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National Transport Commission
Att: HVNL Review Project Team
Level 3, 600 Bourke Street
Melbourne VIC 3000

NHVR'S SUBMISSION TO THE RISK BASED REGULATION ISSUES PAPER

The National Heavy Vehicle Regulator (NHVR) welcomes the opportunity to respond to the first Heavy Vehicle National Law (HVNL) Review Issues Paper on Risk Based Regulation.

The NHVR strongly supports the review and is working closely with the National Transport Commission (NTC), regulatory partners and the heavy vehicle industry to provide input to the review process.

As the national regulator of heavy vehicles, the NHVR's everyday work is governed by the HVNL. Consequently, this puts the NHVR in a unique position in understanding the challenges created by the existing law, seeing first-hand how the law can be interpreted and applied, and how it impacts the industry and the outcomes of the broader transport task.

The largest areas of complaint from industry relate to:

1. Prescriptive fatigue regulations that don't necessarily deliver the required safety outcomes; and
2. A slow and cumbersome access decision making process that doesn't recognise the benefits of safer and more productive vehicles.

The NHVR's number one priority is the safety of the industry and the Australian community. We believe a safer industry is a more productive one and that unsafe business practices improperly distort the market for transport services. By ensuring the law has the flexibility to empower the industry to identify and better manage safety risks as well as acknowledging its efforts in doing so, we will be able to make a real and meaningful positive difference.

Collectively, it is critical to make the most of the review opportunity to develop a modern legislative base to enable national and effective regulation that encourages and adapts to the evolving needs of the heavy vehicle industry and the road transport task.

Improvements in key areas are an obligation, not a choice to deliver a stronger and more flexible platform to improve industry safety and productivity. As outlined in the paper, efficiencies will be delivered by moving from a prescriptive approach which has high costs to an assurance and risk-based approach.

Yours sincerely,

Sal Petrocitto
Chief Executive Officer

Enc (1): Risk Based Regulation - NHVR's Submission

Risk Based Regulation – NHVR's Submission

Priority Areas for Review

The NHVR has identified a number of key principles and priorities to guide its involvement in the review process, noting the broad alignment with the priority areas in the NTC's issues paper.

OUTCOME 1: Simplified, easy to understand and harmonised

- Simplify the law so it can be understood and effectively used by industry, governments, regulators and enforcement agencies.
- Achieve a successful harmonised national law by removing unnecessary derogations.
- Wherever possible, ensure administrative and regulatory details are dealt with through regulation and legally enforceable guidelines, standards, codes of practice and business rules.

OUTCOME 2: Agile and responsive in meeting industry's needs

- Provide the flexibility and authority for the NHVR to make and approve legally enforceable guidelines, standards, codes of practice and business rules.
- Encourage and facilitate the capacity of the NHVR to pursue in a timely and effective way industry adoption of ever-improving systems in areas such as:
 - Electronic business practices with less reliance on paper-based activities;
 - Innovative business practices;
 - Vehicle design, such as Performance Based Standards (PBS); and
 - Technology advancements, including vehicle safety systems, fatigue and distraction detection technology.

OUTCOME 3: Outcome rather than prescriptive focus

- Recognise the benefits of modern business practices, vehicle performance and technology in delivering improved safety and regulatory outcomes, rather than the traditional prescriptive approach.

OUTCOME 4: Risk-based, data and intelligence-led Regulator

- Improve the NHVR's ability to gather and use data and intelligence to deliver a more efficient and effective risk-based regulatory approach, which includes:
 - Leveraging existing industry investment in technology solutions by setting realistic performance standards for the collection and use of data;
 - Delivering consistent data-sharing arrangements between relevant organisations; and
 - Establishing a regulatory framework that provides incentives and flexibility to support industry participants who invest in safety systems and technologies and proportionate deterrents for those who choose to actively disregard their safety obligations.

OUTCOME 5: Promote productivity and certainty with an improved and modern access regime

- Ensuring everyone in the heavy vehicle sector is responsible for adopting new and innovative improvements to network access, including (but not limited to):
 - Delivering a risk-based approach to access, based on the performance of a vehicle within an agreed envelope, to increase network access for safer and more productive vehicles;
 - Remove the vehicle class system approach to reduce complexity and improve access for safer and more innovative vehicles;
 - Move PBS vehicles considered 'normal' to regulation; and
 - Allow the NHVR to provide access consent for low-risk heavy vehicle movements.

Responses to Issues Paper Questions

Q1: Have we covered the issues with the current HVNL accurately and comprehensively? If not, what do we need to know?

The issues outlined by the NTC in the Risk Based Regulation Issues Paper identify many of the key challenges with the current HVNL that have been experienced by the heavy vehicle industry and the NHVR.

While the NHVR is in agreement with the issues outlined in the Paper, included below are some additional key areas that would benefit from further consideration in establishing the framework for the review process:

Collective responsibility to deliver true national reform in an applied legislative framework

The Issues Paper describes in detail the current derogations from the HVNL. To support the reduction or elimination in future derogations, a greater focus should be given to how the Regulator, states and territories, and local government can work together in a disciplined, consistent and agreed manner to meet their shared responsibilities to deliver better national outcomes within the context of the applied legislative framework.

This is particularly the case in regard to the need to significantly improve road access for safer and higher productivity heavy vehicles. The concept of national notices has been a critical but small step forward in achieving national road access consistency in this area; however their true benefit cannot be properly realised due to the different cross border operating conditions that continue to be applied.

Focus on adoption of technology should be more than just compliance

The NHVR believes the HVNL should focus on encouraging industry adoption and use of agreed systems and technology for safety and productivity gains, and not remain narrowly focused on its use for compliance purposes. Industry has also invested significant funding into their own system and technology solutions, which should be recognised when identifying ways to improve safety and productivity outcomes.

To achieve gains, industry must see the benefits of technology and how its use will translate into safety and productivity improvements in their business, such as increased network access outcomes and sharing of information back to reduced regulatory burdens.

The HVNL should provide the overarching provision in the legislation to utilise technology to better regulate and improve safety and productivity outcomes. It should not mandate a particular type of technology which compromises market opportunities, rather it should be outcome focused.

Centralised approach for the collection, sharing and use of data

The preferred method for gaining valuable freight safety and productivity data is to seek support from industry in pursuing a model for collection and use of such information. It is essential that agreed protocols are developed by all interested parties on the responsibilities to effectively collect and share data, which will provide more integrity around the data collected.

Additionally the HVNL should ensure clear provisions are in place to provide data freely to the Regulator to ensure its functions can be undertaken in a effectively and efficiently. This will require a shift away from prescriptive and administrative focused sanction approach to one that addresses key safety goals.

Q2: What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions' regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law?

As highlighted in the Issues Paper, it is important to acknowledge that the current prescriptive nature of the HVNL was constructed in 2012 based on the historical approach to industry regulation and largely mirrored what was in existence in states and territories.

Significant advances have since been made across industry and supply chain parties in the adoption of technology and demonstrating notable improvements in their accountability to do business better and more safely. Significant improvements have also been progressed by the NHVR in the implementation of its role and functions through the use of technology.

This review therefore provides a critical and unique opportunity to assess all aspects of the HVNL in pursuing an improved, strategic and responsive (non-prescriptive) structure to deliver modern road transport regulation.

Current risk-based and outcome focused approaches in the law

The NHVR has made good progress in delivering a risk-based and outcome focused approach to key reforms given the prescriptive nature of the current law. This includes, where possible:

- Actively seeking to facilitate the use of more productive vehicles and developing national notices;
- Making it easier to be part of productivity schemes (PBS and NHVAS);
- Improving heavy vehicle safety outcomes through an increased focus on supply chain responsibilities;
- Improving the monitoring and sharing of information across borders.

Further information on other specific sections of the law and the subordinate instruments that have the opportunity to deliver improved outcome based results is provided at **Attachment B**.

Primary Duties amendments has introduced a true risk-based framework

More specifically, the recent HVNL Primary Duties amendments (October 2018) adopt a true risk-based regime. The primary duty represents an obligation to eliminate or minimise potential harm or loss (risk) by doing all that is reasonably practicable to ensure safety.

In this respect, the NHVR believes the chapters in the law with respect to Primary Duties should be retained without significant change. This includes retaining:

- Risk-based duties regime in Chapter 1A (with some amendments around definitions);
- Key investigational tools in Chapter 9 (with amendment to simplify and clarify powers) and
- Sentencing orders in Chapter 10 (with consideration to additional order similar to those in Part 13 of the Model WHS Act).

The NHVR believes further consideration should also be given to requiring specific safety duties for people who design, manufacture, repair and maintain heavy vehicles.

Approach to fatigue regulations

The NHVR believes that, when it comes to heavy vehicle driver fatigue, transport law needs to embrace a multi-tiered approach incorporating both risk-based and prescriptive arrangements. Such arrangements are common in other transport regulators (for example, Civil Aviation Safety Authority) and in heavy vehicle transport regulators internationally (for example, in the United States of America, European Union and Great Britain).

At the Australian Fatigue Safety Forum hosted by the NHVR in 2018, drivers, managers and transport operators agreed that prescriptive limits are needed and risk-based self-regulation alone is not suitable in the Australian context. As one participant observed during the forum *“Caps on hours are necessary and the current work limits are acceptable in most circumstances, however greater flexibility is required within these limits to appropriately address fatigue and meet operational requirements”*.

The safety benefit of a multi-tiered approach combining industry-specific requirements and risk-based practices has been demonstrated in the Australian heavy vehicle context. Industry data shows that the rate of crashes caused by heavy vehicle driver fatigue reducing in jurisdictions where the multi-tiered approach applies but increases in jurisdictions where a risk-based only arrangement is in place.

With respect to fatigue, the NHVR believes the HVNL needs to be amended to:

- Remove redundant prescriptive requirements that hamper industry safety outcomes.
- Support the industry adoption of risk-based approaches to managing driver fatigue by removing the current constraints in the law that limit the NHVR implementing more flexible fatigue management arrangements (to be discussed in more detail in response to the Fatigue Management Issue Paper).

Western Australian approach to PBS vehicles

Western Australia's approach to the assessment of larger PBS vehicles (ie. PBS Level Four vehicles) is more progressive than what is permitted under the HVNL. Through the use of more realistic standards and the application of additional safety requirements, Western Australia allows for the assessment of larger and more productive combinations.

As a jurisdiction with notable experience in the regulation and commissioning of longer combinations (road trains), the HVNL Review process should consider how the Western Australian PBS scheme could inform improvements of the HVNL-PBS scheme.

Q3: Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved?

The NHVR supports the risk management principle to regulation as proposed by the NTC. The genuine involvement of stakeholders in this approach is essential to its eventual success, ensuring that the legislative framework effectively identifies, analyses, evaluates and establishes controls for material risks.

This approach would include the consistent and appropriate application of risk-based approaches, as well as ensuring the role of the governance arrangements are fair, transparent and easily understood by all parties. Further information is provided in the response to question nine.

Q4: Does the object or scope of the HVNL need to change? If so, how?

Object of the Law

The NHVR believes consideration should be given to update the object of the law to reflect a more modern and responsive approach to the heavy vehicle task, which includes a shared emphasis on all parties to achieve improvements and national consistency in regards to safety, efficiency and productivity outcomes. There may also be a benefit in retitling the law to reflect its application along the entire chain.

Safety, productivity and efficiency are all listed as objectives of the law. Accordingly, since the introduction of the HVNL, there has been a significant focus from the NHVR, governments and industry on achieving improved safety and productivity outcomes.

However, the NHVR and other parties with statutory functions under the HVNL have been somewhat restricted in pursuing the most efficient means to deliver reform by the prescriptive and restrictive nature of the construct of the current law.

For example, in the area of restricted access vehicles, the HVNL affords the discretion in granting exemptions via permit. Exercising this discretion in its current verbose form comes at an administrative (or efficiency) cost¹ to the NHVR, road managers and applicants (ie. operators), and to uniformity.

The law in its current form also provides little clarity as to the accountabilities of each party in critical infrastructure safety areas and no means of resolving disputes or incentivising government performance.

The NHVR believes there is an explicit need to address the objective of efficiency in the law and supports the principle that “[a] new law should be able to respond rapidly to changes in operations, technology and risk management options”.

Scope of the Law

With a potential shift toward a more risk-based approach of the fatigue laws, consideration should be given to whether it is appropriate for all heavy vehicles 4.5 tonnes Gross Vehicle Mass (GVM) and above to be treated as a fatigue-regulated heavy vehicle.

In addition, the current heavy vehicle licensing regime should be considered during the review and how driver competency can be harmonised, measured and maintained effectively and consistently across the country, moving away from the agreed time based prescriptive approach.

¹ The administrative (or efficiency) cost mentioned above is inversely proportional to the current HVNL's responsiveness – ie. demand for administrative solutions (permits) increases as the law fails to accommodate industry's and their customers access needs.

Q5: Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and non-participating jurisdictions alike to be nationally agreeable?

NTC's proposed risk-based approach has value where a nationally consistent framework for assessing and managing risks may effectively account for those risks that vary across different circumstances – including, but not limited to geographic or industry-specific scenarios.

Reducing or Eliminating Derogations

The most significant gains in achieving national consistency will be delivered by removing unnecessary derogations to deliver better outcomes through true national reform.

Transitioning compliance functions from jurisdictions to the NHVR will assist in achieving more consistency by ensuring activities truly align to national heavy vehicle compliance standards and approaches.

Within this context, there still needs to be recognition that the NHVR relies on a cooperative partnership with Police services, which conduct heavy vehicle compliance and other activities relevant to the safety of the road transport sector in a broader context than just the HVNL.

Q6: Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside?

The NHVR believes that the HVNL must be simplified to enable it to be properly understood by all relevant parties. Simplification and flexibility will arise from the adoption of a rational hierarchy delegating matters of detail and procedure to the greatest extent allowable to regulations and statutory instruments, subject to appropriate checks and balances.

Importantly, many primary obligations and rights are so significant they shouldn't be placed in delegated legislation and thus away from direct parliamentary supervision, such as the current primary duties provisions of the law. Much, not all, of the complexity of HVNL arises from the inclusion of detail that:

- Relates to matters that are administrative or procedural in nature with minimal perceived safety benefits;
- Is likely to change over time (presently the process for varying a list of routes is specified in two different sections of the Act across three pages of legislative prescription);
- Relates to an issue that will arise infrequently (for example, the repetitive references to sanctions for defaced permits throughout the Act); and
- Arose from speculative policy recommendations associated with the first generation of the legislative scheme (for example, trial consents, ministerial objections, PBS approvals).

This detail arises from largely from attempts to accommodate conflicting practices and principles operating in jurisdictions at the time.

By way of illustration the *Road Traffic Act 1961 (SA)* dealt with the issue of oversize or overmass access in a single clause, while Parts 4.4 to 4.8 of the HVNL and Part 1, Division 3 of the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* deals with the same subject matter, yet runs to 80 pages of legislative text. Much of the detail in Chapter 4 is directed towards the requirements of government actors and is of little consequence to the safety or productivity of regulated entities given the absence of any meaningful redress if those procedures are not complied with.

Clarity of the principles informing the amended HVNL, coupled with the evidence of more than five years of experience and industry advancements, should preclude this issue reappearing.

To deliver this flexibility, the NHVR suggests:

- National standards (heavy vehicle classifications and access conditions for example), guidelines and processes (for example, administrative requirements governing the various authorities able to be issued under the HVNL) should be developed and agreed by all states and territories to replace key objects in the HVNL;
- The NHVR is provided with the authority to make and approve legally enforceable guidelines, standards, codes of practice and business rules; and
- Matters of detail surrounding common functions (for example, application processes) be grouped together to reduce the size and complexity of the HVNL and if necessary relocated away from the critical rights and obligations.

In addition, the currently relies on textual description of concepts that in many cases would be better understood graphically (ie. through illustrations where appropriate). The Act should facilitate the use of innovative means of representing information in a legally effective way (for example the presentation of the NHVR's heavy vehicle classification system).

A legislated rule making process, such as mandatory notification and consultation requirements, will provide the appropriate safeguards in relation to scrutiny and oversight of these instruments. In the NHVR's view a proportionate response in this area would differentiate significant proposals (which may require the preparation of a regulation impact statement), non-significant proposals (requiring a less extensive documentation and analysis) and exempt proposals (which are inherently unsuited to such a process).

Q7: How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want?

The NHVR believes the most important question to consider in encouraging the use of technology and data for regulatory purposes is that collectively, we understand the outcome we are trying to achieve.

Principles for establishing effective outcomes through technology and information

The following principles should be used to guide delivery of improved technology information outcomes:

Collectively, there is little agreement across governments in either policy or processes related to building a relationship with industry to access and use information collected by technology.

As a first step, it is essential to ensure relevant parties in the freight task (industry, state and local government, supply chain partners) agree the safety and productivity outcomes technology can help achieve (ie. the problem and outcome must be identified before the solution is developed).

The NHVR suggests the review process places significant emphasis on this important task. Industry must agree with the benefits of using a regulatory technology framework if the desired information sharing outcome is going to be successful.

We know most medium to large road transport companies already employ sophisticated technology systems to meet a range of complex business needs. It is essential therefore that governments do not impose additional technology solutions on industry.

Instead, we need to leverage and share benefits from the investment transport industry has made in technology by setting minimum standards (as used in establishing EWD and agreed by industry and government), rather than mandating a prescriptive piece of technology where possible.

Finally, we must also establish appropriate national governance arrangements, including clear policies that articulate the purposes for which the data will be collected, stored, analysed and used consistent application of policies nationally, a relevant 'authority' to maintain the standards and requirements, and ensuring unnecessary costs are not imposed on industry.

Benefits for the Regulator and industry

For the Regulator, data and use of technology will provide valuable information to deliver a truly intelligence-led and risk-based national approach to regulatory activities, focused on ensuring efforts target the greatest safety risk.

As outlined in the response to Question 1, the NHVR is focused on ensuring there is a centralised approach to the collection and sharing of data. The collaborative approach and centralised model used for the collection of national registration information has demonstrated the value in a single common point of contact for all heavy vehicle related data across jurisdictions.

The NHVR and jurisdictions have invested heavily in building a Safety and Compliance Regulatory Platform, which takes raw data and integrates it to produce an analysed output of the heavy vehicle fleet. This platform will play a critical role in delivering a national risk based approach to heavy vehicle safety and regulatory activities.

Q8: What areas of the current law are particularly problematic because they are process or administration focused? Can you detail the impacts?

As mentioned in response to Question 2, there is a need to review all aspects of the HVNL, however some of the key areas of the current HVNL with a strong focus on administrative processes are listed below.

Network access

- Requirements for managing access for safer and more productive heavy vehicles to the road network are particularly problematic, because of the heavy process and administration burden. The current HVNL aligns poorly with a risk-based approach to access.
- The current classification of vehicles into PBS and Classes 1, 2 and 3, as well as the basis for granting access around these classes, is a barrier to the introduction of safer and more productive vehicles. The classing is no longer suitable for the efficient and modern regulation of safer and more productivity vehicles.
- Processes for developing notices and granting access is slow, overly prescriptive and can lead to unproductive outcomes.

Technology use

- Chapter 7 of the HVNL contains highly prescriptive, mandated requirements for IAPs which inhibit the uptake of technology. The law should set the broad standards which technology must meet but not prescribe the technology itself.
- As outlined in Question 4, the administration costs associated with the prescriptive requirements of the HVNL significantly impact the ability for the Regulator to deliver improved efficiency outcomes.

Fatigue requirements

- Current prescriptive work and rest hours and associated work diary and record keeping requirements to address fatigue issues are highly administrative and process-driven (more than 179 sections in current law). These requirements are concerned with meeting minimum prescriptive requirements and do not provide any incentive for industry to adopt improved work practices or invest in technology that has the ability to deliver safety and productivity outcomes.

Q9: How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia?

Performance-based approaches to support diversity

The NHVR believes that an outcome or performance-based approach to the regulatory design compared with existing prescriptive approaches is essential to support improved safety, diversity and innovation within the heavy vehicle industry. This means that the law or subordinate instruments must articulate a particular standard that industry needs to achieve, not necessarily how to achieve compliance with the standard.

Across the country, the transport task is varied and duty holders in the supply chain demonstrate different appetites to manage the risk that accompanies performance-based regulation, as well as different capacities to invest to manage those risks. A regulatory framework that fails to address the implications of this environment will not represent a significant improvement on the current environment.

The NHVR believes a rebalancing between a risk-based approach and the existing prescriptive approaches is essential to support diversity and innovation within the heavy vehicle industry. The amended law should achieve the following:

- Retain prescriptive 'safe harbour' provisions (effectively, the existing prescribed mass, dimension and work rest outer limits contained in regulations) for duty holders whose operating profile (routine predictable tasks with well understood and effective risk controls) have no impetus to extensively innovate.
- Accommodate outcomes for operators interested in, and capable of, satisfactorily managing the risks presented by their particular operating requirements. For example:
 - An operator may be authorised to operate at greater dimensions in a rural areas without having to operate under an exemption (notice or permit);
 - A consignor may be authorised to engage operators under an schedule that provides assurance regarding driver welfare and work rest safety.
- Allow the Regulator to manage movement between the two frameworks through regulations and other legally enforceable guidelines and subordinate instruments. The Regulator is in a position to ensure they are agile and flexible enough to be adopted by any areas of the transport sector for their specific purposes.

Q10: In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require?

Opportunities for improving compliance tools and techniques

The NHVR believe that the Regulator and enforcement agencies should have the ability to undertake the following activities:

- Respond quickly and with flexibility to support new technologies, business practices and other changes within industry, including potentially disruptive ones;
- Interact effectively with off-road duty holders to ensure maximum visibility of their risk management arrangements (for example through registration in the NHVR safety and compliance platform);
- Make and approve legally enforceable guidelines, standards, codes of practice and business rules;
- Use a consistent approach to sharing of data and information that can help the Regulator deliver intelligence-led, risk-based compliance activities targeting the greatest safety risk ;
- Have appropriate powers to conduct inspections and investigations targeting high-risk behaviours and offenders; and
- Ensure recognition of outputs from monitoring technology can be deemed as evidence.

Recourse and protections

A common and verifiable complaint is that the existing administrative penalty sanctions system (infringement notices) disproportionately impacts drivers and to a lesser extent, transport operators rather than other parties in the chain whose activities also drive noncompliance.

Contesting an infringement notice impacts the productivity of the driver and potentially their vehicle, and in so doing imposes a substantially greater indirect cost through time lost than intended by the face value of the penalty.

In many cases (perhaps most) the delay between issue and receipt of the infringement notice detracts from the immediacy and therefore effectiveness of the notice as a sanction.

This argument holds to a lesser extent for court attendance notices. The reliability of this claim might be tested through survey or consideration of the extent to which court proceedings are simply not contested and accepted as the price of doing business.

Consideration of a more timely and user-friendly system (including a national electronic infringement notice scheme and an industry ombudsman) to support the existing appeal and review rights would address the above concerns.

Risk-based and intelligence-led compliance activities

The NHVR is committed to delivering a risk-based compliance and enforcement approach, achieving productivity benefits for compliant operators through reduced regulatory burden while focusing compliance and enforcement efforts towards the greatest safety risks.

To support this approach, the NHVR has established a number of tools to collect national heavy vehicle compliance and monitoring data. This includes information gathered using the national safety camera network, state and territory cameras and compliance monitoring systems, such as automated checking stations and weigh-in-motion sites, as well as jurisdictions' compliance and enforcement databases.

This information feeds directly into the Safety and Compliance Regulatory Platform, along with other key inputs such as accreditation status and registration information.

The NHVR is improving the collection and use of data to deliver a more efficient and effective compliance function and improved safety outcomes, however this can only be achieved through partnerships with industry and government. To ensure the success of this approach, it is essential that all parties have an interest in improving the data quality and agreements.

Q11: How can the new HVNL help to improve safety, productivity and regulatory efficiency?

Opportunities to deliver improved outcomes

The NHVR has outlined key outcomes of the HVNL review in the **Priority Areas for Review** section (on page 2 of this submission). These outcomes will be used to address the key areas of the law in more detail as the content-specific Issues Papers are released.

Regulatory efficiency delivered through a national regulator

The original objective of the HVNL was to introduce one set of regulatory rules for heavy vehicles, to replace the previous system of inconsistent jurisdictional based rules. The Regulatory Impact Statement identified 368 variations in the rules to be harmonised by the national law, with most of these being of a minor technical or definitional nature. Approximately 34 rule variations were identified to have high to medium economic impacts or were more complicated in nature.

The commencement of the HVNL has meant that there is an increasingly national approach to delivering regulatory services to industry. The NHVR already undertakes certain activities in-house, such as administration of the PBS scheme, NHVAS and vehicle standards. Further, the NHVR has a National Services Transition (NST) program, which aims to transition regulatory services that are currently undertaken by jurisdictional road agencies to be directly delivered by the NHVR.

A national approach leads to cost efficiencies because it removes duplication of effort. Having a national regulator focused only on heavy vehicle regulatory activities has also increased transparency on costs. Prior to the reform, there were limited details on the costs involved with undertaking heavy vehicle regulatory activities and similarly limited understanding on what drives changes in costs and if these are efficient or effective. The increased transparency also means there is more attention from industry regarding the cost of undertaking regulatory activities.

Q12: Do you agree with the six draft regulatory principles? If not, why? Are there other principles we should consider?

The NHVR agrees with the six (6) regulatory principles outlined in the Issues Paper (as outlined below).

DRAFT REGULATORY PRINCIPLES (from NTC)

- **Draft regulatory principle 1:** The future HVNL should be risk-based. The law should be developed by identifying, analysing, evaluating and establishing controls for material risks. The future HVNL should not attempt to control immaterial risks or have controls that aren't clearly contributing to risk management. Controls should be specified in terms of suitable regulatory styles.
- **Draft regulatory principle 2:** The future HVNL should have a clear and balanced object, and provide the scope, coverage and visibility needed to manage the risks specific to Australian heavy vehicle operations. The new law should consider good regulatory practice from participating and non-participating jurisdictions, other transport modes, and elsewhere so as to be nationally agreeable and set us on a path to improved consistency.
- **Draft regulatory principle 3:** The future HVNL should be responsive, flexible and able to readily accommodate changes to technology and business models while maintaining the right degree of oversight. Operators should be provided with flexibility to choose the most suitable compliance option, where options are appropriate. Obligations should be placed as far down the legislative hierarchy as is tolerable and should preference outcomes, in the form of harm minimisation, over inputs and process.
- **Draft regulatory principle 4:** The future HVNL should recognise the diverse risk profile of the industry, operators and regulated parties and provide flexibility (in a harmonised manner) for those operating across vastly different domains and under different business models.
- **Draft regulatory principle 5:** The future HVNL should target the most significant risks associated with heavy vehicle operations. The new law should support sanctions and enforcement tools that reflect the severity of the risk, and enforcement decisions must be able to be reasonably challenged.
- **Draft regulatory principle 6:** The future HVNL should deliver better safety, productivity and regulatory efficiency outcomes and lead to continual improvement across these key performance areas.

Attachment A - Current risk-based approaches used by the NHVR

A risk-based approach is fundamental to the effectiveness of modern regulation. The NHVR already applies this approach to its current responsibilities. A number of approaches and tools are outlined below as examples.

Safety Management Systems (SMS)

The NHVR designed and developed a series of practical tools and templates to empower industry to better identify and manage safety risks within their business. The NHVR's **Safety Management System (SMS)** guidance material and tools aims to drive a positive safety culture across the heavy vehicle industry.

The NHVR's SMS program applies a risk-based approach and focus on how the heavy vehicle industry can meet safety obligations under the HVNL. The tools are free for all businesses in the heavy vehicle supply chain and provide a systematic, comprehensive and proactive process to manage operational safety risks.

The NHVR understands that the heavy vehicle industry is very diverse so there is no one-size fits all approach when it comes to safety practices. They are scalable and can be adapted to any size business and provide a similar systems-based approach used successfully in maritime, rail, aviation and other industries.

LINK: www.nhvr.gov.au/safety-accreditation-compliance/safety-management-systems

National Compliance and Enforcement Approach

The NHVR is responsible for administering a national system that delivers consistent and streamlined regulatory services and administration to the Australian heavy vehicle transport sector, reducing regulatory burden while enabling greater safety and productivity.

The NHVR's **National Compliance and Enforcement Policy** outlines the risk-based and outcomes-focused approach adopted by the regulator and partner agencies when planning and undertaking heavy vehicle related compliance and enforcement activities.

It outlines that the NHVR and partner agencies will develop evidence-based risk assessments to ensure that compliance activities, investigations and enforcement responses are targeted and proportionate to the safety risk. Importantly the compliance and enforcement approach is focused on adjusting the traditional prescriptive regulatory approach, which relies heavily on on-road enforcement to adopting a wide range of tools and interventions (engagement, education and sanctions), including more effective targeting of the highest risk behaviours and operations.

LINK: www.nhvr.gov.au/files/201811-0952-national-compliance-and-enforcement-policy.pdf

NHVAS Review - Emerging Risk-Based Approach

The NHVR is undertaking a review of the **National Heavy Vehicle Accreditation Scheme (NHVAS)** Business Rules and Standards to improve the requirements for entry to and participation in the scheme.

A key element in the new framework will be the introduction and implementation of risk management practices into the NHVAS Business Rules and Standards, resulting in accredited operators adopting an approach to business similar to the SMS methodology.

The NHVR expects the proposed changes will create a more purposeful regime that more closely reflects the working of an SMS, as well as refinements that act as red tape reduction and create a more seamless transactional environment for scheme participants.

LINK: www.nhvr.gov.au/consultation/2019/04/14/nhvas-business-rules-and-standards-review

Advanced Fatigue Management

Advanced Fatigue Management (AFM) accreditation brings a genuine risk management approach to managing heavy vehicle driver fatigue as well as providing a significantly improved return on investment. AFM enables businesses to pursue more flexible systems to meet particular demands of the business as long as the fatigue risks are offset by effective countermeasures. AFM makes use of countermeasures to demonstrate that the appropriate safety management systems and safety culture are in place.

LINK: www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/work-and-rest-requirements/advanced-fatigue-management-afm

Attachment B – Response to Question Two

Provided below are sections of the HVNL that deliver a risk-based outcomes-focused approach in the context of the prescriptive nature of the law.

Primary Duties under Chain of Responsibility

The recent Primary Duties amendments (October 2018) adopt a risk-based regime. The primary duty represents an obligation to eliminate or minimise potential harm or loss (risk) by doing all that is reasonably practicable to ensure safety. The provisions relating to primary duties must be retained, with amendments to provide more clarification around definitions and to simplify and clarify powers.

LINK: www.nhvr.gov.au/safety-accréditation-compliance/chain-of-responsibility

Master Code of Practice

The Industry Master Code of Practice, which was developed by Safe Trucking and Supply Chains Limited (a jointly owned company of the Australian Logistics Council and Australian Trucking Association) and registered by the NHVR, has been well-received by the heavy vehicle industry. The Master Code has been successful in helping the various parties in the Chain of Responsibility better understand their duties and practical measures they can take to comply with those duties.

The NHVR doesn't currently have the ability to develop Codes of Practice. Providing this ability to the Regulator will help ensure a greater consistency of the development of and recognition of relevant safety standards.

LINK: www.nhvr.gov.au/safety-accréditation-compliance/industry-codes-of-practice/master-industry-code-of-practice

Performance Based Standards Scheme

The Performance Based Standards (PBS) scheme has been successful in providing operators with the flexibility to optimise the design of their vehicles to achieve improved performance and safety outcomes. However, despite the demonstrated benefits of these vehicles, the ability for operators to gain access for innovative PBS combinations is severely limited. Right now, the scheme is inundated with approvals for truck and dog combinations (1069 approvals in 2018, compared to 269 for B-doubles) because they are the only PBS combination that is guaranteed widespread access. Increased gazetted access is essential to improve the introduction of safer and more productive vehicles into the national fleet.

LINK: www.nhvr.gov.au/road-access/performance-based-standards

Electronic Work Diary Provisions

The Electronic Work Diary (EWD) provisions allow the NHVR to set the performance-based standards under which EWDs must operate but leave the prescriptive technological and operational requirements to achieve those standards up to industry. This is the model the NVHR believes should be used under the Law in relation to all technologies. This includes solutions such as telematics.

LINK: www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/electronic-work-diary

National Notices and Gazetted Networks

The concept of national notices and gazetted networks is a positive step in providing greater access for specific classes of vehicles. However, the reality is that the continuing application of state operating conditions undermines this approach.

LINK: www.nhvr.gov.au/road-access/national-harmonisation-program