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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 *EFFECTIVE ENFORCEMENT* ISSUES PAPER**

The National Heavy Vehicle Regulator (NHVR) welcomes the opportunity to respond to the seventh Heavy Vehicle National Law (HVNL) Review issues paper on *Effective Enforcement*.

Through leadership and influence, the NHVR administers the national system that strives to deliver consistent and streamlined regulatory services and administration to the Australian heavy vehicle transport sector, reducing regulatory burden while enabling greater safety and productivity. Compliance monitoring and enforcement activities are an integral part of the regulatory policy framework that allows the NHVR to assist industry, including all parties in the Chain of Responsibility, to operate in a safe and compliant manner.

The NHVR has adopted a risk-based and outcomes-focused approach when planning and undertaking heavy vehicle related compliance and enforcement activities with partner agencies that deliver certainty for operators and drivers. This has led to some effective outcomes, however there are opportunities to improve what we do.

The NHVR's submission identifies a range of HVNL and policy changes that if implemented would help ensure effective enforcement, investigations and prosecutions. Some of the key areas of improvement addressed in our submission include:

- respond quickly and with flexibility to support new technologies, business practices and other changes within industry, including potentially disruptive ones,
- 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, and
- ensure recognition of outputs from monitoring technology can be deemed as evidence.

Adopting these opportunities for improvement will enable the regulator to be modern and agile in its response to a risk based and targeted regime.

Yours sincerely

Sal Petrocitto  
**Chief Executive Officer**

## Effective Enforcement – NHVR's submission

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### NHVR key opportunities for improvement

The NHVR has identified a number of opportunities that if implemented would improve the Regulator's ability to gather and use data and intelligence. This would deliver a more efficient and effective compliance function and improved safety outcomes through targeted enforcement.

### Compliance and Enforcement

- Opportunity 1: Provide the capacity for the NHVR to respond quickly and flexibly to changes in the heavy vehicle industry and to adopt new technology.
- Opportunity 2: The HVNL should support the shared use of technology to facilitate a risk-based approach to enforcement.
- Opportunity 3: The HVNL should be easy to understand for industry, regulators and authorised officers to foster consistency.

### Investigations

- Opportunity 4: Strengthen the evidence gathering function.
- Opportunity 5: Expand record keeping obligations.

### Prosecutions

- Opportunity 6: Deeming provisions to allow advances in technology.
- Opportunity 7: Using multiple tools in the regulatory toolbox.
- Opportunity 8: Clarification about 'permitting' offences.
- Opportunity 9: Reserve prosecution for the most serious offences.

## Compliance and Enforcement

### Opportunity 1: Provide the capacity for the NHVR to respond quickly and flexibly to changes in the heavy vehicle industry and to adopt new technology.

<b>Recommendations:</b>	The HVNL should enable enforcement capability which is flexible and responsive to the circumstances.
	The NHVR to define a more flexible formal warning process via a policy framework which would be published and available for reference by industry.
	Remove unnecessary state/territory derogations that limit the NHVR's ability to deploy enforcement resources quickly and flexibly.
	The recognition of technology in the HVNL to be less prescriptive and allowing the NHVR to set performance-based standards.

#### Enforcement capability

The NHVR considers effective enforcement of the Heavy Vehicle National Law (HVNL) to be enforcement that produces the desired outcome or intended result. The object of the HVNL (section 3) is:

*“to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that—*

- (a) promotes public safety; and*
- (b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and*
- (c) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and*
- (d) encourages and promotes productive, efficient, innovative and safe business practices.”*

To do this, the NHVR takes an outcomes-focused, risk-based approach to the enforcement of the HVNL by:

- Promoting **voluntary compliance** by industry with the HVNL.
- **Using a collaborative model** to plan and deliver compliance and enforcement activities. This includes working with police and road authorities to ensure consistency of approach and reduce duplication.
- **Ensuring regulatory activities are intelligence and data driven** by collecting and analysing information in the Safety and Compliance Regulatory Platform (SCRP), a cloud-based system that integrates data from various sources to produce intelligent information about the heavy vehicle industry.
- **Focussing on a performance-based outcome approach** to regulatory activity by targeting enforcement efforts to those parts of the industry not doing the right thing and enabling safe operators to get on with doing business.

Several opportunities exist to improve the effectiveness of the HVNL's enforcement effort by providing greater opportunity for the NHVR to respond quickly and flexibly to changing circumstances. The NHVR enforcement officers should have appropriate powers in line with their professional training and access to data and intelligence.

The NHVR is in the process of developing a Regulatory Compliance Mobility Solution (RCMS) which provides authorised officers with access to important information on the roadside. It will also enable them to record outcomes of intercepts efficiently and consistently through convenient modern hand-held devices connected to the NHVR's Safety and Compliance Regulatory Platform (SCRP). These records will be immediately available to authorised officers in other locations, meaning that, over time, low-risk operators and vehicles will experience fewer and shorter intercepts and a more seamless experience across state and territory boundaries. Within a well-defined policy framework, the RCMS will provide an authorised officer with the tools that support a modern approach to enforcement.

## Formal warnings

The formal warning provision (section 590) of the HVNL is complicated and only allows for a warning in very specific circumstances. More effective warning provisions would allow professional, trained officers with access to national information to determine if a person has committed an offence, admits their mistake, and then allow the officer to give a formal warning if the circumstances are reasonable. This approach aligns with the NHVR's focus on adjusting the prescriptive regulatory approach to adopting a modern and outcome focused approach that utilizes a wide range of regulatory tools. The NHVR would define a more flexible warning process via a policy framework which would be published and available for reference by industry. This would require amendments to the HVNL.

## State and territory derogations

The NHVR's enforcement efforts should be truly national; however there are obstacles to achieving that consistency. Derogations from the law require authorised officers to be trained in particular jurisdictional requirements, limiting NHVR's ability to deploy resources quickly and flexibly on a national scale.

Jurisdictional differences in supportive and procedural legislation also create barriers to agile and consistent responses to non-compliance that creates the highest risk. In Queensland, for example, section 139 of the *Justices Act* requires that proceedings for an offence only be brought in the district of the Magistrates Court in which the offence occurred<sup>1</sup>. Generally, an officer authorised in one jurisdiction will be unable to institute proceedings, or issue an infringement notice in another jurisdiction. Authorised officers operating in their home state are therefore disinclined to action breaches that they detect which have occurred in another jurisdiction – e.g. a work diary offence that was committed in a different state. To remedy this situation it would be necessary to amend the relevant legislation.

## Recognition of technology

The HVNL needs to be flexible enough to foster innovation yet simple enough for small operators to have certainty of their obligations. Over 70 percent of registered heavy vehicle operators have between one and five vehicles and may not have the capacity for significant investment in new technology. These operators will require certainty from the HVNL as to what is needed to achieve the necessary safety and compliance outcomes.

Larger operators are investing in new innovations not recognised by the current HVNL. These innovations may have better, although untested, outcomes than those specified in the HVNL. A future HVNL should allow the NHVR to incentivise innovations provided there is a pre-determined assurance mechanism between the NHVR and the operator.

### Example

Operators are implementing fatigue monitoring devices which are more accurate at predicting a fatigue event than simply counting and recording work and rest hours, which does not account for how tired a driver was at the commencement of a shift or any other factors that may affect a driver's level of fatigue.

Innovative solutions do not allow an operator to be exempt from the provisions of the written work diary. The NHVR should have the ability to exempt or incentivise innovative operators from the administrative burden of maintaining work diaries if they share data under a pre-agreed monitoring arrangement with the NHVR.

Effective enforcement would be achieved if the HVNL allowed greater partnerships with industry. Apart from allowing incentives for industry as described above, the future HVNL should allow for greater sharing of data between industry and the NHVR to foster greater cooperation. This would allow the NHVR to understand and target the root cause of the safety or compliance issue, and not just the issue that manifests as a safety risk on the roads. The NHVR could then deploy authorised officers to address immediate high-risk non-compliance and deploy other trained officers to work with industry on understanding and eliminating the root cause of

<sup>1</sup> Recent amendments to the *Heavy Vehicle National Law Act 2012 (Qld)* address this issue for some fatigue offences.

problems in a more cost-effective way. In order to work in a co-regulatory manner, an operator would need to be empowered to share information with the NHVR. For example, the current electronic work diary provisions do not allow for driving hours information to be shared with the NHVR, unless intercepted by an authorised officer. Changes to the HVNL would be instrumental in achieving this.

The HVNL currently recognises two types of technology, Intelligent Access Program (IAP) and the Electronic Work Diary (EWD), and they are recognised in very specific circumstances. The NHVR believes the recognition of technology should be done in a much less specific manner. By being less prescriptive about the uses of technology and allowing the NHVR to set the performance-based standards and leave the prescriptive technological and operational requirements to achieve those standards up to industry. This is the model the NHVR believes should be used in a new HVNL in relation to all technologies including telematics.

As discussed in the NHVR's submission to the NTC's *Effective Fatigue Management Issues Paper*, the NHVR is undertaking the Fatigue Monitoring Trial to assess the potential role of fatigue monitoring technologies in improving fatigue management and safety outcomes under the HVNL regulatory framework. The trial commenced in early 2019 and is due to be completed in 2020.

## Opportunity 2: The HVNL should support the shared use of technology to facilitate a risk-based approach to enforcement.

<b>Recommendation:</b>	For the effective targeting of enforcement resources, the HVNL should include a provision that allows the sharing of data by other agencies, industry and the NHVR. This data sharing provision should extend to matters not directly related but still relevant to the HVNL.
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### Improve data sharing and collection

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 systems and 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 NHVR Safety and Compliance Regulatory Platform (SCRIP), 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 are committed to improving the data quality and agreements for data collection and sharing.

The NHVR is currently (largely) reliant on road authorities and police agencies to share data to determine non-compliance and risk. Often road authorities are reluctant to share this information with the NHVR as the infrastructure may have been built for a single purpose; for example, speed detection. The NHVR seeks a clear, unequivocal legislative provision to allow (relevant) data related to vehicles over 4.5 tonnes to be shared with the NHVR.

There are 117 camera feeds into the SCRIP. This could be significantly enhanced, particularly in metropolitan regions, if jurisdictions were empowered to share heavy vehicle speed and traffic monitoring information with the NHVR in real-time. This data sharing provision should extend to matters not directly related but still relevant to the HVNL, for example dangerous goods data. Carrying dangerous goods is a significant risk criterion which the NHVR needs to consider when developing risk-based approaches to enforcement.

A future HVNL should also recognise the emergence of automated vehicles and vehicle to infrastructure automation and proactively allow this type of information to be shared with the NHVR via the SCRIP.

Sharing data will lead to a more collaborative approach to compliance with the HVNL, with common public safety aims being delivered co-operatively with industry and other enforcement agencies. This would lead to a more effective use of limited enforcement resources. Jurisdictions are currently reluctant to share information with the NHVR, particularly if it relates to matters incidental to the HVNL.

#### Example

The NHVR-led Operation Kingsize was conducted from 10 to 18 September 2019 across 142 locations nationally and involved authorised officers from the NHVR, road authorities and police. Prior to the operation, the NHVR Intelligence Unit provided information concerning operators of interest who had a history of significant non-compliance. The registration numbers of vehicles registered to these operators were fed through the camera data collected by the NHVR's SCRP, allowing monitoring of the movements of these high risk vehicles in near real-time.

During the operation, 40 high risk vehicles were sighted and nine were intercepted, including the detection of a critical fatigue offence in South Australia which resulted in the issuance of a direction to the driver to not drive for 24 hours. The NHVR Command Centre later established from the camera sighting data that the vehicle was moving again after only a 12 hour break. The vehicle was able to be intercepted again by on-road officers.

This is the first time the use of this type of technology has been trialed on a truly national and near real-time basis, however the opportunities for improved safety outcomes and intelligence-led, risk-based approaches to enforcement appear significant. Additional vehicle sighting data will only add to the NHVR's capability to ensure that intelligence driven enforcement is effective in targeting safety risks in real-time.

#### Example

In 2019, NHVR Safety and Compliance Officers intercepted a heavy vehicle being driven by a disqualified driver. The NHVR officers, who were authorised under South Australian *Road Traffic Act 1961* to conduct proceedings against driver license offences, asked the jurisdiction where the licence originated for evidence of the driver's license status to support prosecution. The jurisdiction refused to provide this information because licensing was not a matter regulated under the HVNL. This was not helpful to building a case against the offender.

The NHVR cannot identify all its customers. The HVNL places safety obligations on all parties in the supply chain, however the NHVR can only identify registered vehicles and operators. Sharing data with relevant agencies is imperative in the identification of supply chain parties to promote improved safety and compliance outcomes.

The NHVR supports the Danish principles for digital-ready legislation as a goal for the future HVNL. This essentially seeks to simplify unnecessary and complex legislation and ensure new legislation is easily understandable and digitally compatible. The seven principles include:

1. Simple and clear rules
2. Digital communication with citizens and businesses
3. Possibility of automated processing
4. Consistency across authorities – uniform concepts and reuse of data
5. Safe, secure data handling
6. Use of existing public infrastructure
7. Prevention of fraud and errors.

Having simple and distinct rules will allow industry and the NHVR to implement the rules with more certainty, leading to greater effectiveness of enforcement efforts. An example would be digital work diary rules provided as digital code which could be used by operators. There is currently much confusion generated by the counting

of work hours in the national written work diary and the NHVR and road authorities spend considerable effort educating drivers on how to comply with their legal obligations. The Danish principle 4: *Consistency across authorities – uniform concepts and re-use of data* supports the opportunity for the re-use of data outlined above.

The NHVR does not have uniform guidelines about the format of data shared into the SCRP. The SCRP has been designed to accept data in any format; the data will then be analysed and interpreted by data scientists into information cubes. These information cubes can then be used across the NHVR operations. This deliberate design feature makes the NHVR open to consuming data from multiple sources.

### Increased use of electronic business practices

The NHVR believes that administrative provisions relating to the issuance of paper-based permits and notices within the current HVNL should be removed and more reliance on the use of electronic data should be supported. In a digital age, the reliance on carrying or issuing pieces of paper does not recognise the technological age we are in nor does it reflect a risk-based approach to enforcement. The NHVR is currently in the final stages of transitioning the issuance of access permits from the jurisdictions (acting under delegation) to the NHVR. This will result in all NHVR issued access permits being electronically available to authorised officers, drivers and industry via the NHVR portal.

#### Example

During Operation Kingsize, 1482 intercepts were conducted where an access permit or notice compliance check occurred. As a result, 39 infringements were issued for 'failing to carry permit/notice'. Ideally, all permits/notices would be available to authorised officers and drivers via the NHVR portal. Currently, failing to carry a permit/notice is not a provision under the HVNL that a mere formal warning could be issued as the driver has not taken 'reasonable diligence' to prevent the offence. Not carrying a paper-based copy of the permit/notice is seen as proof that reasonable diligence was not applied and an infringement notice must be issued. This is considered an administrative burden that could be avoided if permits/notices were available electronically via the NHVR Portal.

There are certain administrative provisions in the HVNL where there is currently no evidence of enforcement action ever being taken, for example section 306 where the driver is required to notify the NHVR once a national written work diary is complete. The obligations to report lost and found work diaries in sections 308 and 312 are also unnecessary and should be removed. These provisions should be identified and removed.

The NHVR only seeks to use and share data under the provisions of the Commonwealth and state-based Privacy Acts, which have similar obligations. Since the NHVR seeks information about heavy vehicles, operators, driver and supply chain parties (which is not personal information) then privacy obligations can be complied with. In addition, the NHVR has asked all road authorities to ensure that customers agree that enforcement with the HVNL is a permitted use when collecting and sharing data.

However, where personal information is included in the data record, the NHVR is prepared to consume the data from other agencies with the personal information excluded. To support the sharing of data, the NHVR will have clear principles and guidelines published about how the data will be collected, stored and used, including the data shared from and with other agencies.

### Opportunity 3: The HVNL should be easy to understand for industry, regulators and authorised officers to foster consistency.

**Recommendation:** In order to minimise the complexity of the HVNL and ensure consistent outcomes, the NHVR and industry should have clear requirements and incentives to share information. This should include published guidelines, policies and business rules by the NHVR concerning best practice and shared information use. Deeming provisions should be applied to shared information to ensure consistency and reliability.

The HVNL is complex. The future HVNL should make it easier for regulated parties to understand what their legal obligations are and what may constitute compliance with those obligations. This includes the ability to challenge enforcement decisions and having those challenges reviewed in a consistent manner. With the transition of services to the NHVR, an Offence Management Unit will be established allowing a central and consistent means for industry to challenge allegations of non-compliance issued by an NHVR authorised officer. The following examples highlight some of the difficulties that industry and NHVR authorised officer's experience in interpreting and applying the current HVNL.

#### Examples

Currently, a PBS vehicle approval can run to 25 pages of technical information which is difficult for everyone to understand, particularly an authorised officer by the side of the road.

The entry power provisions (sections 495-505 of the HVNL) are confusing for industry and for authorised officers as it depends on their reason for entry as to what they can do after entry. However, it also allows authorised officers to escalate and gain further powers following entry. This can lead to confusion and unnecessary explanations for the seizure of critical evidence.

The NHVR recommends that an appropriate course of action is to imbed a provision such as section 165 of the *Workplace Health and Safety Act 2011* in lieu of the current provisions in the existing HVNL. This would ensure authorised officers involved are clear on the powers to enter and what can happen after entry. This removes ambiguity and ensures critical evidence is not compromised or lost.

A performance-based law has the potential to be complex. Industry best practise should be supported by the HVNL and the NHVR should be enabled to share this with industry. Should a future HVNL become more performance-based, then the proactive sharing of information concerning how this compliance is achieved and what is 'reasonably practicable' will become crucial. The role of an authorised officer currently does not encompass an obligation to proactively assist industry to meet its obligations under the HVNL.

A simplified ability to share information between industry and the NHVR would allow the NHVR to assist industry with voluntary compliance. For example, if electronic work diaries or on-board mass data were shared with the NHVR and a pattern of low risk non-compliance was identified, the NHVR could share this information with the operator to 'nudge' them back to a compliant state. This is a much simpler method of behavioural modification than enforcement.

A future HVNL should include provisions that allow the NHVR to develop guidelines, standards or business rules that set the requirements for industry to share voluntary compliance data with the NHVR. An incentive to share data voluntarily with the NHVR should also be considered. This data will add to the risk profiling capability of the NHVR enabling enforcement resources to be used more efficiently.

Deeming provisions within a future HVNL that non-regulated data, for example GPS data, shared/collected from the operator is accurate would allow greater certainty for industry and the NHVR. Similarly, non-regulated data collected by the NHVR, such as body worn camera evidence, should be deemed accurate, provided the NHVR publishes clear collection, use and access policy for transparency.



## Investigations

### Opportunity 4: Strengthen the evidence gathering function

<b>Recommendations:</b>	Remove any unjustifiable barriers to the exercise of evidence gathering functions under the Act.
	Facilitate the admission of properly obtained evidence in any proceedings for an offence under the HVNL in each participating jurisdiction.
	Ensure courts rely on sentencing data from each participating jurisdiction and the public is made aware of the outcomes of these matters.

Offences are to be established beyond reasonable doubt through the criminal justice system. The success of the system relies on the availability of skilled investigative and prosecutorial staff, which represents a significant ongoing expense. At minimum, and to support this investment by governments, the recast HVNL should adopt the recommendations outlined above.

Prosecutions serve several functions including acting as a deterrent for wrongdoing, satisfying community expectations around investigation and punishment of wrongdoing as well as reducing/removing the incentive to underinvest in safety.

There is a substantial gap between the extent to which drivers and their vehicles are subjected to monitoring and enforcement and that applied to other duty holders in the chain of responsibility.

The vast majority of all offences proceeded with under the HVNL are infringement notices and court attendance notices. While these notices meet the requirement of certainty in enforcement, it is not clear to what extent they modify behaviour, mitigate risks or represents an equitable treatment of offending relative to the actions of the driver. The data held in relation to offences prosecuted by the NHVR, its delegates and predecessors and police services should be interrogated to determine:

- whether the average time that elapses between offences being detected and dealt with by the courts adversely effects the deterrent value of this approach,
- to what extent matters are undefended (potentially indicating an inability to defend the matter or an economically rational decision not to do so regardless of guilt),
- the suitability of any other model (including civil schemes and national infringement notices) that better meets the object of efficiency and equity, particularly for drivers.

### Opportunity 5: Expand record keeping obligations

<b>Recommendation:</b>	Facilitate the retention of transport and journey documentation for a particular period of time.
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Currently there is no requirement on any responsible person to keep journey and transportation records after a journey has been completed. For example, where a container weight declaration was produced for a particular journey it can be destroyed immediately upon completion of the journey.

The amended HVNL should include a schedule of ‘documents’ required to be kept for a period of three years (to align with other parts of the HVNL). The introduction of this schedule of items would allow certainty by a responsible person about what should be kept for what length of time.

The introduction of a provision like this will give alignment to other recordkeeping obligations (including accreditation).

## Prosecutions

### Opportunity 6: Deeming provisions to allow advances in technology

<b>Recommendations:</b>	Deeming provisions are included in the HVNL to make admissible evidence from new and emerging technologies.
	Provisions that allow evidentiary certificates from State based technologies to be accepted and admissible for HVNL offences.

The prosecution of offences under the HVNL can be highly technical and if put to strict proof, can only be overcome by the calling of expert evidence. This is time consuming and expensive for regulatory litigation which often has relatively minor financial penalties. Deeming provisions can overcome much of these issues, but must be flexible enough to ensure it captures new and emerging technologies.

Example
<p>GPS is a widely recognised technology used in aviation, maritime and other transport modes. GPS in heavy vehicles is a widely used tool by operators. In a prosecution, GPS records from a heavy vehicle are often seized to compare with work diaries and other transport and journey documents, but there are no provisions in the HVNL which deems these records as being accurate. Sometimes GPS is relied upon by an operator to prove their innocence. If put to strict proof the party relying on them must prove these records by reference to other documents and evidence, experts, or in extreme circumstances, seizing the GPS unit from the heavy vehicle and have it tested for accuracy.</p> <p>This creates both time and expense for the operator and the prosecuting agency. Deeming telematics technologies to be accurate, in absence of evidence to the contrary would ensure their accuracy can be relied upon by operators and enforcement agencies while still protecting legal rights.</p>

Cameras and other enforcement tools should also be deemed accurate in absence of evidence to the contrary. Currently, some cameras in the network are certified for purposes under State based legislation (speeding etc.) but not offences under the HVNL. This means that Certificates of Accuracy which can be relied upon in State traffic offences cannot be used in HVNL offences, and prosecutors would have to call extensive technical/expert evidence to admit the evidence. A provision which allows any certificate provision under any State law to be used for a HVNL offence would overcome this.

### Opportunity 7: Using multiple tools in the regulatory toolbox

<b>Recommendations:</b>	The issuing of an improvement notice does not prevent charges being brought for offences under the HVNL.
	Introducing a mandatory incident notification provision for serious safety breaches, analogous to the model WHS legislation.

In the model WHS legislations, improvement notices can be used in conjunction with prosecution to ensure that immediate safety concerns are rectified while an ongoing investigation is continuing. The HVNL prevents prosecution where an improvement notice is issued. This creates a situation where either the immediate safety concerns are not rectified early on in an investigation, or an improvement notice is issued before evidence of serious safety breaches are identified. Removing this restriction would improve safety outcomes, prosecutorial purposes and bring the HVNL in line with model WHS provisions.

If there is going to be a move to greater risk based regulation which entrusts operators to work within their own developed safety systems, this needs to be coupled with a mandatory reporting provision, similar to what exists in the model WHS Acts. Failure to report should be a serious offence. This will ensure greater transparency and safety culture while offering operators more flexibility in how they implement regulatory systems.

## Opportunity 8: Clarification about ‘permitting’ offences

<b>Recommendation:</b>	The legislation is clarified in relation to ‘permit’ offences to ensure that offences do not require multijurisdictional resourcing.
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There is a perception that post 1 October 2018 offences under sections 96, 102 and 111 (“permit offences”) are difficult to prove road side. This is partly due to issues of cross-border investigations (driver intercepted in South Australia, but their supervisor is based in Sydney. It is impractical for the SA based officer to travel to Sydney to interview the supervisor, and telephone interviews are likely to be inadmissible). Clarification within the legislation of when a person ‘permits’ an offence may help to overcome this, but would need to be carefully worded to ensure it does not create a reverse onus of proof.

## Opportunity 9: Reserve prosecution for the most serious offences

<b>Recommendations:</b>	Make all prescriptive driver offences infringeable, reserving prosecution for serious safety issues and non-driver defendants who breach the HVNL.
	Make insurance policies which indemnify sanctions and penalties under the HVNL illegal and void.

Currently the majority of prosecutions undertaken across Australia are prescriptive driver offences. Drivers often plead guilty in writing, or simply don’t attend and are convicted in their absence. This is not an efficient use of prosecution or court resources. Prescriptive mass, dimension, loading, speed and fatigue offences committed by a driver should be infringeable (including critical and severe risk categories). They should be of sufficient quantum to deter offending and carry demerit points for the more serious offences.

Any offences of fraud or dishonesty (e.g. making a false or misleading statement) should not be infringeable and have serious penalties attached. Likewise any offence involving a serious safety risk (e.g. operate an unsafe heavy vehicle) should not be infringeable and should have penalties increased. Any offence against a company or committed by a non-driver individual should be heard in court.

This would decrease the amount of prosecutions brought through the courts while ensuring that prosecution in court is reserved for the most serious offences. This would reduce the burden on drivers to attend court but maintaining a serious legal disincentive to them offending. It also recognises the influence of non-driver parties contributing to on-road offending.

It is well known that companies can, and do, take out insurance for regulatory fines. This defeats the purposes of prosecution and the specific and general deterrent effects of the law. A provision should be included to make any such policy illegal and void.