

5 December 2016

Review of HVNL investigative and enforcement powers
National Transport Commission
Level 15/628 Bourke Street
Melbourne VIC 3000

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The Australian Logistics Council (**ALC**) welcomes the opportunity to contribute to this review of the investigative and enforcement powers contained in the Heavy Vehicle National Law.

In most participating jurisdictions, the National Heavy Vehicle Regulator (**NHVR**) must rely on agreements with state and territory governments to provide enforcement services.

ALC has consistently argued that one law should be interpreted uniformly across Australia; however, ALC members have found that this has not always been the case.

Accordingly, ALC believes non-police enforcement officers should be in an employee/employer relationship with the NHVR and required to use Regulator designed guidelines and enforcement doctrines, which are reinforced by a culture developed from having all enforcement officers belonging to a single organisation.

ALC also notes the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 (**the Bill**) which recently passed the Queensland Parliament proposes significant changes to obligations owed under the HVNL.

These include the creation of a new primary duty on applicants to ensure that all reasonably practicable steps are taken to avoid a breach of various provisions of the HVNL. It also includes bringing within the Chain of Responsibility a requirement on some chain participants to ensure that heavy vehicles are appropriately maintained or repaired.

Finally, it is noted clause 91 of the Bill proposes the insertion of a new section 570A into the HVNL which provides significantly enhanced powers to authorised officers to provide information.

The explanatory memorandum to the Bill says the following about the proposed new section:

The new power is considered necessary for the following reasons:

- *sections 569 and 570 of the HVNL provide that authorised officers may require documents and information from a responsible person for a heavy vehicle as defined in section 5, however, persons other than a responsible person for a heavy vehicle may also have information relevant to a breach of the primary duty, such as a third party maintenance provider, fuel company or tolling company; and*
- *because of the reformulation of many offences in the HVNL as positive obligations, rather than deemed liability or reverse onus offences, the prosecution will bear a greater evidentiary burden and the Regulator and enforcement agencies will need sufficient power to gather evidence to prove relevant breaches beyond reasonable doubt.*

ALC acknowledges that some of the proposals canvassed in the Discussion Paper have been suggested for years, although no compelling evidence other than enforcement officer convenience has been advanced for many of them.

ALC therefore believes that these new provisions should be bedded down before any further significant suite of changes to the HVNL (which already contains enforcement provisions that are on the border of being acceptable for implementation in rights based jurisdictions – an observation which includes the proposed new section 570A) are implemented.

It follows that the NTC proposals contained in the Discussion Paper, which generally recommend that operational guidance and training be used to bring about a common understanding to guide the interpretation of the HVNL is the preferable way forward, particularly if that acts as a driver to develop a set of national guidelines with genuine national 'buy in' from all enforcement officers.

Should a legislative gap be subsequently identified, that can be dealt with as appropriate through the HVNL Legislation Maintenance Programme.

ALC is otherwise happy to support the other minor amendments to the HVNL proposed in the Discussion Paper.

The NTC recommendations contained in the Discussion Paper should be accepted.

Please contact me on 0418 627 995 or at Michael.kilgariff@austlogistics.com.au should you wish to discuss this submission further.

Yours sincerely



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