehicle age and mechanical condition, that the frequency of non-complying vehicles is highly independent of the elapsed time since the last inspection, and that pre-trip inspections are important. This suggests the methodological difficulty of isolating the impact of annual inspections in preventing mechanical defects from other factors. A host of variables could impact results, such as the quality of the annual inspection, the rigour of alternative compliance schemes, the certainty of detection and the level of on-road enforcement.

When the costs of inspection are compared with the benefits of annual inspections, the CIE estimates that an annual inspection would need to reduce the cost of road crashes involving each heavy vehicle by around 23 per cent for the benefits to match the costs.[195] A purely financial analysis, however, cannot capture the human impact of grief and trauma involved in road accidents.

The Independent Expert Panel, having reviewed the available evidence, formed the view that:

> There is no firm evidence that crash risk would be reduced by the national adoption of annual or periodic compulsory roadworthy inspection programs... however, there would be great merit in jurisdictions working together to produce and adopt a national standard for vehicle safety inspections, for use in testing stations and at the road-side…It may then be possible to identify programs that will reduce the risk of crashes due to defects in heavy vehicles and in the long run develop a truly national system of roadworthiness inspection; and because of the apparent relationship between some types of inspection programs and the reduced incidence of mechanical defects in vehicle fleets, there is not a case for jurisdictions to abandon roadworthiness testing altogether at this time.[196]

---

[194] Elvik R, 'The effect on accidents of technical inspections of heavy vehicles in Norway', *Accident Analysis and Prevention*, vol. 34, no. 6, November 2002, pp. 753–762.

[195] Centre for International Economics, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law*, September 2011, p. 56

[196] *Independent Expert Panel on Heavy Vehicle Policy report*, report to ATC, 20 June 2011, pp. 26–27.

In effect, this means that there will be no change from current practice for the foreseeable future, resulting in no net gains or costs.

It was clear at the September 2010 industry forum in Newcastle that the project board and the industry representatives support a mutual-recognition approach to inspection in the interim. Mutual recognition is consistent with the 'one-stop shop' philosophy of the NHVR and would deliver the interstate registration benefits articulated in the 1996 RIS, then estimated to be worth around $14.24 million to operators.

In effect, this would mean that the 1996 agreement regarding transfer of vehicles between states would stand. If a registered vehicle was transferred, it would not be required to undergo a further inspection upon entering the new jurisdiction. (Conditional registration should probably be exempted from the mutual recognition regime; divergent topography, terrain and conditions across the country mean that conditional registration decisions may need to continue to be state based.) Mutual recognition does *not* mean that heavy vehicles are free to have their vehicle inspected anywhere within Australia. In the interim, before a national approach can be agreed on, the system operational in the vehicle's garaging address would apply.

9.4.4 Outcome

As per the expert panel recommendations the NHVR and jurisdictions will work together to produce and adopt a national standard for vehicle safety inspections, for use in testing stations and at the roadside.

In the interim, existing state-based inspection regimes will continue.

Mutual recognition of existing state-based regimes will yield benefits.

9.4.5 Summary of benefits, costs and unknowns

BENEFITS

If mutual recognition is introduced:

- transferring vehicles will not be subject to inspection, potentially delivering the $14.24 million articulated in the 1996 RIS (1996 values)
- operators of transferring vehicles will no longer incur the $3000 opportunity cost of vehicle inspection[197]
- mutual recognition of defect notices may be more convenient for interstate vehicle owners issued with defect notices in New South Wales.

COSTS

- Costs will be incurred in the further study (which has not yet been costed).

UNKNOWNS

- Findings and recommendations from the further study and how this will impact operators and the regulator.
- Potential impacts on the NHVAS in New South Wales.

9.5 Transfer of registration

Current model law: National Transport Commission (Road Transport Legislation—Heavy Vehicles Registration Regulations) Regulations 2006, ss. 27, 28

Heavy Vehicle National Law: Heavy Vehicle (Registration) National Regulation, part 7

SUMMARY

Around 56 000 heavy vehicles change hands each year. The model law currently requires only that purchasers of heavy vehicles notify the registering authority of a transfer of registration.

If the purchaser neglects to notify the authority of a transfer, the register cannot be updated with details of the new operator. Consequently, the previous owner may be infringed for speeding or

[197] This is higher than for the opportunity cost of spray suppression because the vehicle may have to travel to the inspection site (Centre for International Economics, 2011, p. 55).

traffic offences committed by the new owner, the authority misses out on transfer fees and stamp duty, and the integrity of the register is compromised.

To prevent this, the national law could require notification of transfer by both sellers and buyers of heavy vehicles. This is the current practice in all states except Victoria and Queensland.

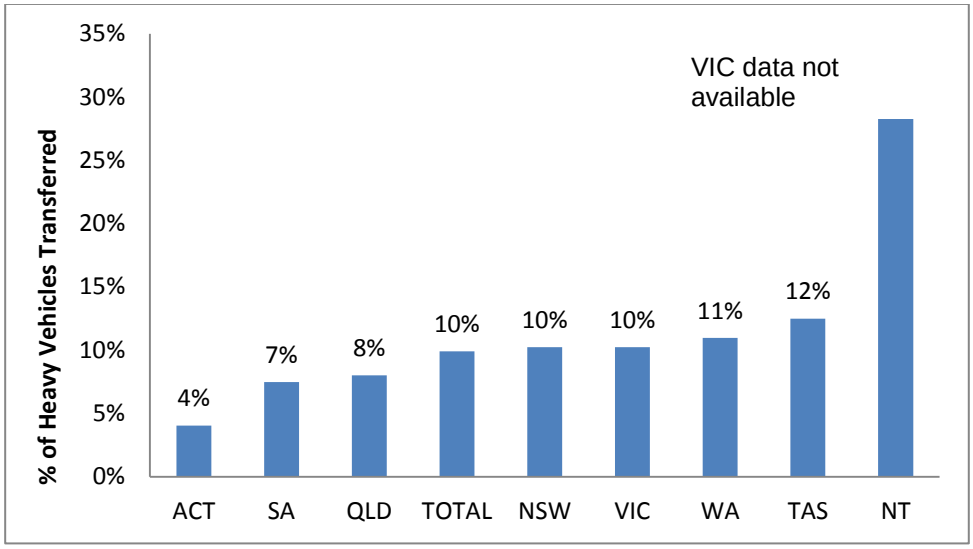
Two options were considered: (1) retain the status quo; or (2) require both sellers and buyers to notify the regulator of transfer of registration.

The second option will be adopted in the national law.

9.5.1 Problem

The registration of approximately 10 per cent of the heavy vehicle fleet is transferred in any one year, accounting for around 56 000 vehicles annually.[198] As indicated in Chart 19, the percentage of vehicles traded differs widely between states and territories, from 4.03 per cent in the Australian Capital Territory to 31.4 per cent in the Northern Territory.

Chart 19: Transfer of registration of heavy vehicle fleet by state



Under the model law, when a heavy vehicle changes hands, only the acquirer (i.e. purchaser) is required to notify the registration authority that the vehicle has changed hands:

> s. 27 Obligations of a person disposing of a heavy vehicle
>
> A person, or the agent of a person, who disposes of a registered heavy vehicle must, immediately after disposing of the vehicle:
>
> (a) complete an application for transfer of registration as disposer in the form approved for that purpose by the registration authority and sign it; and
>
> (b) give the completed form to the acquirer.
>
> s. 28 Obligations of acquirers
>
> (1) A person who acquires, or the agent of a person who acquires, a registered heavy vehicle must, as soon as practicable after acquiring the vehicle:
>
> (a) obtain an application for transfer of registration from the disposer, completed and signed by the disposer as indicated on the form; and
>
> (b) complete the form as acquirer to the extent indicated on the form and sign it; and
>
> (c) not more than 14 days after acquiring the vehicle, lodge the completed and signed application with the registration authority accompanied by any applicable stamp duty and the appropriate fee for transfer of registration of the vehicle.

[198] This is an estimate only. Exact figures are available for all states except Victoria and are expressed as a percentage of the total heavy vehicle fleet in 2007. Victoria's figures were estimated by applying the same percentage of transfers as occurs in New South Wales (12.76%) to the size of the Victorian heavy vehicle fleet in 2007.

(2) Regulation 27 and subregulation (1) do not apply in relation to a heavy vehicle acquired in accordance with an order of a court in Australia or other legal process.

(3) If a registered heavy vehicle is acquired in accordance with an order of a court in Australia or other legal process, the person or the agent of the person, who acquires the vehicle must:

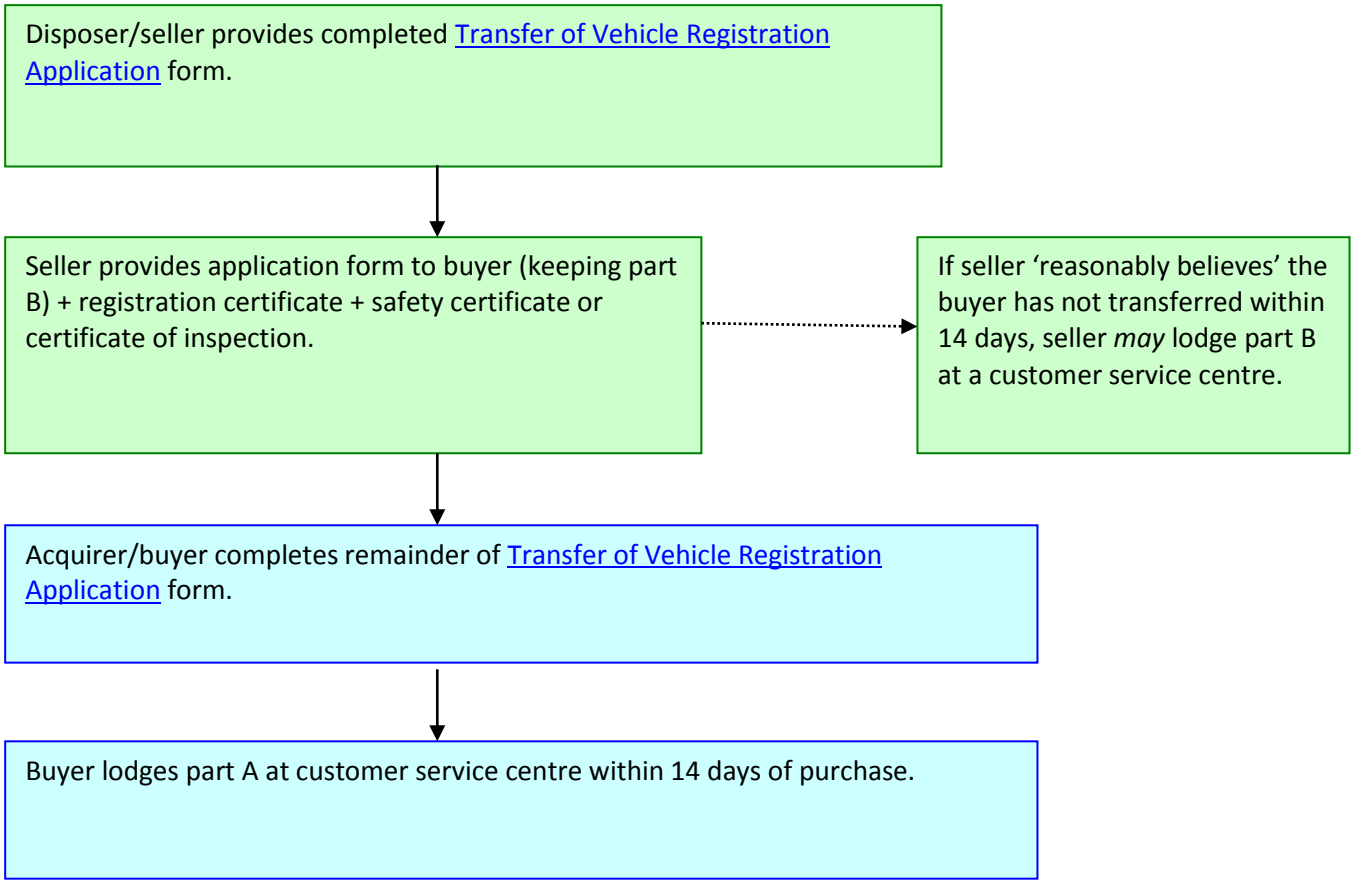
(a) obtain a form of notification of a court order or other legal process and complete the form as the acquirer to the extent indicated on the form and sign it; and

(b) not more than 14 days after acquiring the vehicle, lodge the completed and signed application with the registration authority accompanied by any applicable stamp duty and the appropriate fee (if any) for transfer of registration of the vehicle.[199]

In most states and territories, the model law has been amended to require both the disposer (seller) and the acquirer to notify the registration authority of the transfer of a registered heavy vehicle. In this way, a previous owner is prevented from incurring speeding fines or infringements incurred by a new owner. Similarly, the registering authority can ensure that registration fees are appropriate (e.g. in situations where the previous owner was paying a concessional rate) and maintain the integrity of the register by linking the operator to a vehicle.

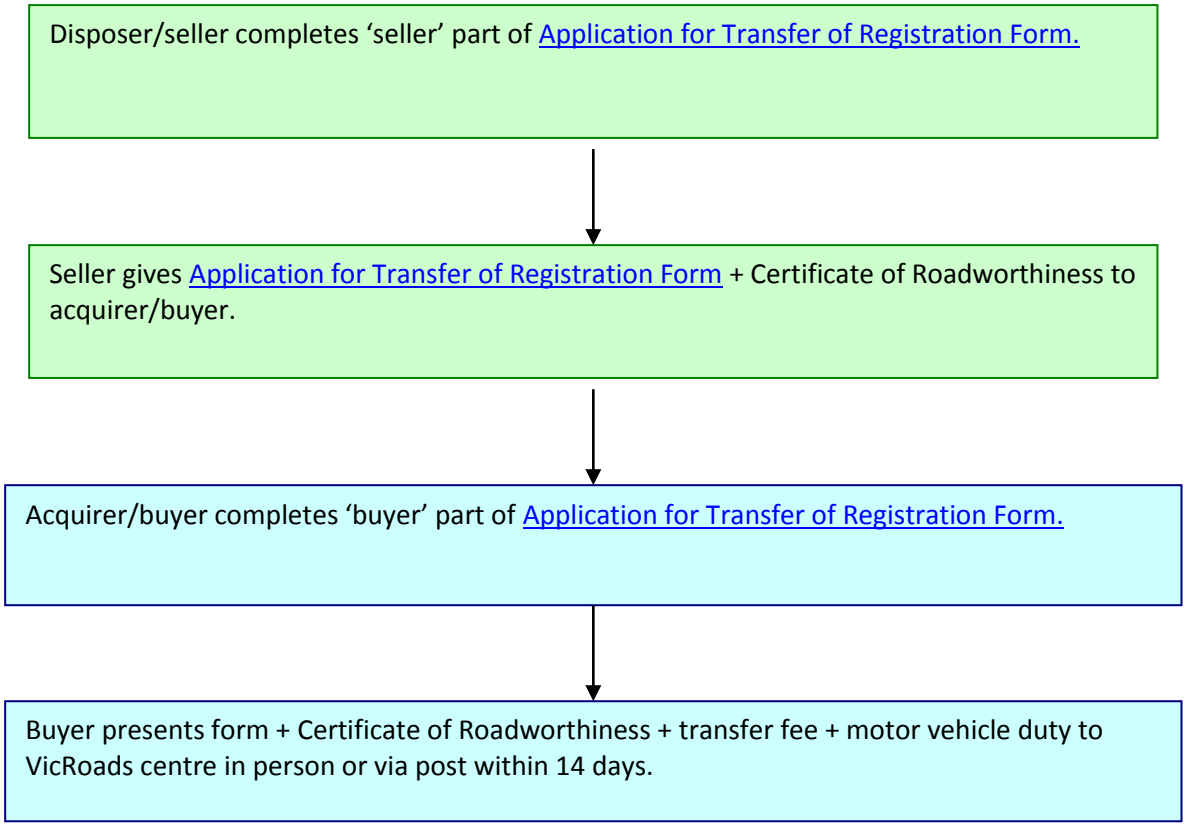
Interestingly, of the five jurisdictions that adopted the model law, three subsequently reversed their decision. The only jurisdictions still compliant with the model law are Queensland and Victoria. Their respective processes for transfer of ownership are mapped below.

Queensland



[199] National Transport Commission (Road Transport Legislation—Heavy Vehicles Registration Regulations) Regulations 2006.

Victoria[200]

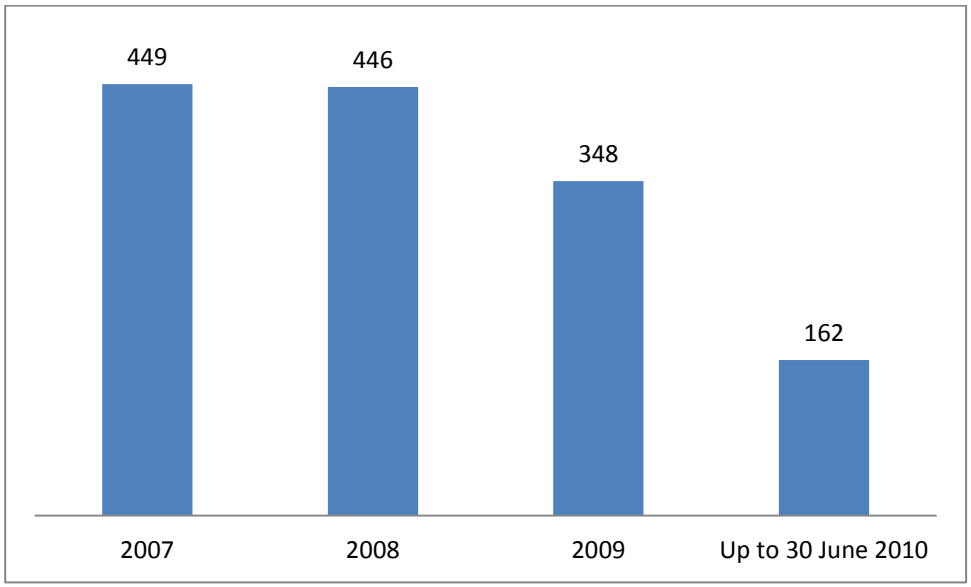


In most instances, the buyer would be motivated to notify the registering authority of a change of ownership to ensure the validity of third-party insurance and thereby protect their investment. However, if the buyer forgets or neglects to provide such advice, problems can arise. For example, where a transfer is not advised, the previous owner remains the recognised operator in the eyes of the authority, with all the attendant rights and responsibilities. Theoretically, then, if the new owner incurs speeding or other traffic infringements, the previous owner will be held accountable for the offences. Rectifying these problems can tie up resources and result in considerable frustration for operators. This is why South Australia reversed its original adoption of the model law.

Chart 20 indicates the number of infringements issued by the Queensland registering authority due to an acquirer failing to transfer registration.

[200] Tractors, forklifts and mobile plant do not require a roadworthiness certificate.

Chart 20: Infringements issued as a result of acquirer failure to notify of transfer (Queensland)



These figures represent 3.3–4.3 per cent of the total heavy vehicle transfers of registration in each year. Although this may be a small proportion of all transfers, the transactions can be difficult to untangle. (Similar data were not available for Victoria.)

An unscrupulous operator may be motivated to neglect to advise of ownership change to leave themselves free to speed with relative impunity, knowing that the register will not tie them to the vehicle. The unscrupulous can also 'invent' a vehicle transfer for fraudulent purposes:

> There is a … transfer issue with the cloning of stolen vehicles and other vehicle fraud practices in which the thieves or fraudsters commonly sign a transfer of registration form whilst posing as the actual owner. While the vehicle often stays with its rightful owner, that person remains unaware (until the registration becomes due for renewal) that their vehicle is now shown on the local register as registered to another person.[201]

A third problem is that, where change of ownership is not advised, states and territories miss out on stamp duty and transfer fee revenue. The transfer fees captured by the infringements issued by the Queensland Department of Transport and Main Roads since 2007 amount to around $30 000.

9.5.2 Objective

The objective of transfer of registration provisions is to ensure the accuracy of the register of motor vehicles. Under s. 9 of the *Road Transport Reform (Heavy Vehicles Registration) Act 1997*, one of the functions of a registration authority is to maintain a register of heavy vehicles in accordance with the regulations.

The focus of the motor vehicle register is to identify the natural person or corporation responsible for the operation of the vehicle on the road network, and to provide a unique identity for each vehicle.[202]

The register allows a vehicle to be traced to a registered operator, thereby supporting compliance and enforcement activities and facilitating timely and accurate re-registration processes.

The premise of the reform to remove transfer of registration requirements from sellers was that 'the administrative workload would be reduced by removing compulsory notification by disposers'.[203]

---

[201] SJ Wright and Associates, *Review of the Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme*, August 2006, p. 24.

[202] *Administrative guideline: National Driver Licensing & Heavy Vehicle Registration Schemes 2.3.1.*

[203] Wright SJ and Associates, *Review of the Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme*, August 2006, p. 23.

9.5.3 Options

There are two options for how vehicle transfers could be administered: either maintain the status quo, or require both sellers and buyers to notify the regulator of transfer of registration.

9.5.4 Impact analysis

Retaining the status quo will result in no net changes to costs or benefits of the transfers system.

The second option (requiring both the seller and the purchaser to notify the authority of a change of ownership) better manages the risk that the change of operator will go unrecorded or incorrectly recorded and promotes the integrity of the motor vehicle register. Amending the law to reflect this will promote the goal of 'the same outcome in the same circumstances'.

However, amending the model law will increase the regulatory burden in Queensland and Victoria because an additional requirement is placed on the seller to notify. Although existing forms require information and signatures from both parties and provide an option for sellers to notify, costs will be incurred. Queensland estimates that the cost of amending the current registration system will be approximately $1 million and that the administration task will double.[204]

9.5.5 Outcome

The second option—imposing obligations on both sellers and acquirers of vehicles—will be adopted in the national law.

9.5.6 Summary of benefits, costs and unknowns

BENEFITS

- Improved integrity of the registration database.
- Seller will not incur fines accrued by the new operator.
- More accurate collection of transfer fees and stamp duty.

COSTS

- An additional requirement to notify will be placed on sellers in Queensland and Victoria.
- The Queensland and Victorian registering authorities will incur system and administration costs. (Queensland estimates this to be in the order of $1 million.)

UNKNOWNS

- Exact volume of additional administrative burden for Queensland and Victoria.

9.6 RAV permits

Current model law: National Transport Commission (Road Transport Legislation—Restricted Access Vehicles Regulations) Regulations 2006, r. 10, 16

Heavy Vehicle National Law: Forthcoming

SUMMARY

Under the current model law, only a heavy vehicle operator may apply for a RAV permit.

Queensland has diverged from the model law to allow anyone to apply for a permit—for example, allowing a farmer to apply for a permit to enable a B-double operator to enter their farm during the harvest.

The permit specifies the route and conditions but not the vehicle registration or VIN. Instead, it stipulates the type of vehicle *permitted under the guidelines.*

If just 10 per cent of the Queensland permit applicants represent non-operators, administrative savings of around 50 weeks per year are achieved in permit issuance by the state.

Industry has the benefit of greater flexibility if, for example, a vehicle breaks down and can no longer be used at the appointed time. An identical vehicle may be used without needing to re-apply for a permit.

[204] Regulatory Impact Statement and Draft Heavy Vehicle National Law initial comment from Queensland, 27 January 2011, p. 2.

Two options were considered: (1) to retain the model law in national law; or (2) to adopt the Queensland model.

The national law will adopt the Queensland model.

9.6.1 Problem

Across Australia, RAVs such as B-doubles and road trains can travel on the parts of the road network that have been designated as RAV routes via notices or, in the case of Queensland, guidelines. If an operator wishes to access a road that is not part of the RAV network, they must apply for a separate permit from the relevant regulator.

At present, the model laws specify that permit access must be initiated by a heavy vehicle *operator*. However, Queensland has diverged from the model law to enable anyone to apply for a permit. This subtle distinction allows, for example, a farmer to apply for a permit to enable a B-double operator to enter their farm during the harvest.

Consolidation of the national law provides the opportunity to consider the merits of allowing any person, as opposed to solely an operator, to apply for an RAV permit based on the Queensland experience.

9.6.2 Objective

Typically, access is sought for the 'last mile' of the transport chain to reach a facility such as a farm or depot that is situated on local roads that struggle to accommodate B-doubles and road trains through 'as of right' notices. The local councils responsible for the 'last mile' may seek to impose additional access conditions (such as speed and time restrictions) to protect vulnerable road assets. The permit system facilitates this access. Permits are usually valid for one year, allowing asset owners to review access conditions at regular intervals.

9.6.3 Options

There are two options with regard to RAV permits: to maintain the status quo or to adopt the Queensland model.

Option 1

Under the existing model law, only heavy vehicle operators can apply for a permit to operate their vehicle on a route outside the RAV access maps. Once approved, the heavy vehicle operator is issued with a permit that contains the registration or VIN of the vehicle that is permitted to operate on the approved route. The permit can only be used by the identified vehicle and is not transferable, even to an identical vehicle with the same specifications.

The driver is required to carry the permit with them at all times while on the approved route, making the compliance and enforcement task easier. Another advantage is that operators and drivers are likely to be well apprised of their obligations under chain-of-responsibility legislation. It is less certain that other parties would be as well informed. Further a non-operator or driver, such as a farmer, may not be in a position to judge if the vehicle hired for the task is compliant or noncompliant with the terms of the RAV permit.

The system gives comfort to local councils because they know exactly how many vehicles will be using the road and can therefore form a view about the likely level of degradation. In the absence of this information, there is a risk that councils may be more conservative in their approach when setting access conditions.

The disadvantage to the existing system is that it tends to be resource intensive. By its very nature, the permit system relates to individual vehicles rather than 'as of right' access. Each vehicle and its proposed route must be scrutinised. Not only does this create an administrative burden for the regulator and industry, it is inflexible, because the permits are not transferable. Should the permitted vehicle then not be available, the operator must apply for another permit, which might compromise schedules.

Option 2

In Queensland, any person (such as a farmer, operator or company) may apply for a permit to access roads extraneous to the RAV network. Therefore, the applicant is not required to be the owner or driver of a vehicle. The permit specifies the route and conditions but not the vehicle registration or VIN. Instead, it stipulates the *type of vehicle* permitted under the guidelines. The guidelines contain specifications for components such as axle spacing, mass limits and technical

requirements. Any vehicle can be operated under the permit, provided that it is compliant with the guidelines.

Permits are usually issued for a period of 12 months, after which they can be renewed for up to five years, providing there have been no issues with the access. In some instances, the route may be added to the RAV-approved network for use by all RAVs. The flexibility of Queensland's permit system offers benefits to both government and industry. For government, the system has the potential to significantly reduce the number of permits that need to be issued for the same transport task.

9.6.4 Impact analysis

It is difficult to quantify the exact benefits that accrue under the Queensland model because the regulator does not require notification from the permit holder of the number of operators or vehicles accessing the road under each permit. Therefore, the exact number of vehicles operating per permit is not known.

However, to provide an indication of the administrative benefits of the system, Queensland conducted an informal review into how three business operators (who are *not* transport operators) use the permits. The review found that the three business operators shared their permits with 45 transport operators. This means that only three permits (one for each applicant) required processing, as opposed to the 45 that would have been required if the permit system was limited to operators.

Queensland estimates that this represents efficiencies in the order of:

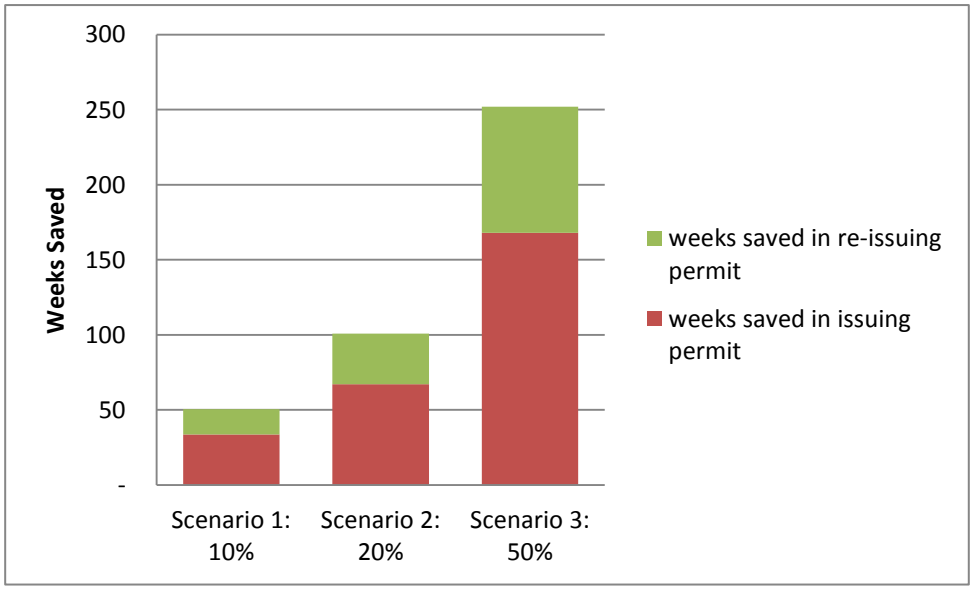
- 84 hours issuing permits (based on two hours per permit for a route that has been previously approved for another operator)
- 42 hours once every year to re-issue the permits (approximately one hour per permit).

It is difficult to extrapolate these efficiencies across the Queensland permit system because records are not kept of applicants; this means that non-operators (who would presumably share their permits) cannot be differentiated from operators (who presumably may not). Chart 21 indicates the time savings that would accrue for the Queensland government under three scenarios:

1. where 10 per cent of permits are issued to non-operators
2. where 20 per cent of permits are issued to non-operators
3. where 50 per cent of permits are issued to non-operators.

The chart is based on the 2009–10 figure of 450 RAV permits issued.

Chart 21: Potential efficiencies where permits are issued to non-operators (Queensland)



There would also be additional savings to the government because there is no need to amend permits when fleet owners need to accommodate breakdowns or update their fleets.

Queensland advises that the approach does not appear to have promoted conservative access decisions among local councils.[205]

The approach also has significant benefits for industry. Having secured a permit, business operators of farms, depots and feedlots are not limited to particular operators but can source whoever is available—within the guideline specifications—to acquit the transport task. This flexibility is particularly important during the harvest period, when delays occasioned by vehicle breakdown or unavailability can be costly.

Despite these administrative benefits, some jurisdictions have expressed concern about compliance and enforcement under the Queensland model. Queensland advises that there is little experiential evidence to support this concern. Initial enforcement activity is based on whether the vehicle is operating on the appropriate route and under the conditions that may apply (e.g. time restrictions), whether by guidelines or a permit. Drivers travelling on an agent's permit are required to carry a copy of that permit, which is consistent with the model law permit requirements. Although there is no registration or VIN on the permit, it specifies the approved vehicle type, from which the enforcement officer can ascertain whether the vehicle is approved to use the particular route. Industry has suggested that, if the Queensland model is adopted, it would be useful to impose a duty on the permit holder to provide a copy of the permit to the transport operator to assist with compliance. Chain-of-responsibility legislation would apply, regardless of whether the permit was issued to an agent or a transport operator, with the agent (as well as the transport operator) being responsible for understanding their compliance obligations.

Jurisdictions have also expressed concerns about the system being used to competitive advantage by trailer manufacturers. There has been an example in Queensland where a manufacturer of a PBS vehicle applied for a permit to operate their vehicle combination on a particular route. The route was assessed as suitable for the particular PBS combination and, as such, the manufacturer's permit could be given to transport operators using the manufacturer's PBS vehicle combination for the pre-assessed route. This could be viewed as providing the PBS vehicle manufacturer with an unfair advantage. However, as the permit system is open to anyone to apply, there is nothing to prevent other vehicle manufacturers undertaking the same process.

Additionally, having a pre-assessed route available at the time of purchasing a vehicle provides a degree of access certainty to transport operators and can lead to productivity gains. This was demonstrated by the Queensland example—allowing the vehicle manufacturer to apply for a permit was pivotal in the recent assessment of the Toowoomba to Port of Brisbane route for PBS 2B vehicles. It should be noted that there may be some capacity to restrict who may apply for a permit if jurisdictions can demonstrate that allowing anyone to apply would have perverse outcomes.

9.6.5 Outcome

The national law will allow any person to apply for a vehicle permit.

9.6.6 Summary of benefits, costs and unknowns

BENEFITS

Time savings for the regulator in issuing permits—this could be anywhere from 50 weeks to 250 weeks, depending on who applies for the permit.

Increased convenience for transport operators where a vehicle may break down or be unavailable.

COSTS

Some scope to turn the system to competitive advantage.

Systems costs for jurisdictions currently operating under the model law system.

If the practice of using vehicle registration details on the permit is discontinued, there will be compliance and system cost implications.

UNKNOWNS

Non-operators cannot be differentiated from operators, so it is impossible to precisely quantify benefits.

Systems costs involved in adopting the Queensland RAV model are not known.

[205] Email correspondence dated Monday 10 January 2011 from the Road Safety and Management Division, Department of Transport and Main Roads.

Non-operators such as farmers may not be in a position to judge compliant from noncompliant vehicles.

9.7 Unpaid fines

Current model law: National Transport Commission (Road Transport Legislation—Heavy Vehicles Registration Regulations) Regulations 2006, s. 33(e), (f)

Heavy Vehicle National Law: Heavy Vehicle (Registration) National Regulation, r. 42 (f), (s)

SUMMARY

All jurisdictions use vehicle registration sanctions as a punitive measure for unpaid fines. These fines may relate to the vehicle (e.g. non-payment of a speeding fine) or be entirely unrelated (e.g. non-payment of council fines).

Registration sanctions differ in severity and nature across the country but can include suspension, cancellation, vehicle immobilisation and refusal to renew registration.

The model law is currently silent on registration sanctions for offences that are unrelated to the use of the vehicle. These sanctions are generally imposed under state-based fines enforcement laws that have nothing to do with transport law.

The HVNL could either recognise that state law may result in registration sanctions for unpaid fines that are unrelated to the vehicle's operation (option 1), or *remove all reference to registration sanctions—even where they relate to the operation of the vehicle (option 2).*

The national law will recognise that state and territory laws may result in registration sanctions for unpaid fines that do not relate to the operation of the vehicle.

9.7.1 Problem

All states and territories use vehicle registration sanctions as a punitive measure for unpaid fines. These fines may derive from vehicle offences (e.g noncompliance with defect notices) or be entirely unrelated to the operation of a vehicle (e.g non-payment of local council fines). Offences that relate to the operation of the vehicle are covered in the various state transport laws and in the model Heavy Vehicle Registration Regulations, s. 33(e) and (f).

However, offences that are *unrelated* to the operation of the vehicle can incur registration-related sanctions under state-based fines enforcement laws. The model law contains provision for registration sanctions that relate to the operation of the vehicle, but is currently silent on registration sanctions for offences unrelated to vehicle use.

The nature and severity of registration sanctions differ across jurisdictions. They can include vehicle immobilisation, refusal to renew registration, registration suspension, registration cancellation, and a refusal to permit transactions between the fine defaulter and the relevant transport authority. Queensland and South Australia have no power to suspend or cancel registration under their current fines enforcement law. The vehicle-related sanctions are generally imposed after a series of escalating warnings and opportunities to pay. Table 19 summarises approaches to vehicle sanctions for fine defaulters across the country.

Table 21: Registration sanctions for non-payment of fines

Jurisdiction	Legislation	Enforcing body	Vehicle sanction						
			Registration non-renewal	Registration cancellation	Registration suspension	Fleet registration cancellation	Customer business restriction	Immobilisation warrant	Inability to sell
Victoria	*Infringements Act 2006*, part 8	Fines Victoria (civic compliance)	x		x				x
New South Wales	*Fines Act 1996*, division 3	Office of State Revenue		x		x	x		
Queensland	*State Penalties Enforcement Act 1999*, division 7a	State Penalties Enforcement Registry						x	
Western Australia	*Fines, Penalties and Infringement Notices Enforcement Act 1994*, section 19	Fines Enforcement Registry			x				
South Australia	*Criminal Law Sentencing Act 1988*, division 3, subdivision 3, 70F, 70G (2c)		x				x[206]	x	
Tasmania	*Monetary Penalties Enforcement Act 1999*, section 59	Monetary Penalties Enforcement Scheme			x				
Australian Capital Territory	*Crimes (Sentence Administration) Act 2005*, 116I d(ii)	Territory and Municipal Services			x				
Northern Territory	*Fines and Penalties (Recovery) Act 2001*, division 7	Fines Recovery Unit			x				

Data on the application of registration sanctions for unpaid fines were only available in two states: Western Australia and South Australia.[207] In Western Australia, 2163 registration sanctions have

[206] However, transactions in relation to transfer of the vehicle and registration renewal are permitted.

[207] The Northern Territory reports that registration sanctions, though legally possible, are not applied, and licensing sanctions are used instead.

been imposed for unpaid fines since 2005–06; in South Australia, 7307 such sanctions have been imposed.

9.7.2 Objective

The objective of registration sanctions that are unrelated to the operation of the vehicle appears to be as a fines enforcement mechanism. The privilege of access to the road network is considered so valuable that debtors will pay their outstanding fines rather than lose that access. The imposition of registration sanctions in this way is unrelated to the objectives that usually define transport policy—namely, road safety, freight productivity and efficiency. It is instead a pragmatic instrument of leverage for removing—or threatening to remove—a desirable privilege unless fines to the state are paid. As some jurisdictions have pointed out, however, if the sanction prevents the sale or use of the asset, it may impede the debtor's ability to pay the fine.

9.7.3 Options

There are three options for how vehicle-related sanctions can be approached. First, the HVNL could recognise that state and territory laws may result in registration sanctions for unpaid fines that are unrelated to the use of the vehicle. This would be similar to the existing system, with the fines enforcement agency directing the regulator to impose a sanction.

Second, all reference to registration sanctions for unpaid fines could be removed from the HVNL—even those related to vehicle offences.

Third, the HVNL could be amended to take account of *all* registration-related sanctions, whether they relate to the vehicle or not. While promoting national consistency, this option is too impractical for serious consideration, especially considering that the fines enforcement laws fall outside transport legislation and are administered by non-transport agencies.[208]

9.7.4 Impact analysis

Under the first option, the NHVR would be directed to impose a sanction by the relevant state or territory fines enforcement agency. The regulator would advise the customer of the sanction but direct them to the relevant agency to resolve or contest the sanction. The regulator would also advise the local transport authority of the direction. This approach has two significant advantages. It will achieve uniformity of sanction where the offence relates to the vehicle (and is therefore covered in national law), thereby promoting national consistency. It is also broadly similar to current practice, whereby the customer must liaise with a fines enforcement agency, even though the communication might issue from the transport agency.

The disadvantage is that it will not promote consistency of registration sanctions across the states for non–vehicle related offences. The range of sanctions outlined in Table 19 will presumably remain in operation, meaning that operators will be subject to different penalties from fines enforcement depending on their garaging address. In adding another layer (the regulator) to the communication between the fines enforcement body and the transport agency, this approach will perpetuate and probably increase customer confusion about precisely which agency to apply to for resolution. (State transport agencies report that they already receive calls and visits from frustrated customers mistakenly believing that the transport agency can resolve their issues.) The involvement of another government body may create system delays and sequencing challenges. This extra administrative layer will impose costs on government.

Where the operator has an unpaid fine that results in a registration sanction, there are clearly costs imposed on the operator, whose ability to conduct business, and therefore pay the fine, is impeded. There will be flow-on effects for the wider community by temporarily reducing the nation's freight-moving capacity.

Option 1 does not address distinctions between vehicle- and driver-related sanctions. Licence-related sanctions will remain the exclusive purview of the state, while vehicle-related sanctions will nominally be issued from the regulator. This option will require business process re-engineering and systems changes for the states and territories, which will lead to greater costs.

In its cost–benefit analysis, the CIE noted that the practice of imposing registration sanctions on operators with unpaid fines 'appears to have costs and *potentially* some benefits' [author's emphasis]. These benefits derive from the inferred link between the penalty and future behaviour

[208] A fourth option of simply ceasing the use of registration sanctions for unpaid fines unrelated to the vehicle was not considered as it is outside the ambit of transport law.

modification, which cannot be quantified. As these behaviours are extraneous to transport policy, generally they will have no impact on the six matters under consideration in this RIS. Therefore, the benefits delivered by this option can only be assessed by comparison with option 2.

Option 2, whereby all reference to registration sanctions—even if it relates to the operation of the vehicle—is removed from the national law, is the cleaner option. It will reduce the administrative burden on the regulator and continues current practice, with no attendant need for business process re-engineering or systems changes.

The disadvantage of the approach is that, as with the first option, it will not promote consistency of registration sanctions across the country. It may even encourage 'jurisdiction shopping' by unscrupulous operators in search of the jurisdiction with the most lenient penalties. The power of the regulator to impose meaningful sanctions that modify on-road behaviours may be compromised.

It should be noted that there is a lack of clarity in the existing fines enforcement laws about when a sanction should be applied to a vehicle as opposed to a driver. This could have future consequences for national consistency, especially in situations where jurisdictions have the power to cancel entire fleet licences (e.g. New South Wales). Other potentially sensitive issues include confusion for industry where registration sanctions are issued through the NHVR yet heavy vehicle driving sanctions continue to be applied via the state body.

9.7.5 Outcome

The national law will recognise that state and territory laws may result in registration sanctions for unpaid fines that do not relate to the operation of the vehicle.

Summary of benefits, costs and unknowns

BENEFITS

- Achieves uniformity of sanction where the offence relates to the vehicle, since these will be covered in national law.
- Broadly similar to current practice where the offence is unrelated to the vehicle.

COSTS

- Does not promote consistency of registration sanctions across the states for non–vehicle related sanctions.
- Imposes a burden on the regulator and registering authorities for outcomes with no relation to transport policy.
- Registration sanctions will impede an operator's ability to conduct business and therefore pay fines.
- Adding another layer of government involvement (the regulator) on top of the transport agency and the fines enforcement body may confuse customers and create delays.

UNKNOWNS

- The cost of the regulator's involvement in the process.

9.8 New offences

Three new offences are proposed for inclusion within the national law either to reflect existing jurisdictional practice that is considered to be working well or to provide more proportionate offences. The proposed new penalties cover defect notice removal, sanctions for noncompliance with the NHVAS, and IAP service provider obligations.

9.8.1 Removal of defect notice label

Current model law: National Transport Commission (Road Transport Legislation—Heavy Vehicles Registration Act) Regulations 2006, s. 33(a)

National Heavy Vehicle Law: Forthcoming

SUMMARY

Vehicles found to be unroadworthy by police or other authorised persons are issued with 'defect' notices. In the case of a major defect, a defect label must be affixed to the vehicle.

The driver of the vehicle is responsible for ensuring that the defect notice is sent to the registered operator of the vehicle. However, if the driver removes the label from the vehicle, the operator would have no visual cue that the vehicle was issued with a defect notice and that corrective action was required. This may only be discovered at re-registration.

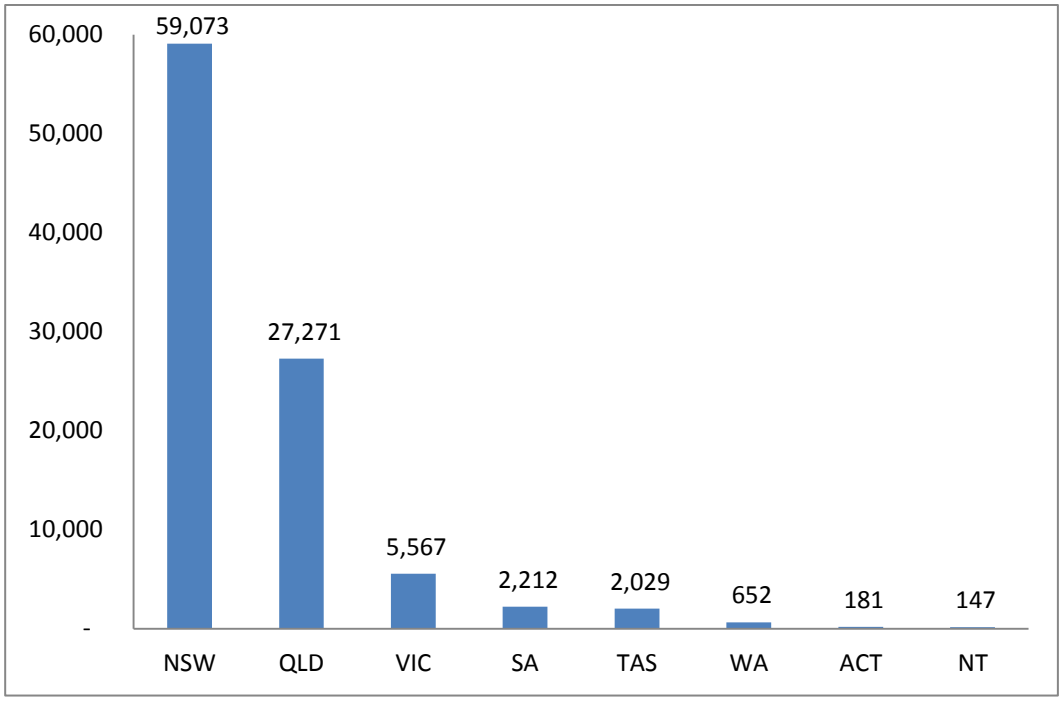
To guard against this practice, Victoria and New South Wales have made an offence of removing a defect notice label. Such an offence will be included in the national law.

Problem

All jurisdictions use a 'defect' or 'compliance' notice system, whereby vehicles found by inspectors, police or other empowered officers to be unroadworthy are issued with 'defect' notices. Defect notices may be either major or minor.[209] Both types of defect notice must state the time and date from which the vehicle is not to be used on a road unless the defect is fixed and, in the case of a major defect, cause a defect label to be affixed to the vehicle. If the defect notice is not cleared within the specified time, the registration authority may suspend or cancel the heavy vehicle registration.[210]

Chart 22 shows the volume of defect notices issued to heavy vehicles in 2009–10.

Chart 22: Total heavy vehicle defect notices issued in 2009–10



As a general rule, an operator will have a high degree of motivation to comply with a defect notice. However, where the operator is not also the driver of the vehicle, it is possible that they may be unaware that a defect notice has been issued. The driver of the vehicle is responsible for ensuring that the defect notice is sent to the registered operator of the vehicle (s. 40[4]). If the driver removes the notice from the vehicle, the operator would have no visual cue that the vehicle was issued with a defect notice and that corrective action was required.

> There are too many instances where the company finds out in an untimely fashion about defects to its trucks. This is because some company drivers ignore defect notices and even remove the stickers. Vehicles in this state are uninsured and the company has no idea what has happened because the system deals with the drivers, not the registered operators.[211]

[209] Western Australia is an exception here. Also, Federal Interstate Registration Scheme makes no provision for defect notices.

[210] Heavy Vehicles Registration Regulations 2006, s. 33(a).

[211] Wright SJ, 2006, p. 18.

Making it an offence to remove or deface the notice will reduce the likelihood that an operator may discover an outstanding defect only at the point of re-registration and then incur the costs of re-registering the vehicle. In the worst-case scenario, the operator may discover that the vehicle is unregistered and therefore uninsured after an on-road incident.

There is general agreement at state and territory level that the removal or defacing of a defect notice should be an offence. Such a provision currently exists in New South Wales and Victoria, whereby 'a person other than an Officer of the Corporation or of a corresponding registration authority must not remove or deface a defective vehicle label'.[212] The Victorian penalty for so doing is 10 units.[213]

Since 2004, there has been one prosecution in Victoria for this offence. The accused was charged with three offences of removing a defect notice without authority, incurring a total fine of $12 000.

Objectives

The objective of the defect notice is to identify vehicles considered to be unroadworthy and to prompt corrective action on the basis of an inferred link between vehicle defect and crash incidence. (The relationship between roadworthiness and on-road incidents is discussed in Section 9.4) That prompt can be compromised where the operator is not notified by a driver that a defect notice is in effect and the defect notice is removed from the vehicle.

Outcome

A new offence of removing or defacing a defect notice will be introduced in the national law.

Summary of benefits, costs and unknowns

BENEFITS

- Will increase the likelihood of a defect notice being made known to an operator where they are not also the driver.
- Will reduce the incidence of operators discovering defect notices at the point of registration renewal, leading to the costs of re-registration.

COSTS

- States and territories may incur costs in supporting prosecutions. To date, there has been one prosecution for this offence in Victoria.

UNKNOWNS

- The exact incidence of defect notice labels being removed.
- The exact road safety impacts of defect notice labels being removed.

9.8.2 Intelligent Access service provider obligations

Current model law: National Transport Commission (Model Legislation—Intelligent Access Program) Regulations 2006, s. 15(8)

National Heavy Vehicle Law: Heavy Vehicle National Law, chapter 7, part 5

SUMMARY

The IAP collects, among other data, information related to noncompliance with IAP conditions. The sensitive nature of the data means that data collection, retention and distribution must be subject to high standards of integrity.

Currently, auditors check service provider records under the Act. However, there is no specific offence for refusing auditor access to records.

Although there is no evidence at present that access is problematic, the central importance of data integrity to the system justifies creating a new offence.

[212] Victoria Road Safety (Vehicles) Regulations 2009 (SR No 118 of 2009), r. 244. The relevant law in New South Wales is the Road Transport (Vehicle Registration) Regulation 2007 R 71(5).

[213] One unit is currently set at $119.45, but is indexed at the start of the financial year.

Problem

The IAP is a relatively new program that allows heavy vehicles to have access, or improved access, to the road network in return for monitoring their compliance with specified access conditions. These conditions must include spatial data (i.e. an IAP-approved route) and may include temporal data (times when the vehicle is permitted to use the IAP road), speed data (the maximum speed at which the IAP vehicle may travel on the route), and any other condition of access to the IAP road (e.g. a condition about mass limits). Compliance with these conditions is electronically monitored through a combination of global positioning systems and in-vehicle sensors that transmit vehicle performance data to a third-party service provider for downloading and analysis. In instances where a vehicle is noncompliant with a condition, a noncompliance report is triggered that alerts the IAP service provider to the breach. The service provider must then alert the registering authority to the noncompliance.

Clearly, the sensitive nature of the data collected through IAP requires stringent rules around record keeping, particularly security, integrity and disposal of records. Reviewing IAP information for its completeness and reliability is the role of auditors certified by Transport Certification Australia (TCA).[214] Under s. 15(8) of the Act, service providers are required to give an IAP auditor access to any record kept by the IAP service provider. However, there is no specific offence attached to refusing access.

New South Wales has diverged from the model law to explicitly make refusal of auditor access an offence:

> A service provider must not fail to give an auditor access to any record kept by the service provider for the purposes of this Part, if required to do so by the auditor for the purposes of an intelligent access audit.[215]

The offence attracts a maximum penalty of five penalty units.

Advice received from the TCA is that auditor access has not proven to be an issue to date. There is no report of service providers obstructing or otherwise hindering auditors in the acquittal of their functions under the Act. It is the view of the TCA that 'IAP Service Providers have always been engaging and co-operative in this process'.[216]

Nonetheless, the central importance of data integrity to the sound functioning of the IAP has prompted general agreement among the states and territories that such an offence should be included in the HVNL. Accordingly, it is proposed to amend the model law consistent with the New South Wales provision. Current experience suggests that this will have no impact other than reinforcing the importance of data integrity to the system.

Objectives

The IAP is designed to improve compliance with road transport laws among heavy vehicle road users and the efficiency of road use by heavy vehicles. Authorities may be reluctant to grant access to the road network where enforcement operations are limited and noncompliance could compromise vulnerable road assets. The IAP RIS noted that 'with 598 on-road enforcement operators working in Australia, overseeing 810,000 km of road, the probability that a breach by an articulated vehicle will be detected is only 1 to 2 per cent'.[217] The IAP is one means to give comfort to authorities that conditions of access are being complied with. Benefits for operators include regulatory concessions in excess of those available to the general road user.

Although employed principally as a concession arrangement at this stage, IAP also has potential applications in road-user charging and as a punitive measure to control operators who persistently breach road transport law.

Outcome

A new offence of an IAP service provider refusing access to an auditor will be introduced in the national law.

BENEFITS

---

[214] The TCA manages the auditing and certification regime for the IAP. It also certifies, audits and cancels the certification of IAP service providers.

[215] New South Wales *Road Transport (General) Amendment (Intelligent Access Program) Act 2006*, s. 72zb (2).

[216] Advice provided by the TCA, 30 September 2010.

[217] National Transport Commission, *Intelligent Access Program (IAP) stage 1 implementation—Regulatory Impact Statement*, 2005, p. 1.

- Shores up the importance of data integrity to the IAP system.

COSTS

- None identified to date, as there is currently no evidence that auditor access is a problem.

UNKNOWNS

- The extent to which auditor access may become problematic in the future.

9.8.3 Tampering with a speed limiter

Current model law: Not applicable

Heavy Vehicle National Law: Heavy vehicle national law s.75

SUMMARY

During the course of public consultation, there was a proposal for a new offence for speed limiter tampering in the HVNL.

Current offences for speed limiters are limited to where the speed limiting device or system is not operating in accordance with a vehicle standard for such devices or systems; they do not cover wilful tampering or interference by a person.

The inclusion of such an offence met with strong support among the High Level Reference Group. The offence will be included in the national law.

Problem

Under the model AVSR, it is a requirement that particular heavy vehicles, subject to some exemptions, comply with ADR 65, which specifies devices and systems used to limit maximum road speed. The draft Heavy Vehicle (Vehicle Standards) National Regulation has incorporated this requirement.

Under the draft HVNL, for enforcement of the requirement, an authorised officer has power to issue a defect notice for a breach of a vehicle standard, which would include noncompliance with ADR 65. It is an offence for the driver and operator of the vehicle to which the defect notice applies to use the vehicle on a road in breach of the defect notice.

However, this offence is limited to where the speed limiting device or system is not operating in accordance with a vehicle standard for such devices or systems, and does not cover wilful tampering or interference by a person.

During industry consultation, the South Australian Road Transport Association proposed that a new offence for speed limiter tampering should be included in the HVNL.[218] As this proposal was made subsequent to the release of the draft RIS, it has not been subject to a comprehensive impact analysis.

There is strong support for a speed limiter tampering offence among the states and territories (Victoria and Western Australia already have a similar offence). The High Level Reference Group supported the inclusion of such an offence at the meeting held on 9 June 2011.

Objectives

Speed limiters are designed to prevent heavy vehicles from speeding and have been a component of policies such as ‘three strikes’. They are designed to promote road safety.

Outcome

The HVNL will include an offence for speed limiter tampering.

[218] The proposal was made during the Adelaide Heavy Vehicle Forum.

10. Consultation

10.1 Introduction

The draft Regulation Impact Statement (RIS) was released on 28 February 2011 and was available for public consultation until 6 May 2011. Of the 62 written submissions and one verbal submission received:[219]

- 5 were from allied industries (mainly insurance)
- 15 were from government
- 2 were from unions or volunteer associations
- 21 were from operators or drivers
- 20 were from industry peak bodies.

In addition to the formal submissions, 18 forums were held across the country to explain the intent of the proposed law and the likely impacts. The forums attracted around 780 stakeholders, and included question and answer sessions that provided attendees with direct access to the regulatory bodies that were developing the laws and establishing the regulator. Evaluation sheets were also provided at each forum to enable stakeholders to put their questions, comments and concerns in writing. The question and answer sessions, and the evaluation forms have all been considered in the development of this updated RIS and are summarised in Section 10.8.

Key stakeholders, such as the Australian Trucking Association (ATA), Australian Livestock Transporters Association, NatRoads, Australian Logistics Council (ALC), National Farmers' Federation, Australian Local Government Association and Transport Workers Union (TWU) have all been directly consulted at least once.

Factual errors and editorial corrections have been amended in the body of the RIS and are not outlined in this chapter. Issues of a purely technical nature that cannot be resolved immediately will be addressed in the forward work program.[220]

10.2 General response

The submissions reveal an overwhelming support for the concept of a National Heavy Vehicle Regulator (NHVR). Industry is enthusiastic about a 'one stop shop' and supportive of the new decision making frameworks and the potential to improve access arrangements. Local Governments have welcomed the prospect of improved technical assistance regarding pavements and bridges and all parties strongly support the ability of the regulator to chart and respond to access 'hot spots'. The potential for the regulator to take a decisive leadership role in chain of responsibility investigations is warmly embraced by virtually all stakeholders.

The enthusiasm for the regulator concept, however, comes with a caveat: the regulator must **replace rather than replicate** the existing bureaucracies. This has been variously expressed as a fear of a 'ninth regulator' and a desire for a 'regulator with teeth'. As one stakeholder put it:

> …we will only consider a National Heavy Vehicle Regulator (NHVR) to be successful if it replaces existing state and territory based regulators (for heavy vehicles). Conversely, if the NHVR ends up adding to the number of regulators with jurisdiction over heavy vehicles, its creation will be a negative step.[221]

Industry and local government, although generally supportive of the heavy vehicle law, want to see a regulator with genuine power and robust, transparent governance structures. In particular, stakeholders have called for:

- minimal and tightly controlled delegation and subdelegation powers
- public release of the service level agreements (SLAs) between the regulator, and the states and territories on the regulator's website

[219] A complete list of respondents is included as Appendix F.

[220] A summary of these is included as Appendix G.

[221] Linfox submission.

- tailored, specific training in the intent and administration of the Heavy Vehicle National Law (HVNL) to be a condition of any functions delivered under SLAs, including by the police
- the development of guidelines that interpret the HVNL to be the sole province of the regulator
- development and publication of guidelines as a matter of priority, particularly regarding access and Intelligent Access Program (IAP) conditions
- adequate funding for the regulator to ensure it can acquit its functions fully and effectively
- more information about how the regulator will set fees and how those fees will be reviewed
- a formal review process to evaluate how the regulator and the law are tracking
- advice on how legislation pertaining to Australian Government archives, freedom of information, the Ombudsman and privacy will be applied to the NHVR in a constitutionally effective manner.

There is a clear message that this 'once in a generation' opportunity deserves close attention and care, and that it is better to be flexible with the time frames rather than stick rigidly to the original deadlines.[222]

Consultation revealed great disappointment and concern that driver licensing was removed from the initial tranche of regulatory reform. There is a clear and unambiguous call from industry stakeholders for driver licensing to be a priority issue in the next wave of reform.

10.2.1 National Transport Commission response

The NHVR is clearly intended to assume **all** heavy vehicle regulatory functions, including registration, accreditation, permits and notices. The states and territories retain the road manager role and will operate as service providers for some of these functions under specifications negotiated in SLAs. The SLAs will establish the nature, volume and standard of the services to be provided in what is effectively a purchaser–provider model. This is the model that was unanimously voted for by all members of the Australian Transport Council (ATC) and that will ensure the regulator replaces rather than replicates existing authorities.

The need for further detail on how the regulator will operate and the mechanics of its relationship with the states and territories is acknowledged. These matters are currently being worked through by the project office in cooperation with the state and territory authorities. The SLAs may be available shortly and will provide more detail to interested parties.

Interpretation of the law in regards to access is clearly a function for the regulator as articulated in the 2009 RIS:

> A key role for the NHVR would be in development of guidelines on decision making in implementing particular areas of the law where industry seeks consistency across jurisdictions, such as … access to local roads.[223]

The project office is working jointly with the Industry Advisory Group (IAG) and government bodies on the development of guidelines, and access is a priority. The guidelines will explain:

- the delineation of powers between road managers and the regulator
- the difference between vehicle and road conditions
- the application process for permits and notices
- the analytical framework for infrastructure assessment
- the obligations on all parties and the available review mechanisms.

Intensive training and education on the law and its application is expected to start in late 2011.

The draft law provides for monitoring, review and reporting to the Ministerial Council on the operation of the law; see clause 582(2)(g). This will provide transparency in the operation of the regulator, including its relationship with the states and territories that provide services on its behalf.

---

[222] See submissions from Toll, NatRoad, Australian Trucking Association, and Livestock and Rural Transport Association of WA (LRTA).

[223] Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement*, May 2009, p. 74.

The minister of a participating jurisdiction may direct or request the regulator to report on specific matters relevant to the law.

The oversight provisions under which the NHVR will work (including its relationship to Australian law) are subject to ongoing development.

The ATC has not yet given an indication of the time frame for national driver licensing reforms. The new Standing Committee on Transport and Infrastructure will need to consider this issue.

10.3 Cost–benefit analysis

Most stakeholders have agreed that the proposed decision-making frameworks have the potential to deliver significant productivity benefits. However, concerns have been raised about the magnitude of the benefits cited. Specifically, stakeholders have queried:

- The relationship of the Productivity Commission's report[224] to the figures quoted in the cost benefit analysis.
- whether the full costs of implementation, transition and operation are accounted for
- whether the $800 million cited in the RIS is sufficient for road infrastructure upgrades
- the distribution of the mooted benefits across jurisdictions
- whether the additional cost to Western Australia to use the State Administrative Tribunal process was factored into the analysis
- sector-specific impacts
- how the environmental measures were derived
- whether the cost–benefit analysis complies with the COAG *best practice regulation guide for Ministerial Councils and National Standards Safety Boards* and the *Australian Government best practice regulation handbook*
- whether the RIS took account of benefits arising from future technologies such as IAP.

10.3.1 National Transport Commission response

The confusion created by the use of the Productivity Commission report figures is noted and acknowledged. The Commission's figures were intended to provide a sense of the nature and size of the problems created by regulatory fragmentation. The Commission identified four areas of reform necessary to unlock productivity: (1) replacing prescriptive regulations with performance-based regulations (2) reducing regulatory fragmentation and improving the appropriateness of regulation (3) improving existing road funding and investment decision making; and (4) the commercialisation of road provision and pricing. The Commission did not attribute the estimated gains it identified to any area of reform.

Two of these four reforms clearly dovetail with the heavy vehicle national law reform: (1) replacing prescriptive regulations with performance-based regulations; and (2) reducing regulatory fragmentation and improving the appropriateness of regulation. The Centre for International Economics (CIE) speculated that reducing regulatory fragmentation alone might be worth 25% of the gains, from which it derived the figure of $7.5b. However, it should be noted that the CIE believe this figure to be conservative.[225]

The cost benefit analysis and the RIS have been revised to make it clearer that the benefits considered possible from the heavy vehicle law reforms did *not* derive from the Productivity Commission report, but from direct consultation with industry, previous RISs and other studies. Modelling undertaken by the Productivity Commission was extrapolated in this RIS to give comfort that the size of the net benefits identified in the cost benefit analysis 'top down' and 'bottom up' studies were commensurate with those inferred from the Productivity Commission.

As the RIS makes clear, the extent of the possible productivity gains is contingent on minimal or no deviation from the law. It is difficult at this stage to accurately predict if or where deviations may occur and so the level of gains can be indicative only. To make this clearer a new sensitivity analysis has been included with a 'best bet' scenario of around $12 billion in net present value and

[224] Productivity Commission Inquiry report, *Road and rail freight infrastructure pricing,* no. 41, 22 December 2006

[225] The Centre for International Economics, *Benefit Cost Analysis: National Heavy Vehicle Regulator (NHVR) Model Law,* September 2011, p. 11

a ‘pessimistic’ scenario of around $5.6 billion in net present value. A more recent economic analysis undertaken by Nera Economic Consulting estimated benefits of around $10.8 billion, giving confidence that the analysis is in the ballpark of what is achievable.[226]

The benefits do not appear to be equally distributed across the states and territories. Nera’s analysis suggests that between 94% and 98% of the benefits will accrue in Queensland, New South Wales, Victoria and, to a lesser extent, South Australia.[227] Nonetheless, additional emphasis on the use of notices rather than permits to grant access and mutual recognition will deliver some benefits to other jurisdictions, albeit comparatively small.

The costs of external review were estimated by extrapolating known costs incurred through the Victorian administrative tribunal system to all heavy vehicle registrations in Australia, including Western Australian registrations. Therefore, although the Western Australia State Administrative Tribunal costs were not directly applied, an assumption was made that they would be roughly comparable to the Victorian Civil and Administrative Tribunal system and derived on this basis.

The costs were the best available at the time and were included in the benefit–cost ratio. As outlined in the RIS, $800 million applies to the cost of upgrading bridges to support the higher mass limits (HML) policy released in 1998. This figure was used because it was endorsed by the ATC and the funding was agreed to. It is not suggested that this represents the entirety of funding required to address infrastructure issues. The cost of disaggregating heavy vehicle law from light vehicle law was not included in the cost–benefit analysis because it was not known. It is acknowledged that there will be loss of economies of scale through the separate administration of these vehicle types.

A sector-specific analysis of benefits and costs was beyond the scope of this RIS.

The environmental measures were derived in accordance with OBPR Guidelines. The public-release RIS reflected the OBPR’s critique of an earlier draft.[228]

The RIS did not speculate on gains that might arise from the future use of IAP and other technologies, as these are highly contingent on how or where IAP may be used as per forthcoming guidelines.

10.4 High-impact items

10.4.1 Decision-making frameworks

The new decision-making frameworks proposed in the RIS have been supported by both industry and local councils. Industry is particularly supportive of a ‘one stop shop’ for permits and notices, and the extension of rights of review. Local councils welcome the pavement and bridge technical expertise that will be available to them through the regulator (although it should be noted that Main Roads Western Australia already funds assessments on behalf of local councils). All parties are enthusiastic about spotlighting access ‘hot spots’ and targeted funding to resolve them.

New South Wales objects to clauses 141–144 and wishes to retain the existing arrangements whereby the road authority cannot overrule the decision of a local council, and vehicle conditions are the purview of the road manager. The Local Government Association of South Australia agrees with the overrule provision.

As with most of the RIS submissions, stakeholder concerns derive not from the concept and intent of the framework, but with the detail. Specifically, stakeholders are looking for:

- guidelines to assist with internal review mechanisms including by what criteria decisions are to be judged and by whom
- permit/notice documentation from the regulator
- a ‘stop the clock’ provision within the law that will take account of complex applications for access and the need to undertake technical assessments
- limitations of review rights so that they do not extend to third parties

---

[226] Although it is acknowledged that the NERA figures are benefits only. NERA Economic Consulting, *Economic benefits from the establishment of the National Heavy Vehicle Regulator*, 25 May 2011, p. 7. Based on option 3 or 4, which are the options that most closely approximate the assumptions in the RIS. The difference in the figures is at least partly explained by the different discount rates (7% by CIE, 9.5% by Nera), time frame for NPV (20 years by CIE, 22 years by Nera) and benefits (operator and regulator by CIE, operator only by Nera).

[227] NERA Economic Consulting, *Economic benefits from the establishment of the National Heavy Vehicle Regulator*, 25 May 2011, p. 11.

[228] See correspondence dated 22 December 2010.

- definitional certainty around concepts like ‘amenity’, ‘road condition’ and ‘vehicle condition’
- provisions within the law or guidelines that will allow councils to seek to recover costs for undertaking assessments, or to meet the costs of any road or bridge upgrades
- information about how transitional arrangements will work
- where liability lies if the road authority overrides a decision taken by a road manager
- assurance that permits do not continue in perpetuity once granted
- assurance that fruitful relationships built up over many years will not be lost
- continued attention to local and regional issues, including the maintenance, review and potential extension of local productivity variations.

Industry would much prefer that road manager decisions be subject to external review and point to such provisions for planning applications as an indication that it is possible. The need for route compliance certificates has been questioned as an unnecessary duplication.

Local government’s cautious support for the proposal needs to be seen in the context of a general concern about the inadequacy of existing levels of funding. The need for a sustainable funding model to manage current and projected levels of demand is clear.

10.4.2 National Transport Commission response

The position of New South Wales is effectively to retain the status quo with regard to access. This will substantially reduce the productivity gains possible under the NHVR and is incompatible with the decision taken by the ATC to adopt ‘option 4’ in the 2009 Commonwealth RIS.[229] The success or failure of the regulator largely hinges on its ability to promote robust and transparent decisions regarding access, because this is where the greatest productivity benefits are to be had. Maintaining the current roles and responsibilities is likely to deliver the ‘ninth regulator’ scenario, which is of concern to industry.

In situations where the road authority overrules a decision taken by the local council and the infrastructure is subsequently damaged, the liability, if any, lies with the road authority if the only cause of the damage was the access decision. This would be a rare situation.

There is no intention under the current arrangements to allow third parties (such as competitors) into the review process. Should external review be introduced in the future, this may change as interested parties are often entitled to make submissions in external review processes.

The project office is working collaboratively with governments, local councils and the IAG on the development of access guidelines as a priority. The guidelines will provide more detail on the mechanics of the access system.

Section 134 of the HVNL states that the road manager must decide whether to grant consent within 28 days. Concerns regarding unrealistic time frames have been raised in instances where complex route assessments are required or third parties, such as utility companies, need to be consulted. The HVNL has been redrafted to allow for an extended time period of up to six months by agreement with the regulator. The law now also expressly provides for route-assessment fees to be charged where allowed by local law, and for a stay on the time frames until they have been paid.

The National Transport Commission (NTC) acknowledges the industry’s desire for full external review rights for access decisions. However, this needs to be balanced with the financial and operational reality of local councils. There is a risk that if external review is introduced with this tranche of reform, councils will take a more conservative approach to access than what currently exists.

Although recognising industry concerns about duplication and regulatory burdens, route compliance certificates continue to be available under the law as a means of giving assurance to jurisdictions that use them. The alternative may be additional IAP conditions, which would meet strong resistance from industry.

The Western Australian access system is generally acknowledged to work well by industry, local councils and the Transport and Main Roads departments. The intent is to replicate the collaborative

[229] Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulation Impact Statement,* May 2009.

and efficient Western Australian system in the rest of the country, not to subject the state to issues it has previously been free of in the interests of national consistency.

The law does not grant access in perpetuity. Each permit and notice will expire after maximum time limits of three and five years, respectively, after which operators will be required to make a new application. Should authorities wish to amend or cancel access during the life of the permit or notice, Chapter 4, Part 8, divisions 3 and 4 allow for this. All amendments or cancellations are made by the regulator either on the regulator's own initiative or by way of request by a relevant road manager. Furthermore, a provision has been drafted in the HVNL that vests power in the regulator to immediately suspend an access authority or exemption granted by permit or notice where it is considered necessary due to extreme risk.

There is no intention to compromise existing relationships. Notices, permits and corresponding instruments will continue as normal on 1 January 2013 until their expiry. The HVNL acknowledges local productivity variations, and allows for their review and extension into other jurisdictions where appropriate. A comprehensive list of local productivity variations (LPVs) is being compiled for this purpose.

The broader question of road-user charging and funding-distribution models is outside the scope of this RIS. The Australian road reform pricing project is currently developing a comprehensive charging mechanism for road users.

All operational queries and suggestions have been submitted to the project office for review and action.

10.4.3 Advanced fatigue management

There is overwhelming support for an overhaul of the advanced fatigue management (AFM) system and cautious support for the framework proposed by the expert panel in the draft RIS. However, industry wants greater detail about how risk and risk offsets will be calculated. At the time of writing, the expert panel's report was not publicly available. Further information about templates and other resources is being compiled.

The other strong message from small and large operators was for rational operational flexibility. As one operator said:

> A logbook cannot see when you are tired, but it can tell you to stop when you are not, when there is no food, no shade, no toilets and then affect whether you get unloaded without any consideration of the drivers current state of alertness.[230]

In addition to a general plea for a rational, flexible system, the submissions called for:

- 'fitness for duty' recognised as more important than hours of work in managing fatigue
- the imperative to resolve the 'counting time' issue
- a need for definitional certainty around concepts such as 'work' and 'rest'
- simpler, less costly accreditation, so that small but high-quality providers are not disadvantaged
- clarity around who will be the accrediting body
- containment of regulatory duplication with the introduction of the workplace health and safety laws
- no disadvantage for operators that have already done the 'hard yards' in gaining AFM accreditation
- more investment in rest areas that are suitably spaced and appropriate for oversize vehicles
- recognition of exemptions for fatigue management, such as in emergency situations and to respond to animal welfare situations
- clarification of Western Australia's status in the national system
- vehicles above 4.5 tonnes to be brought under fatigue laws

[230] TRUCKRIGHT submission.

- consideration of the differences between buses and freight vehicles in the management of fatigue.

Queensland suggested that the 16-hour outer limit be retained in case the implementation of the law is delayed. New South Wales has expressed doubt that any system can address the high risk posed by driving in excess of 15 hours.

It should be noted that several submissions framed AFM within the context of industrial issues and rates of pay.

10.4.4 National Transport Commission response

The model developed by the expert panel is founded on a philosophy of quality and sufficiency of rest (i.e. 'fitness for duty'), rather than on hours of work. The NTC recommends that the expert panel's report be released as soon as possible to inform industry of how the risk-offsets system is intended to work and to quell anxiety about the model's central philosophy.

'Counting time' has now been resolved with a commitment to implement the system used in New South Wales and Queensland.[231] Any residual risks arising from this change are subject to a review by the NTC.

The operational aspects of the system (including definitions such as 'work' and 'rest') are now being developed and refined by the project office in partnership with the NTC. The NTC has referred some matters to its maintenance process, including use of the vehicle for personal reasons in excess of allowable hours.

As outlined in the RIS, the new system is intended to reduce barriers to accreditation for smaller operators by eliminating the need for expensive fatigue experts by providing fatigue templates and other resources through a public library. Specific fatigue expertise will only be required in complex, 'borderline' cases. Operations that sit firmly within established levels will be approved promptly.

The accrediting body will be the NHVR.

Occupational health and safety (OH&S) laws and the HVNL are not designed to be oppositional or duplicative. OH&S laws set out 'general duties' that bind all participants in the Australian workforce. In contrast, the HVNL sets out prescriptive requirements specific to the road transport industry. The HVNL does not replace general duties, so an operator that complies with the HVNL cannot assume they have acquitted their duty under OH&S laws. This is the current situation with regards to state-based transport laws and will continue with the national law. Nothing has changed in this regard.

No disadvantage will accrue to operators that have already secured AFM accreditation. They will continue to operate as accredited operators until the expiry of their current accreditation.

The lack of sufficient rest areas and the challenges this creates for schedulers and drivers is acknowledged.[232] This is being addressed over time by state and territory governments.

Western Australia has signalled its intention to continue to regulate fatigue under its existing OH&S laws using its state-based accreditation system. The expert panel spent considerable time discussing the Western Australian framework and outcomes with local representatives. In effect, the proposed system enables work opportunities equivalent to the Western Australian system, subject to stringent risk countermeasures. Over time, it is hoped that Western Australian will transition into the national system.

The fatigue policy and accompanying RIS was developed on the assumption that heavy vehicles constitute $\geq$12 tonne vehicles.[233] To revise this figure to include 4.5-tonne vehicles would require a separate analysis, as it represents a significant shift in policy and is beyond the 'consolidation' mandate from ATC. The fatigue RIS expressly considered buses within its terms of reference, so an additional review is unnecessary.

The HVNL reform continues to be delivered on schedule so the contingency of retaining the 16-hour outer limit is probably unnecessary. New South Wales' safety concerns are acknowledged. However, the data suggest that risk amplifies after 12 hours of work rather than at New South Wales' current outer limit of 15 hours. The expert panel's model is designed to balance work and rest to levels equal to that of the risk incurred by 12 hours of work.

---

[231] Australian Transport Council, meeting 20 May 2011.

[232] Austroads, *Audit of rest areas against national guidelines*, AP-T95-08, 2008.

[233] National Transport Commission, *Heavy vehicle driver fatigue final Regulatory Impact Statement*, 2006.

The NTC has previously articulated its position that industrial and pay rates are contributing factors to fatigue and should be addressed.[234] This is currently under consideration by the Australian Government Department of Employment, Education and Workplace Relations through the Safe Rates proposal.

South Australia, New South Wales, Western Australian and the Northern Territory currently allow livestock drivers the flexibility to attend to animal welfare incidents before completing their journey. Such requirements will be managed under the HVNL through local productivity variations. The laws exempt emergency services personnel travelling to and from incidents from fatigue requirements.

10.4.5 Spray suppression

The proposal to remove spray suppression from vehicles has been supported by all but two respondents—the New South Wales Government and the NSW Farmers Association. Association members believe that spray suppression increases safety for trailing motorists in wet conditions and therefore support the mutual recognition option. New South Wales believes that insufficient evidence has been provided to remove the British Standards requirement and supports retention of the model law.

10.4.6 National Transport Commission response

The evidence is overwhelming that spray suppression, built to British Standards, does not materially affect visibility and on-road safety. This evidence, including three United States Congress investigations, is summarised in Appendix E.

This is not to say that it is impossible to design systems that **do** suppress spray. New South Wales has provided evidence in support of such systems.[235] However, these are built to standards other than British Standards.[236]

10.4.7 Vehicle inspections

There have been no dissenting voices to the development of a national approach to heavy vehicle inspections with mutual recognition operating in the interim. Industry strongly believes that the national system should be in the first tranche of reform, with particular attention given to written-off and modified vehicles.

The ATA has argued that TruckSafe-accredited vehicles should be exempted from annual inspection requirements on the grounds that participating vehicles achieve strong safety outcomes equal to or better than the National Heavy Vehicle Accreditation Scheme (NHVAS).

10.4.8 National Transport Commission response

The NTC discussed the recognition of nongovernment accreditation schemes, such as TruckSafe, with jurisdictions. Such a wholesale policy change requires careful consideration before it can be included in the HVNL, so the matter has been referred to the maintenance program.

A decision is required as to who will manage the research and development of the national inspection system.

10.4.9 Restricted vehicle access permits—the Queensland model

Industry and jurisdictions have been generally supportive of the proposed shift to the Queensland model whereby anybody may apply for a restricted vehicle access permit.

Two jurisdictions have signalled their wish to retain the model law. Western Australia objects on two grounds. Firstly, the arrangement is a retrograde step and is better managed through a national notice and permit network. Secondly, if the practice of using vehicle registration details on the permit is discontinued, there will be compliance and system-cost implications. New South Wales believes that farmers are not in a position to judge the compliance or otherwise of the vehicles hired for the transport task. Further, based on New South Wales experience, the estimated time frames cited in the RIS appear to be 'grossly overstated'.

---

[234] National Transport Commission, with The Hon. Lance Wright QC and Professor Michael Quinlan, *Safe payments: addressing the underlying causes of unsafe practices in the road transport industry*, October 2008.

[235] See for example Grover CJ, *An evaluation of the SprayDown HGV spray suppression equipment*, unpublished project report.

[236] See European Union directive 91/226/EEC.

10.4.10 National Transport Commission response

Over the longer term and as 'real-time' technology becomes available, the national notice and permit network envisaged by Western Australia will become a reality. In the interim, the provisions outlined in the law remain relevant.

Farmers may well have difficulty in judging compliant from noncompliant vehicles. In such cases, the farmer can manage the risk by having the operator approach the NHVR for a permit to acquit the transport task. The regulator will be able to provide advice to farmers (and other parties) on compliant vehicles.

The figures on which time frames were based were provided directly by Queensland based on their time-on-task estimates.

10.4.11 New offences

Industry strongly opposes the creation of new sanctions beyond cancellation and suspension for NHVAS offences as contrary to the original policy intent. According to industry, the appropriate response to a noncompliance is an audit, and—if the issue is not rectified—suspension or cancellation from the scheme. There is a view that the new offence will not materially alter compliance levels.

There is general agreement with the proposed new offence for the removal of a defect notice, subject to the law acknowledging that sometimes notices will legitimately need to be removed—for example, to repair a windscreen.

Transport Certification Australia argues that the proposed new offence of refusing access to an IAP auditor is redundant, as auditors are no longer used. The process now occurs in-house.

The South Australian Road Transport Association proposed that a new offence for speed-limiter tampering should be included in the HVNL.[237] Current offences for speed-limiter tampering are restricted to where the speed-limiting device or system is not operating in accordance with a vehicle standard for such devices or systems, and does not cover wilful tampering or interference by a person.

10.4.12 National Transport Commission response

The proposed new NHVAS offence does appear to contradict the original policy intent that accredited operators should not be subject to penalties over and above those for other road users.[238] Accordingly, the penalty has been removed from the law and the RIS.

The HVNL has been amended to allow removal of a defect notice in some circumstances such as for repairs.

While acknowledging the TCA's current practice, it is proposed to retain the offence in relation to auditors to accommodate potential changes in future service-delivery models.

There is strong support for a speed-limiter tampering offence among the states and territories (Victoria and Western Australia already have a similar offence), and the High Level Reference Group (HLRG) supported the inclusion of such an offence at the meeting held 9 June 2011.

Section 73 of the HVNL has been amended to include the new offence of tampering with a speed limiter.

10.4.13 Registration sanctions for unpaid fines

Industry has strongly objected to the continuing use of registration sanctions for unpaid fines that do not relate to the operation of the vehicle, regardless of who administers the sanction. As one stakeholder stated:

> Heavy vehicles are tools of trade for transport operators and as such they should not be subjected to potential registration sanctions for matters unrelated to the use of the heavy vehicle. A registration sanction and loss of earnings is [a] harsh penalty for non-payment of a fine related to pet registration. Administrative ease is not a sound reasoning to expose

[237] The proposal was made during the Adelaide Heavy Vehicle Forum.

[238] National Road Transport Commission, *Alternative compliance discussion paper*, May 1994, p. 12.

operators to potentially harsh commercial losses and unreasonable penalties for matter unrelated to the business of operating trucks.[239]

Jurisdictions that currently do not impose registration sanctions for unpaid fines have expressed concerns that the HVNL will compel them to do so.

10.4.14 National Transport Commission response

The NTC has some sympathy with industry objections to the use of registration sanctions for unpaid fines that are unrelated to the use of the vehicle. It is difficult to justify the fines on road safety, efficiency or productivity grounds. Nonetheless, state and territory representatives have indicated that governments are highly unlikely to support the decoupling of fine defaulting from registration sanctions. Existing government policies and laws are outside the scope of this project. The provision is limited to those states and territories that currently use it.

10.5 Medium-impact items

10.5.1 Higher mass limits

The expectation that jurisdictions will derogate to preserve restrictions lower than those set in the national law has aroused industry anger and frustration. There is considerable resentment that the agreed higher mass limits (HML) policy has not been honoured and particular ire around the use of IAP as an access condition. There is a view that the application of IAP to HML vehicles should be subject to a separate RIS.

The failure to gain agreement on HML has diluted what could otherwise be vocal, robust championing of the HVNL by industry.

There is a general view that Ministerial Guidelines are required about where IAP may be used as a road condition. There is also strong support for a derogation review process that subjects state-based variations to public scrutiny and even penalty.

10.5.2 National Transport Commission response

The NTC acknowledges the depth of feeling among operators on this issue, but was unable to secure state and territory commitment to the model law provisions. The project office and the NTC will continue to work on driving HML consistency across the country.

Derogations will not be subject to a sunset clause in the HVNL as this will be a matter for the jurisdictions.

ATC-approved guidelines are urgently required on the application of IAP as a road condition and are being developed by the project office in consultation with industry. The guidelines will be subject to annual reporting, which will provide ongoing scrutiny to HML access.

HML was one of the applications considered in the cost–benefit analysis conducted in the IAP RIS, so the need for a separate RIS is questionable.[240] However, it is acknowledged that IAP was not considered in the RIS for *Increased mass limits for road-friendly heavy vehicles* (1998) or *Mass concessions for accredited heavy vehicles* (2006).

Western Australia will continue to offer HML above those set in the model law through local productivity variations.

10.5.3 Work diary (100-km radius)

The expert panel's recommendation that a 100-km radius apply for work diaries has been largely supported, though with some disquiet. Western Australia has indicated that that it does not support the rule, but since it will continue to administer fatigue under its OH&S law, this point is immaterial. Like Western Australia, Tasmania believes fatigue to be a time-on-task issue and, for this reason, does not support the proposed radius and will derogate to retain its 0-km radius rule. Queensland has indicated it does not favour the rule but will support it in the national interest.

There is general agreement that some exemptions need to be built into the law to account for emergency services and other special cases.

---

[239] Australian Truckers Association, submission, p. 24.

[240] National Transport Commission, *Intelligent Access Program (IAP) Stage 1 implementation: Regulatory Impact Statement*, 2005.

10.5.4 National Transport Commission response

The regulator is vested with wide discretionary power to grant a work diary exemption by notice similar to the power that currently exists for granting exemptions with respect to work and rest hours. Emergency and other contingencies are therefore accounted for.

10.5.5 Short-rest and split-rest defences

There was approval across industry and jurisdictions for the short-rest and split-rest defences as set out in the model law to apply.

However, industry takes the view that short-rest and split-rest defences should be 'as of right', especially given the acknowledged shortage of rest areas across the country. NatRoad believes that the defence should be available to drivers who are within thirty minutes of their home base. Industry seeks guidelines that clarify the circumstances in which the defence is available.

10.5.6 National Transport Commission response

The defence is intended to be used in exceptional circumstances where a driver is genuinely unable to take their scheduled break because, for example, rest stops are unavailable. Extending the defence 'as of right' might result in their incorporation into schedules and thereby compromise the intent of the fatigue laws with regards to safety. The existing law allows for circumstances of hardship to be addressed without encouraging unsafe practices.

The use of the defence within thirty minutes of a home base has been referred to the maintenance program.

10.5.7 Codes of practice

Highly divergent views are apparent in regards to the registration of codes of practice and their use as prima facie evidence that reasonable steps have been taken. On the one hand, the ALC believes that compliance with codes should be taken as a discharge of relevant safety duties. On the other, the TWU and New South Wales believe that deeming compliance with a general duty to have been satisfied if a code of practice is complied with is problematic. Both parties support the Model Work Health and Safety example, whereby development of the codes is the joint responsibility of industry, unions and regulators.

Western Australia does not, in principle, support the registration of codes but will support them in the interest of progressing the HVNL.

10.5.8 National Transport Commission response

The retention of the model law is recommended as the appropriate balance between the positions. Under the model law, the burden of proof rests with the prosecution once compliance with a code has been proven, giving some comfort to complying operators. General duties will still apply under the Model Work Health and Safety laws, meaning that an operator cannot assume that compliance with the HVNL represents the entirety of their OH&S obligations.

The NTC acknowledges that greater consistency between transport and OH&S law needs to be achieved. This should be done as part of the maintenance process.

10.5.9 Three strikes policy

There is general agreement that the three strikes policy should not be included in the national law, though New South Wales has signalled its intent to retain three strikes.

However, industry is concerned that removing the three strikes policy means it will no longer be advised when its drivers breach the law, thereby compromising its capacity to acquit its obligations under chain of responsibility (CoR). It has been suggested that the Crown be made a party to CoR laws and thereby bound to inform operators of driver breaches of the national law.

10.5.10 National Transport Commission response

A proposal was put to the HLRG to provide for operators to be informed of HVNL breaches by operators. The provision was limited in that it applied solely to the HVNL and therefore did not include state-based speeding and traffic laws. The HLRG did not support the proposal because of privacy concerns and the view that its limited application would not meet industry needs. Further work will be done to identify ways for operators to be better informed about driver breaches.

10.5.11 Silage trailers

The approach to silage trailers proposed in the law has been widely supported with the caveat that the definition must be tightened to prevent agricultural vehicles operating 'like trucks', but avoiding registration and access charges.

10.5.12 National Transport Commission response

The task of transporting goods is not an 'agricultural task'. The definition of agricultural task limits the use of agricultural vehicles to tasks carried out in agriculture.

10.5.13 Administration fees

There is general disquiet at the idea that the regulator can review and determine administration fees on the grounds of conflict of interest. The HVNL must also be sufficiently flexible to allow for third-party providers of services (e.g. where vehicle inspections are outsourced).

New South Wales has suggested that committing to cost-recovery principles might unnecessarily limit the regulator's ability to set charges.

The formula for fee distribution is of concern to the Western Australia Local Government Association because Main Roads Western Australia funds council activities such as route assessments.

10.5.14 National Transport Commission response

The potential for a conflict of interest is acknowledged. The HVNL has been amended to remove the power to set fees from the NHVR. Fees will be prescribed by regulation.

The law already provides for services provided by third parties to be subject to fees.

Cost-recovery principles are considered the most appropriate model for the regulator. Taxes and charges would be deeply unpopular and could derail industry support for the national approach.

The revenue distribution model is an operational issue that will be settled in the Intergovernmental Agreement.

10.5.15 Regulating driver fatigue through occupational health and safety law

As anticipated, Western Australia has signalled that it will be a non-participant in the Heavy Vehicle Driver Fatigue Laws and will retain the Western Australian Heavy Vehicle Accreditation Scheme. This does not appear to be of great concern to industry, although NatRoad expressed a preference for a national system of driver fatigue law.

New South Wales believes that the expert panel's report did not accurately disclose substantive differences between the heavy vehicle model laws and the current Western Australian OH&S regulations.

The TWU believes that the HVNL should be redrafted to 'interact seamlessly' with the Model Work Health and Safety Bill (MWHS). This includes revising some of the duties to rebalance the burden of liability, adopting the concept of 'reasonably practicable' rather than reasonable steps, removing the mental element for consignees, aligning penalties with those in the MWHS bill, and revising risk management in standard hours and basic fatigue management.

Other stakeholders have expressed concern about duplication or contradictions between national OH&S laws and the HVNL.

10.5.16 National Transport Commission response

The expert panel spent considerable time discussing the Western Australian framework and outcomes with local representatives. Western Australia appears satisfied that the expert panel accurately described the Western Australian system. In effect, the proposed AFM system enables work opportunities equivalent to the Western Australian system, subject to stringent risk countermeasures. Given this, over time it is hoped that Western Australia may transition into the national system.

The changes proposed by the TWU represent a wholesale revision of the HVNL that goes well beyond the 'consolidation' mandate. They cannot reasonably be incorporated in the current process. However, it is acknowledged that the issues raised by the TWU are worthy of further investigation and will be incorporated into the NTC's work program through a review of the relationship of general duties to the HVNL.

10.5.17 Returning seized goods

The proposal to include a provision in the national law for the return of seized goods has been welcomed. However, questions have been raised about the time frame for the return of goods (NatRoad believes the two-year provision is excessive), the basis on which 'reasonable compensation' will be determined and the process for return of goods.

10.5.18 National Transport Commission response

The HVNL requires that goods be returned once no longer required for the purposes of investigation or after two years. It is anticipated that most goods would be returned before the two-year point. The manner in which goods are returned will be determined between the operator and the seizing authority. The general legal principles relevant to damages and compensation for loss of trade will apply.

10.5.19 Pilot and escort vehicles

The recommendation for the development of a national pilot and escort vehicle accreditation program with mutual recognition arrangements in the interim has met with no dissent. New South Wales has signalled that it is in the process of developing an accreditation scheme and has concerns about the recognition of the new scheme.

10.5.20 National Transport Commission response

The project plan for the development of a nationally consistent approach to pilot and escort vehicles has been approved by Austroads with Western Australia as the project-managing jurisdiction. New South Wales' proposed new accreditation scheme would be considered as part of this process.

10.5.21 Custom plates

The proposals for custom plates outlined in the RIS have met with no objections. Toll has called for individual state custom plate systems to eventually be phased-out.

10.5.22 National Transport Commission response

The HVNL does not allow the regulator to issue custom plates. As outlined in the RIS, custom plates will continue to be issued by the state and territory authority.

10.5.23 Obligations to carry accreditation documents/driver not required to carry documents

No objections have been raised to the provisions proposed for these items.

However, several stakeholders have argued that the national law should move away from the requirement for drivers to carry accreditation, notices or permits in the vehicle.

10.5.24 National Transport Commission response

The long-term vision is to phase-out the requirement to carry documentation as 'real-time' data becomes available for enforcement officers, drivers and regulators. In the interim, the provisions outlined in the law remain relevant.

10.6 Issues not directly referenced in the Regulation Impact Statement

Stakeholders took the opportunity to raise a number of issues relevant to the HVNL albeit not directly referenced in the RIS. These issues are summarised below.

10.6.1 Safety issues

New South Wales is concerned that safety has not been given adequate weight in the law and the functions of the regulator.

10.6.2 National Transport Commission response

Safety is considered in the object of the law: 'preventing or minimising risk to public safety arising from the operation of heavy vehicles'.[241]. Public safety is central to the architecture of the law and repeatedly referenced in provisions about powers given to the regulator; far more so than in the current New South Wales law.

[241] Heavy Vehicle National Law Bill 2011, (3b).

When regarding annual vehicle inspections and AFM, the expert panel '… adopted safety as its primary yardstick and therefore has evaluated the evidence and applied its expertise using a risk based approach'.[242]

The most contemporary empirical evidence—including about safety—was used in the RIS to frame the discussion around vehicle inspection, spray suppression and fatigue. The opportunity to present evidence that presented a contrary view on safety was present throughout the process. The NTC is confident that safety considerations were given appropriate weight in framing all recommendations.

10.6.3 Enforcement issues

Stakeholders expressed strong criticism of inconsistent application of the law by police forces across and within jurisdictions. Several suggestions were made about how this could be resolved including bringing police under the HVNL umbrella, vesting the regulator with the power to quash infringement notices issued by an authorised officer, appointing in-house specialist training units for authorised officers, and implementing interstate exchange programs.

Jurisdictions expressed concerns that the powers vested in authorised officers are insufficient for the police.

Industry believes that to promote equity and remove cost barriers in defending alleged breaches, a person charged under the HVNL should be free to move a court appearance to a local court in their garaging jurisdiction.

10.6.4 National Transport Commission response

Evidence clearly shows that inconsistent enforcement practices create frustration and confusion for operators and drivers. Nonetheless, it is unrealistic to expect that police powers be absorbed within the HVNL. The police remain responsible for enforcing all traffic laws, not simply those relevant to heavy vehicles or captured within the HVNL. Therefore, police powers are extraneous to the 'authorised officer' provisions of the HVNL. The police will be captured under each jurisdiction's state-based application act.

The NHVR will have the power to quash infringement notices issued by authorised officers, but not by police.

The problem of inconsistency in enforcement will be managed by the regulator through SLAs with the states and territories in the first instance, though it is likely that the NHVR will have a specialist, in-house CoR team. Targeted and intensive education and training will be required to shift enforcement cultures and promote consistency. This will take time and resourcing.

Although the NTC acknowledges the inconvenience to operators who are seeking to defend interstate charges, this reflects the reality of the federalist legal system and is unlikely to change in the near future.

10.6.5 Federal Interstate Registration Scheme

Industry strongly argues that if the Federal Interstate Registration Scheme (FIRS) is discontinued, operators that currently operate within it must not be disadvantaged. Presently, FIRS vehicles operate subject only to route and time-of-day conditions. Under the proposed national law, B-doubles may be subject to additional conditions. Industry has signalled that if this is not amended to be consistent with current FIRS conditions, then they will agitate strongly for the continuance of FIRS leading to the absurd situation of a 'national system for the national system'.

10.6.6 National Transport Commission response

Class 2 notices will be subject to route and time-of-day conditions, making them comparable to the current FIRS arrangements. However, Class 2 permits will remain subject to all any conditions required by the regulator or the road manager.

10.6.7 Chain of responsibility

Stakeholders have generally expressed enthusiasm for the potential of the regulator to drive national approaches to CoR, and have called for the regulator's powers and resourcing to be appropriate for this responsibility. (However, the NSW Farmers Association voiced its strong opposition to the concept of CoR.)

[242] Independent Expert Panel on Heavy Vehicle Policy, April 2011, p. 2.

There is a view among some organisations that CoR remains focused on driver offences.

The ATA and TWU are both of the view that the Crown should be bound by all of the HVNL capacities and subject to the penalties faced by other parties in the chain.

Comcare has proposed that it could play a role in national CoR investigations.

New South Wales is concerned that differences in the nature and extent of obligations for mass, dimension and load restraint and speeding, and fatigue make it difficult for the various CoR parties to understand and comply with their legal obligations.

10.6.8 National Transport Commission response

The potential of the regulator to drive CoR is currently being explored through the compliance and enforcement workstream. Although complete details are not yet available, it is likely that the regulator will have a dedicated CoR team empowered to investigate alleged breaches across borders. It will be in a position to generate, collate and analyse intelligence about supply chains and across borders, which will extend the investigative focus beyond drivers to other parties. Additionally, the NTC is developing a compliance and enforcement strategy that incorporates CoR and considers the feedback on enforcement practices generated through the RIS process.

Although the differences in obligations across offences are acknowledged, they appear to have been managed without difficulty in Victoria, Queensland and South Australia.

The Crown will be bound by the law, including in criminal matters.

10.6.9 Compulsory third-party insurance

Insurers and state governments have raised many concerns about how compulsory third-party (CTP) insurance will work under the national law, including how insurers will be advised of changes of address, how (or if) CTP insurance can be collected for unregistered vehicles and how stamp duty can be affected.

10.6.10 National Transport Commission response

Under the HVNL exposure draft, a registered operator may permanently move their heavy vehicle to another jurisdiction but not be required by the heavy vehicle law to change their CTP insurance arrangements. In light of concerns raised by governments, a proposal was put to the HLRG that when a registered operator moves interstate, they must provide evidence of having obtained CTP insurance cover in the new jurisdiction. If that evidence is not provided, then the regulator must record the change of garage address, but also warn the registered operator that the vehicle's registration will be suspended and then cancelled if the evidence is not provided within a reasonable time. Existing provisions about the suspension of cancellation of registration may be used for this purpose. The proposal was accepted by the HLRG and appears in the redrafted law.

The law will allow for stamp duty to be charged if local law permits it. Systems and stamp duty issues are subject to ongoing investigation.

10.6.11 Local productivity variation

Industry and government stakeholders evince a strong commitment to the continuance of LPVs, such as the Victorian Primary Producer Registration and Livestock Loading Scheme. However, concerns have been raised about what exactly constitutes a LPV, the transparency of process in their creation, review and extension to other jurisdictions, and the potential for mutual recognition.

10.6.12 National Transport Commission response

The law is deliberately non-specific in relation to LPV to ensure sufficient flexibility in its application. In general terms, a LPV is any arrangement that enables more productive use of the road network than allowed in law. A comprehensive list of LPV has been sought from the states and territories, and will be maintained by the project office.

Future LPV will need to be justified on safety, productivity and efficiency grounds, and may be applied beyond the region for which they are originally intended. In this way, LPVs that provide regional benefits can be considered for broader implementation. This is likely to be particularly useful in cross-border regions. It may also be that, over time, the conditions that justified the creation of a LPV no longer apply, and the concession should be revoked or altered. Guidelines will be published on how analysis, review and extension is best done.

There is no provision under the HVNL to allow automatic mutual recognition of a state-based LPV when travelling into another jurisdiction. The sheer diversity in LPVs and the specificity of conditions under which they are applied makes general mutual recognition too risky. The consent of the relevant road manager will still be required when crossing borders, but the operator will have the advantage of the regulator coordinating this on their behalf. Over time, there will be scope for LPVs to be extended.

10.6.13 Intelligent Access Program

The TCA has pointed out a difference between the model law and the proposed national law in regards to the retention of noncompliance reports (NCRs). The model law was silent on the length of time that NCRs needed to be retained; the national law suggests four years.

10.6.14 National Transport Commission response

Section 31 of the model law requires TCA to retain NCRs for at least four years and section 18 of the model law requires IAP service providers to keep NCRs for at least four years. Sections 367 and 384 of the HVNL retain these obligations.

10.6.15 Specific plates

Stakeholders have called for a national approach to heavy vehicle modification plates and dealer plates.

10.6.16 National Transport Commission response

Specific rules with respect to the recognition and approval of heavy vehicle modifications do not exist in any of the model laws and therefore did not appear on the draft national law. A proposal to amend the HVNL to provide for the recognition and approval of heavy vehicle modifications was accepted by the HLRG.

Dealer plates (or trade plates) are being retained in state legislation. They do not appear to be greatly used for interstate travelling and have a limited use, which makes the establishment of a national trade plate system unfeasible.

10.7 Issues considered out of scope for this Regulation Impact Statement

Several issues were raised by stakeholders that are beyond the scope of this RIS. As noted earlier, there is strong support for a national system of driver licensing and disappointment that this reform was dropped from the original terms of reference. Similarly, some respondents to the AFM proposal argue that industrial issues and rates of pay are the key drivers of unsafe practices. This is being considered through the Australian Government Department of Employment, Education and Workplace Relations' Safe Rates project.

Other issues raised by stakeholders of relevance to the road freight task, but beyond the purview of the HVNL include:

- a national system of accreditation for buses
- the need for a regional infrastructure fund in New South Wales
- the potential for conflict of interest where the road authority is both infrastructure provider, road safety monitor and service provider
- calculation of A-trailer registration fees
- divergent approaches to animal welfare issues across borders
- national standards for road surfaces.

10.8 Feedback from the industry forums

The NTC has completed a comprehensive consultation process, which included 18 information forums at the following locations around Australia:

- Melbourne (two forums)
- Hobart
- Mount Gambier
- Port Hedland
- Perth
- Bunbury

- Albury–Wodonga
- Adelaide
- Canberra
- Darwin
- Alice Springs
- Sydney (two forums)
- Dubbo
- Rockhampton
- Townsville
- Brisbane.

The following is a summary of the major concerns raised by stakeholders at these forums, and the responses.[243]

10.8.1 Extra layer of bureaucracy to slow down the access decisions

Participants expressed concerns that the NHVR represents an additional tier of authority that industry will need to seek approval from to gain access to the road network. Of particular concern was the negative impact the NHVR might have on the access decision-making time lines.

Clarification was also sought as to how the NHVR would improve interactions with third parties such as other authorities (electricity, water, rail, etc.) and land councils to address existing delays in the access decision-making process.

10.8.2 National Transport Commission response

The new NHVR will not create an additional layer in the access decision-making process. Instead, it will assume the function of granting access to heavy vehicles, which is currently the function of road authorities around the country. The proposed structure splits the access decision-making framework into two distinct areas: vehicle conditions and road management. The NHVR will be responsible for decisions regarding vehicle safety, vehicles using the roads, and permits and notices issuance on this basis. The state road authorities will continue to be responsible for managing and maintaining the road network.

In terms of the NHVR's impact on access decision time lines, the proposed legislation includes time frames in which decisions must be made. These are maximum times to allow for some flexibility and to prevent the situation of access being denied because insufficient time has been given to assess an application. However, the inclusion of decision time frames enables operators to escalate their application and seek a review if they have not received a decision within the stated time.

The NHVR will provide a mechanism for the review of access decisions. Therefore, if an operator has not received a response to their application, or is unhappy with the outcome, they can request that the NHVR review the decision, or seek reasons why access is being denied. This is a new level of transparency within the access decision framework and is expected to lead to improved decision-making processes.

Additionally, it is anticipated that the NHVR will build on existing good practices so where there is a quick turnaround on access decisions, this will remain the case. The NHVR will initially focus on areas where access decisions have been considerably delayed and will look at how good practice from other areas can be used to address these delays. The proposed legislation also has features such as deemed future consent for access to routes by similar vehicles, based on the principle of replacing individual permits with notices, where possible. The implementation of national best practice and streamlined processes are eventually expected to reduce decision-making time frames.

The NHVR will also be required to report publically on its performance against key performance indicators, including how quickly access decisions are being made.

It should be noted that the HVNL does not extend decision time frames to third parties such as electricity, water and rail authorities, or land councils (unless they are defined as road managers for the purposes of the HVNL).[244] It is anticipated that once the HVNL is in place, one of its priorities will be to focus on areas where decisions are being delayed by third parties and to use the most effective means to get influence in the particular circumstances.

[243] It should be noted that advice/information provided was the best available at the time and may have changed through the drafting process.

[244] This has subsequently been amended through the drafting process.

10.8.3 Local productivity variations and transitional arrangements

Participants sought clarification regarding how current LPVs would operate under the national scheme and what the implications would be for national consistency.

10.8.4 National Transport Commission response

One of the key principles of the model legislation is to facilitate productivity in the road transport industry while maintaining safety outcomes. As a result, ATC agreed to keep local variations to the model legislation where they increased productivity, based on the assumption that these variations had already been assessed by state road authorities as meeting the necessary safety requirements. To this end, the national partnership arrangement for the consolidation of the model laws includes a broad definition of a LPV as a variation that improves productivity and does not compromise safety requirements.

It should be noted, however, that these local variations will not be directly incorporated into the legislation, as this is considered inflexible and may restrict productivity gains in the future. Therefore, the proposed legislation provides for LPVs to be retained through exemption powers, permits and notices to ensure maximum flexibility. In terms of the transitional arrangements, existing jurisdictional instruments enabling the productivity variations will initially be deemed valid under the national scheme. These instruments will be reissued by the NHVR once they expire. For those instruments without an expiry date, the proposed legislation will give these instruments a sunset period of 3–5 years, at which time they will need to be re-issued by the NHVR.

As part of the consolidation process, the NVHR project office is establishing a register of productivity variations to ensure that they are all captured under the national scheme. To help improve national consistency, it is anticipated that, once the list of variations has been compiled, the NHVR will look at areas where these variations might be expanded, particularly in situations where state borders split areas that would be better considered as a region. The expansion of productivity variations will, however, be dependent on the nature of the variation and any infrastructure constraints that exist in the region.

10.8.5 Ability to address infrastructure bottlenecks

Many participants raised questions regarding the NHVR's role in road infrastructure investment and addressing access bottlenecks, such as bridges and some local roads.

10.8.6 National Transport Commission response

The key function of the NHVR will be the administration of the national legislation and issuing the associated legislative instruments. It will not have a direct role in the distribution of revenue raised through heavy vehicle charges. However, the NHVR will have the benefit of centralised data on access requests and will develop a better understanding of where and why particular local councils are denying access. In situations where an individual council is denying access because it does not have the necessary resources to undertake—for example, a bridge assessment—the NHVR will be in the position to provide the council with support. Where access is being denied because of inadequate infrastructure standards, it is anticipated the NHVR will liaise with other national bodies such as Infrastructure Australia to highlight areas requiring critical investment. The NHVR will also be in the position to support local government to develop business cases for accessing other available funding.

10.8.7 Inconsistency in enforcement

Workshop participants expressed frustration at the inconsistent approach to enforcement across the jurisdictions, and between transport officers and police. There was particular concern expressed about accredited operators being subject to the same enforcement practices as non-accredited operators, contrary to the policy intent.

10.8.8 National Transport Commission response

Inconsistency in enforcement practices is largely influenced by the enforcement culture within the jurisdiction, rather than variations in legislation. However, it is anticipated the introduction of the NHVR will begin to address these cultural differences. Under the proposed national laws, while authorised officers may be employees of the jurisdictional road authority, their authority will come directly from the NHVR. As such, they will be asked to work to a national standard, which will be mandated through SLAs with the NHVR branch within each jurisdiction. This should see improvements in enforcement consistency over time.

Additionally, the NHVR will provide a complaint mechanism whereby industry can register a complaint if they feel the national standard or the national policy approach is not being carried out by transport officers in the way the NHVR requires it. As these officers will be operating under the authority of the NHVR, their decision can be directly overruled by the NHVR when it is considered necessary.[245]

Based on feedback from participants, a key priority for the NHVR will also be to improve training and education for enforcement officers across Australia. It is expected that having a national standard will help to facilitate this. Additionally, the issue of how to differentiate between an accredited operator's vehicles and those of a non-accredited operator for enforcement purposes has been earmarked for further work by the project office.

The NHVR will be working to improve CoR investigations. It is acknowledged that drivers and operators often take the brunt of enforcement practices because they are the most visible party in the chain. However, with the NHVR, more effort will be put into investigating responsibilities across the whole supply chain. One of the key benefits of the NHVR is that it has cross-border authority to target those links in the supply chain that are causing breaches of transport. One set of laws will apply regardless of where the supply chain transactions occur, and it is expected that the NHVR will set guidelines for how prosecutions, enforcements and investigations into CoR are undertaken. The NHVR will also have a central intelligence function, receiving data from all the sources around Australia to analyse where CoR issues and trends are emerging on a national basis so that investigations can be better targeted.

It is also anticipated that the NHVR will be more proactive in educating all parties on how CoR works, providing more information about what their obligations are and what they need to do, depending on where they are in the supply chain. This, combined with improved investigation processes working consistently across the country, will help to provide better guidance to all parties in the supply chain in relation to how CoR should work.

It should be noted that the police will continue to play a role in the enforcement process and the NHVR will not have direct control over how they enforce transport law. The project office will continue to work with police around the country so that when the regulator is in place, there are agreements that will set out how the police work with the regulator to enforce transport laws in a consistent manner. In terms of the way police interpret the law, one of the key tasks for the NHVR will be to extend its training and education to the police to improve consistency across the board.

10.8.9 The Intelligent Access Program as an access requirement

Participants questioned the role of the IAP within the broader context of heavy vehicle regulation and how the NHVR would address current jurisdictional inconsistencies in applying the IAP as a condition of access, particularly under the HML scheme.

10.8.10 National Transport Commission response

IAP legislation has been included in the national legislation as part of the consolidation of model legislation developed by the NTC. This part of the legislation sets the standards that allows the IAP to be used. It does not set the IAP as an access condition for the HML scheme. However, road authorities will still be able to impose the IAP as a road-access condition where it is considered necessary to protect and ensure the safe use of infrastructure. It should be noted, however, that the general principle for imposing access conditions is based on an assessment of risk. Therefore, under the national scheme, the expectation is that road managers will provide further information on the safety risks that are being managed if they impose the IAP as a condition of access. This will also apply to other access conditions imposed by road managers.

10.8.11 Fatigue

Questions were raised regarding whether Western Australia would sign up to the model fatigue provisions and, if not, how the NHVR would manage the inconsistencies for drivers operating across the Western Australian border. Participants also sought clarification regarding the interaction between fatigue laws, and the national work health and safety legislation currently being developed.

Participants also made comments about animal welfare provisions in relation to fatigue management requirements. It should be noted that animal welfare provisions are not included in the

[245] This does not apply to state police officers, whose powers are separate to those of transport officers or 'authorised officers' under the law.

HVNL. Animal welfare is covered in jurisdictional legislation, and it is the responsibility of operators who transport livestock to ensure they understand and meet these requirements.

10.8.12 National Transport Commission response

At this stage, Western Australia has indicated that they intend to keep their current approach of managing fatigue through OH&S. To minimise the impact on drivers who operate across the Western Australian border, the draft national law retains current provisions that address the situation of crossing into a jurisdiction where the model fatigue laws are not in place. For fatigue management accreditation, this means mutual recognition between the Western Australian scheme and the national scheme, so operators only need to be accredited once. In terms of work diaries, drivers operating across the Western Australian border will still be required to maintain a separate work diary for the time they travel in Western Australia over a seven-day period. The NTC anticipates that with the proposed changes to AFM, the differences between Western Australia's approach and the HVNL will be minimised.

In relation to the National Work Health and Safety review currently being undertaken, the NTC has not seen the final outcome of this process, although has been in regular contact with Safe Work Australia. It is anticipated the fatigue management requirements under the HVNL will fit within the broader OH&S umbrella. It should be noted, however, that the HVNL preserves the provision that a person meeting their obligations under fatigue management is not automatically deemed to have met their obligations under OH&S legislation.

10.8.13 Offences that attract demerit point losses

Some participants expressed concern that heavy vehicle drivers travel many more kilometres than the average driver, yet have the same number of demerit points. In this context, participants questioned whether offences under the HVNL should have a loss of demerit points attached.

10.8.14 National Transport Commission response

In particular circumstances, breaches of the work/rest hour requirement will attract demerit points. These breaches have been categorised into four types: minor, substantial, severe and critical. There are a series of tables in the proposed law that are based on the existing model legislation that specify when a breach moves from minor to substantial, substantial to severe, and then up to critical.

A critical breach would receive a four demerit point penalty if the person was found guilty by a court. The next level down is a severe breach, which would receive a three demerit point penalty under the law, if the person was found guilty by a court. This is considered an appropriate penalty for the severity of the offence. Other offences do not have demerit point penalties. Currently, some jurisdictions have attached demerit point penalties to more minor offences, such as not completing a work diary correctly. It is not proposed to incorporate these into the national law.

10.8.15 Inconsistencies in penalty levels

Participants raised the question as to whether the NHVR would be addressing jurisdictional inconsistencies in penalty levels for the same offence.

10.8.16 National Transport Commission response

A separate penalties project is underway to set penalties across the law with the intent of national consistency.[246]

10.8.17 Extension of codes of practice

Participants requested further clarification regarding the codes of practice registration under the HVNL, particularly where codes are currently registered with a jurisdictional road authority.

10.8.18 National Transport Commission response

Codes of practice are yet to be finalised. As a general rule, it is anticipated that any document that is valid under the existing law should continue to be valid under the new law. However, the situation is different with codes of practice, as they currently only apply within one jurisdiction. Ideally, these codes should translate across to the national law to avoid their reregistration. However, this will have implications for other jurisdictions which will need to be carefully considered. This work is

[246] Although this remains the intent for the long term, the Queensland penalties will be included in the HVNL for now.

currently being undertaken by the project office. In the interim, the HVNL will include transitional provisions that maintain the status quo.

10.8.19 Issues that are beyond the scope of the Regulation Impact Statement

Participants raised a number of issues that are outside the scope of the RIS. These include

- funding arrangements for the NHVR
- issues with A-trailer registration charges
- heavy vehicle driver licensing
- operational details (e.g. information technology systems and user interfaces)
- technical issues with particular vehicle design requirements.

11. Implementation, monitoring and review

Following review and agreement by the standing committee on transport and infrastructure (SCOTI) the national heavy vehicle law will be introduced into the Queensland parliament by the end of October 2011. The national law will be passed by the Queensland parliament by the end of March 2012, by which time the states and territories will have drafted complementary legislation. Enabling legislation is expected to be passed in the states and territories between July and October 2012.

A national heavy vehicle regulator project office is already operational and will continue to make the administrative arrangements necessary for the establishment of the regulator proper. The regulator is expected to be established by July 2012 and operational by January 2013.

Service Level Agreements are being developed that quantify the regulatory activities that the regulator will purchase from the states and territories when it becomes operational. These activities are likely to include front of counter registration services, inspection services and compliance and enforcement services. Functions that the regulator will deliver in house (such as the performance based standards review panel, the national heavy vehicle accreditation scheme, permit co-ordination and fatigue authorities panel) are currently being refined.

Formal monitoring and review mechanisms are outlined in the intergovernmental agreement on heavy vehicle regulatory reform which was signed by COAG on 19th August 2011. They include:

- Annual review of local productivity variations;
- Annual review of access decisions made by asset owners for consistency and possible national application;
- Review of the charging and funding arrangements pursuant to reforms arising from the COAG road reform plan feasibility study and subsequent regulation impact statement;
- Review of the intergovernmental agreement by 30 June 2013. The review will focus on the progress made by all signatory parties in achieving the agreed outcomes;
- On-going review by the regulator of its own activities to ensure continuing relevance and congruence with objectives.

12. Acronyms and abbreviations

ADR	Australian Design Rules
AFM	advanced fatigue management
ALC	Australian Logistics Council
ATA	Australian Trucking Association
ATC	Australian Transport Council
AVSR	Australian Vehicle Standards Regulation
BFM	basic fatigue management
C&E	compliance and enforcement
CIE	Centre for International Economics
COAG	Council of Australian Governments
COR	chain of responsibility
FAP	Fatigue Authorities Panel
GDP	gross domestic product
GML	general mass limits
GVM	gross vehicle mass
HLRG	High Level Reference Group
HML	higher mass limits
HVAS	Heavy Vehicle Accreditation Scheme (Western Australia)
HVNL	Heavy Vehicle National Law
IAG	Industry Advisory Group
IAP	Intelligent Access Program
LPV	local productivity variation
MDL	mass dimension loading
NHVAS	National Heavy Vehicle Accreditation Scheme
NHVR	National Heavy Vehicle Regulator
NPV	net present value
NTC	National Transport Commission
OBPR	Office of Best Practice Regulation
OH&S	occupational health and safety
OSOM	oversize and overmass
PBS	performance-based standards
PRP	Performance-based Standards Review Panel (the body that determines if a vehicle fits the PBS criteria)
RAV	restricted access vehicle
RIS	Regulatory Impact Statement
SLA	service level agreement
SPV	special purpose vehicle
TWU	Transport Workers Union
VCAT	Victorian Civil Administrative Tribunal

13. Appendix A Low-impact RIS items

Refer to attachments.

14. Appendix B Cost–benefit analysis

Refer to attachment.

15. Appendix C Differences in health and safety laws

Table C1. Summary of differences between the Western Australian occupational health and safety (OH&S) law and the model law

Area	OH&S regulation	Transport regulation
Duties	Due diligence—operators must take every reasonable precaution in the circumstances to protect the safety and health of their workers, customers and the general public.	Requirement to take all reasonable steps to avoid fatigue while driving.
Coverage	Employers (commercial vehicle operators), employees (commercial vehicle drivers), which include schedulers, clients and so on.	Drivers and those in chain of responsibility, such as employers, prime contractors, operators, schedulers, consignors and consignees, loading managers.
Entry to system	Accreditation only (in Western Australia).[247]	Accreditation for some aspects of system (BFM, AFM)
Scheduling and rostering	Operating standards for work and rest DFMP required	Operating standards for work and rest. Fatigue management practices in place.
Readiness for duty	Written policy on importance of fitness for duty, including drugs and alcohol.	Procedures for assessment of health, drugs and alcohol, and wellbeing before starting work Procedures for drivers to report unfitness for duty.
Driver health	Medicals required every three years.[248]	Drivers must be certified by medical practitioner as fit to drive at least every three years, and each year if >49-years old.
Workplace conditions	Workplace conditions should meet Australian standards for seating and sleeping.	Suitable sleeping arrangements available for driver rest where needed.
Training	Induction training required, DFMP training required both on induction and refresher.[249]	Induction into FRMS, regular updates on policy and procedures, training of knowledge on fatigue risk management.
Records and documentation	Required to keep records of all regular/irregular trips, driver schedules and rosters that demonstrate the company and drivers are conforming to DFMP and OH&S regulations	Operator to implement, authorise, maintain and review documented policies and procedures relevant to FRMS, and keep records that demonstrate compliance with FRMS standards.

[247] This is required for a restricted access vehicle (RAV) only. A normal 'as of right' vehicle does not require accreditation so there are no checks done. Western Australia has more non-accredited than accredited operators.

[248] Or less than three years if stipulated by the medical practitioner that conducted the medical.

[249] Refresher training is recommended but not legislated.

Area	OH&S regulation	Transport regulation
Management practices	Incident reporting system required.	Counselling, disciplinary action for non-compliance. Communication process between drivers and management.
Audit and review	Internal DFMP review after any unsafe incident and annual review every 12 months. Noncompliances must be recorded and the register maintained for three years.	Internal review every 12 months.
Enforcement and compliance	Accreditation audits required every 12 months. Transport regulation officers and police.	RTA and police.

AFM = advanced fatigue management; BFM = basic fatigue management; DFMP = Driver Fatigue Management Plan; FRMS =Fatigue Risk Management System ; RTA = Roads and Traffic Authority

a For example, the Western Australia *OHS Act 1984* and Code of Practice for Fatigue Management for Commercial Vehicle Drivers

b For example, the National Transport Commission National Heavy Vehicle Accreditation Scheme and New South Wales Road Transport Regulation 2005

16. Appendix D Summary of the diversions from HML model law

The following table documents the items of the higher mass limits (HML) model law, or parts thereof, that were or were not implemented by each jurisdiction. Notes in and below the table also indicate where jurisdictions implemented more than the provisions of the table.

Vehicle config. Note 1	**WA** *Note 2*	**NT** *Note 3*	**SA**	**Qld** *Note 4*	**NSW**	**ACT**	**Vic**	**Tas**
1	No	Yes	Yes, but not tri-drives	Yes, but not tri-drives	Yes, but not tri-drives	Yes, but not tri-drives	Yes, but not tri-drives	Yes, but not tri-drives
2	No	Yes	Yes, but only car-carriers and not single axles on trailers	Yes	Yes, but only car-carriers	Yes, but only car-carriers	No	Yes
3	No	Yes	Yes, but not single axles on trailers	Yes	Yes, plus single-drive prime movers	Yes, plus single-drive prime movers	Yes	Yes
4	No	Yes	Yes, but not tandem drives	Yes, but not tandem drives	Yes	Yes	Yes	Yes, but a single-drive complying bus is allowed 10 t by law rather than exemption
5	No	Yes	Yes, but not trailers	Yes	Yes, but not trailers	Yes, but not trailers	Yes	No
6	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	No	Yes	Yes, but not tri-drives	Yes, but not tri-drives	Yes, but only up to 36.5 m long and not tri-drives	Yes, but only up to 36.5 m long and not tri-drives	No	No

m = metre; t = tonne

Notes:

1 Refer to higher mass limits (HML)-eligible vehicles in Section 8.8.

2 Western Australia recognises the national HML scheme and supports the principle of providing concessional loading approvals on a national basis. Currently, there are no vehicles operating in Western Australia on HML approvals issued by Main Roads Western Australia, although one concessional HML permit has been issued in the past, using the permit process for the Main Roads Concessional Loading Bulk Product Scheme (CLBPS). The CLBPS allows loading to HML while imposing less stringent access arrangements for participation. In particular, the requirement for vehicles to be fitted with road-friendly suspension systems would be onerous for Western Australian transport operators. The CLBPS is available for all vehicle types operating in Western Australia, including locally approved high productivity vehicles and those vehicle types incorporating tri-axle dollies and tri-drive groups. Due to a lack of demand, Western Australia does not currently have a mechanism in place allowing the issue of HML approvals for interstate operations. Additionally, the approved HML route network in Western Australia is currently very limited in extent; however, HML operations could be approved on the CLBPS route network, as HML involves lower mass limits.

3 The Northern Territory has implemented HML via legislation that allows a 17-t tandem axle group mass and a 22.5 tonne tri-axle group mass for any tandem axle group or tri-axle group fitted with a

certified road-friendly suspension. In addition, the legislation provides for buses with single-drive axles and six-tyred tandem axle groups. The Northern Territory does not have the 6.7-t steer axle mass in legislation, but allows 6–7 t under permit on road train–rated prime movers.

4 Queensland also allows certain permit vehicles, such as AAB-quad long combination vehicles, to operate at HML. In such cases, tri-drives are limited to general mass limits.

17. Appendix E Summary of research on spray suppression

The United States (US) National Highway Traffic Safety Administration (NHTSA) reported to Congress in 1988, 1994 and 2000 on the status of available spray-suppression technology worldwide.

- NHTSA spent a great deal of its resources and energy in the 1980s looking at the possibility of requiring heavy trucks to be equipped with splash and spray suppression-devices, primarily special flaps and side skirts around the wheels of the trucks. This effort was based upon public dislike of the spray clouds generated by large vehicles on wet roads. At the end of this effort, on 25 May 1988, NHTSA announced that no available technology had been demonstrated to significantly reduce splash and spray, and therefore significantly improve visibility of drivers on the public roads. In the absence of such evidence, NHTSA concluded it should not require these devices on large trucks.
- NHTSA noted that the 1991 European Directive was based on the 1984 British Standard, which specifies laboratory tests on spray-suppression components whereby water jets are directed at the components and the amount of water captured in a tray under the components is measured as a percentage of the total amount of water directed at the components. NHTSA noted that there had been no testing done to prove that vehicles fitted with devices passing those tests actually produced less spray under real-world driving conditions on highways.
- In 1993, Congress asked for an update on technological developments in this area and whether a demonstration of effectiveness had been made. In March 1994, NHTSA reported to Congress that some new efforts were underway, and that the 1988 conclusions about the absence of demonstrated effectiveness remained valid.
- In 1999, NHTSA was again asked to update its research. The report, published in 2000, found significant interest in splash and spray suppression by government and the private sector. At the time, however, the technologies that purported to reduce splash and spray could not be shown to translate into real-world visibility improvements for drivers. For instance, Europe has a directive specifying how spray suppression devices will be evaluated for effectiveness in a laboratory test. However, when NHTSA contacted European governments, they learned that there are no data that show devices that are approved under their laboratory test result in better visibility on vehicles on the road. Similarly, a number of US states have passed laws requiring spray-suppression devices. However, when NHTSA contacted Florida, which has the broadest law, they learned that the state does not know how to evaluate whether the devices that work in laboratory tests help drivers on the road. NHTSA also re-examined the available databases to document the safety problem posed by splash and spray from heavy trucks. As was the case in 1988 and 1994, the number of crashes from splash and spray is extremely small. Given that no significant safety problem appeared to exist, and the currently available technologies could not be shown to effectively address the problem, NHTSA did not

believe it would be prudent to spend its limited resources on another round of splash and spray suppression research.

- A 2002 discussion paper by the National Road Transport Commission (NRTC) for Stage 2 of the Prime Mover Rating Project included a literature review that encountered no research to support the effectiveness of spray suppression devices. In addition to research already discussed in this paper, the NRTC discussion paper summarises work undertaken by the Royal Melbourne Institute of Technology (RMIT) University.
- A report was put out in October 1998 on the Spray Testing at Angelsea Complex in Victoria. The report was prepared by Peter Mousley of RMIT University. This involved five days of testing at Angelsea during October of 1998. The three aims of the test were: to evaluate revisions to the spray measurement system; to determine the worst and best cases of spray suppression; and to control the air flow measuring system used to measure the flow field during on-road tests.
- The specific conclusions drawn from the tests included, first, that the Pewag FreeScreen mudflaps, which comply with European standards for spray suppression, did not reduce spray. Second, no conclusive decision about the performance of the Mercedes Benz–sourced mudflaps could be made, due to only one mudflap being made available. Third, the full-length poly skirts reduced spray to levels similar to that produced at 70 km/h without skirts (tests conducted at 100 km/h). It was noted that wet weather encountered during testing detrimentally affected the air-flow measuring system. As a result, many of the results were lost to water contamination of the air-flow measuring probes. There were concerns about the repeatability of the tests for that reason.
- An earlier test by Mousley in March 1997, once again at the Angelsea test site, had a number of issues regarding repeatability of testing. The overarching outcome or summary of the result suggested that it could be concluded that the least amount of spray was produced without the fitment of any spray-suppression devices. It also suggested that, to a following motorist, it was believed there would not have been any discernible difference in the amount of spray from any of the configurations tested.
- In August 2001, Peter Mousley and Simon Watkins of RMIT University conducted further tests looking at the development of spray-measurement systems and the evaluation of spray-suppression devices. Devices tested or evaluated included untextured flaps and guards, textured flaps and guards, vented flaps and guards, and special hubcaps. The findings of this report are yet to be released, but discussions with the author suggested concerns with regard to the effectiveness of the devices in actually reducing the level of splash and spray. He did express the view that there were real benefits to be gained in terms of reducing the spray by focussing on aerodynamics. This report was still unreleased at the time of writing this discussion paper.

In 2003, the University of Minnesota found that spray-suppression devices did not have a significant effect on the spray induced by a 1997 model prime mover and semi-trailer with good aerodynamics, and for a 1985 model prime mover and semitrailer with poor aerodynamics. The conclusion was the same for high-speed operation, while at low speeds there was a small but insignificant improvement.

- To test the effectiveness of four spray combinations on four tractor-trailer configurations traveling at 55 mph and 65 mph (88.5 km/h and 104.59 km/h, respectively), 32 runs were made in each of the four configurations. Configuration 1 was a 1997 Freightliner tractor-trailer with no spray devices; configuration 2 was the same 1997 Freightliner tractor-trailer outfitted with the most effective spray device from pilot testing; configuration 3 was a 1985 Freightliner tractor-trailer outfitted with no spray devices; and configuration 4 was the same 1985 Freightliner tractor-trailer outfitted with the most effective spray device from pilot testing.
- This arrangement indicated which, if any, of the four configurations produced the least amount of spray on those particular tractor-trailer combinations, whether the spray treatment was effective at a variety of vehicle speeds, and the role of vehicle aerodynamics in the production of spray. The plan for all testing followed the Society of Automotive Engineers recommended practice for splash and spray evaluation (SAE J2245 paragraphs 6.2, 6.3.2, 6.4, 6.4.2 [1994]), without exception.
- The results of the present investigation indicated that, at the lower vehicle speed, regardless of the wind condition, the addition of spray-reduction devices to the 1997 newer and more aerodynamic tractor-trailer configuration did not result in a significant reduction of spray. Consistent with these results, testing at the higher vehicle speed indicated no significant differences between the improved aerodynamic tractor-trailer without spray-reduction devices and the improved aerodynamic tractor-trailer with such devices, for any wind condition. Although not significant, results indicated the addition of spray-reduction devices to the less aerodynamic 1985 tractor-trailer may slightly reduce spray at lower vehicle speeds in non-stringent wind conditions, but provide no benefit at higher vehicle speeds.
- The results indicated that an improvement in the aerodynamics of a tractor-trailer configuration can significantly reduce the amount of spray generated by large trucks in wet weather. Therefore, although the addition of the evaluated devices does not significantly reduce spray, improved vehicle aerodynamics can reduce spray and are of more benefit.

The European Union introduced Council Directive 91/226/EEC on 27 March 1991. This directive is based on the British Standard, with some minor amendments as documented in the proposal of 27 July 1989:

The technical content of the proposal takes broad account of the provisions either in force or at the advanced draft stage in certain Member States. Reference has been made, in particular as regards the dimensional requirements, to the provisions in force in the United Kingdom and at the draft stage in Belgium while, however, making a number of amendments to these. Basically the amendments concern the distance from the ground to the lower edge of the spray-suppression equipment and its minimum enclosure angle and the minimum percentage of water retention required at the end of the test to which energy-absorption devices must be submitted in order to obtain EEC type-approval. In view of the fixed horizontal distance between the spray-suppression device and the wheel, the distance from the ground to the lower edge of the spray-suppression device has been increased from 150 mm to 200 mm in order to extend the durability of such devices once they have been fitted and are in use on vehicles. A greater increase in this distance, to take account of the clearance required for certain mechanical suspensions—in particular the rear axle of some trailer-towing vehicles—would result in the efficiency of the device being reduced. However, given that the trend is to fit vehicles with pneumatic suspensions, which remain at a constant height, this problem should not cause major difficulties. At the same time the minimum enclosure angle of the spray-suppression device has been reduced from 45° to 30°. It has been

noted that beyond 30° (i.e. between 30° and 45°), the presence of a spray-suppression device on each mudguard may, in particular when it covers the inside of the mudguard, cause interference with the wheel where the wheel and mudguard approach each other dynamically. The minimum water retention percentage proposed for the energy-absorbing types of device has been increased by 5% (i.e. from 65% to 70%) in order to improve their efficiency.

Directive 2007/46/EC was introduced in 2007 to establish a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles. Directive 2010/19/EU was introduced in 2010 to amend the earlier directives ostensibly without changes to the technical approach (i.e. the same types of performance tests and fitting requirements were used), mandating the 1991 requirements on all vehicle categories covered by 2007/46/EC from 9 April 2011.

18. Appendix F List of respondents to the draft RIS and HVNL

Insurance Council of Australia

Motor Accident Insurance Board Tasmania

Motor Accidents Compensation Scheme (Northern Territory)

Suncorp

Tourism Central Australia

Australian Assembly of Volunteer Fire Brigade Associations (AAVFBA)

Australian Local Government Association (ALGA)

Brisbane City Council

Comcare

Local Government Association of Queensland

Local Government Association of South Australia

New South Wales Road Transport Authority and Department of Transport

Queensland Department of Transport and Main Roads

South Australian Department for Transport, Energy and Infrastructure (inclusive of the South Australian Police and the Motor Accident Commission)

State Government of Victoria

Tasmanian Department of Infrastructure, Energy and Resources

Transport Certification Australia

Transport Workers Union of Australia (TWU)

Vice Chief of the Defence Force

Western Australian Department of Transport (inclusive of comments from Main Roads WA, WA Police, Insurance Commission of WA, Department of Treasury and Finance and Worksafe WA)

Western Australian Local Government Association (WALGA)

Mr Chris Begley

Mr Harry Carna

Mr Stephen McCartney

Mr Wal Cichocki

Mr Geoffrey Cocks

Mr Michael D Jordan

Mr Garry Page

Mr Adrian Peterson

Ms Lorraine Pountney

Ian Wright & Associates

All Size Equipment Transport

Brookfield's Transport Services
CBCI
Engistics
Linfox
Logistics Safety Solutions Pty Ltd
Toll Group
Transedel Livestock Transport
Transport Consultancy Solutions
Truckright
Whyte's Transport Pty Ltd

AgForce Grains
Australian Heavy Vehicle Repairers Association
Australian Logistics Council (ALC)
Australian Trucking Association (ATA)
Bus Industry Confederation (BIC)
BusNSW
Cattle Council of Australia
Cement Concrete and Aggregates
Commercial Vehicle Industry Association of Qld (CVIAQ)
Crane Association of WA (CAWA)
Livestock and Rural Transport Association of WA (LRTA)
Livestock Transporters Association of Victoria
Motor Traders Association of NSW
National Farmers Federation (NFF)
National Pilot Vehicle Drivers Association
National Road Freighters Association
NatRoad
NSW Farmers Association
Truck Industry Council
Victorian Farmers Federation

19. Appendix G Summary of technical and operational issues raised in the RIS process

- A national standard for road surfaces is required so that I can carry a piece of bar and lay it on the road, find a 300 mm gap under that bar and then ring and put in a complaint that will be actioned, to bring that piece of road to a safe and reasonable standard.
- There is a lack of consistency between states regarding the rear overhand and frontal swing requirements for buses to obtain a controlled access permit. (AVSR 67). New South Wales and Queensland have allowed greater rear overhang provisions.
- In 1999, the National Transport Commission (NTC) recommended that bus GVM be increased from the arbitrary 16 t to the manufactured GVM of 18 t for 2-axle buses with equivalent increases for 3-axle and 4-axle buses. No increase has yet been agreed and this needs to be progressed.
- The issue of individual axle mass for buses is a concern as operators have little control over such factors as individual weight of passengers and where they might sit, weight of baggage and so on.
- The NTC Fatigue Maintenance Group is looking at issues that need to be included in the Heavy Vehicle National Law (HVNL), including establishing minimum rest breaks and daily sleep opportunity limits in the basic fatigue management (BFM) hours option for 2-up drivers and clarifying the rules for switching between hours options, which are ambiguous and difficult to enforce.
- Clarification is required for bus drivers regarding the 'rounding off' rule (fatigue).
- Differences in standards for school buses across states such as specifications of warning signs, angle and luminosity of lights need to be addressed.
- The Austroads equivalent standard axles (ESA) method may not accurately estimate the effect on pavements of road trains and of axle loads well in excess of current regulation axle loads. If the NHVR system permits road trains where they have previously been restricted a better understanding of the effects of road trains and of heavier axle loads on road pavements is required.
- Class 1 vehicle lengths to be increased to 27.5 m. Lines of 8 to have annual RAV as do lines of 4 combination and limited to line of 4 combination. Class 1 vehicle travel at night at 3 m x 27.5 m long.
- To prevent unnecessary disputes arising between consigners and drivers as a result of compliance and enforcement activities, NatRoad recommends that a new provision be included in Chapter 9 (Enforcement) of the HVNL that compels an authorised officer to either replace a trailer seal (with an official seal) or provide documentation to an affected driver stating that a seal was broken as part of an authorised inspection.
- Given the role private industry plays in road infrastructure, road designers and road maintenance contractors' views should be sought.
- Notices and permits need to be redrafted to reduce ambiguity. For example, there are some issues whereby a notice requires a driver to notify police before crossing a bridge but the police interpret this as requiring an escort for the entire journey.
- The bus and coach network should be clearly mapped in every state with all controlled access roads identified. This should include roads that semitrailers, B-double and road train combinations have been provided access.
- Use of the heavy vehicle for domestic or personal reasons in excess of allowable fatigue hours must be permitted.
- The combination of a body truck and 40 ft trailer are suited to the business and road environment of Far North Queensland, yet are denied access on routes to key destinations for beef cattle such as Townsville, despite this configuration being lighter than HML approved B-double configurations.

- Concerns as to whether or not the NHVL adequately caters for motorhomes and campervans.

19. Appendix H – Independent Expert Panel Report

Report attached

20. Appendix I – NHVR Project Office Forward Work Program

Forward work program attached.