

16 August 2019

National Transport Commission
Submission – Review of the Heavy Vehicle National Law
Level 3, 600 Bourke Street
Melbourne VIC 3000

Attention: NTC Heavy Vehicle National Law Review

The Australian Logistics Council (**ALC**) welcomes the opportunity to comment on the second series of discussion papers published by the National Transport Commission for the purposes of the Heavy Vehicle National Law Review, entitled *Effective Fatigue Management (the fatigue management discussion paper)*, *Easy Access to Suitable Routes (the access to routes discussion paper)*, *Safe People and Practices (the safe people and practices discussion paper)* and *Vehicle Standards and Safety (the vehicle standards and safety discussion paper)*.

ALC is the peak national body representing the major and national companies participating in the freight logistics industry with a focus on national supply chain efficiency and safety.

Summary

[A Mandatory Safety Management System for All Operators](#)

ALC believes that all heavy vehicle operators should be required to maintain a Safety Management System as part of an overall requirement for an operator to comply with National Operator Standards set out in the HVNL. This would include a fatigue management plan similar in nature to the system currently in place in Western Australia.

The nature of any component of a particular system would vary according to the needs of a particular operator.

[Managing Fatigue](#)

There is scope for the Regulator to prescribe by statutory instrument a requirement for operators to carry specific pieces of equipment that are proven to be a cost efficient way to improve safety outcomes. This should include technology capable of ensuring drivers are not fatigued when operating heavy vehicles.

The maintenance of a certified fatigue management plan forming part of a Safety Management System (as well as carrying any prescribed equipment) could mean work diaries and AFM/BFM accreditation become obsolete.

That said, if diaries must be used to control hours, electronic work diaries that are compliant with the Telematics Data Dictionary made for the purposes of the National Telematics

Framework should be used, with the 'misdemeanour' type offences designed to penalise minor infraction of rules removed from the Law.

Facilitating Access

In its response to the NTC's *Risk Based Approach to Regulating Heavy Vehicles* discussion paper, ALC recommended that heavy vehicles must carry telematic equipment.

One reason for this is to provide decision makers access to information about heavy vehicle usage on routes, so access decisions can be made quickly and on the basis of reliable information. Adoption of this proposal could make the current system of mass management accreditation unnecessary.

To ensure transparency in decision making, the HVNL should set out a comprehensive process for access decisions, culminating in a right to administrative review of adverse access decisions by the relevant civil and administrative tribunal.

Finally, to promote speed and consistency in decision making, road access managers must use the NHVR's *Approved Guidelines for Granting Access* and make decisions within specific timeframes.

Principal Method of Managing Safety – Adoption of Mandatory Safety Management Systems (SMS)

Page 19 of the *Safe People and Practices* paper states that safe practices include actions taken to manage the safe and efficient heavy vehicle journey. This is inclusive of policies, procedures and organisational structures and accountabilities designed to manage safety.

The paper recognises that these make up a transport operation's SMS. Currently, SMSs have no recognised status in the HVNL, despite most operators having some form of system, even if it isn't formally documented. Although larger operators tend to have well established, comprehensive SMSs, smaller operators may not document safety practices at the same level of detail.

Page 40 of the same paper observes that SMSs are recognised by the Australian Transport Safety Bureau as an effective tool for managing safety.

ALC agrees with the analysis on SMSs presented in this paper.

As discussed in ALC's response to the NTC's *Risk Based Approach to Regulating Heavy Vehicles*, the interrelationship between safety obligations imposed by both the HVNL and WHS legislation became apparent as ALC developed safety products to encourage compliance with the Master Code.

ALC members have also advised that risk is now being treated in a holistic manner, with relevant systems designed to meet ISO 45001 *Occupational Health and Safety Management Systems – Requirements*.

The maintenance of a SMS is an integral part of managing safety in this context.

Therefore, for the reasons set out in the 2018 ALC position paper *Improving Heavy Vehicle Safety the Australian Way*¹ operators should be required to maintain a SMS as part of an overall requirement for an operator to comply with National Operator Standards set out in the HVNL².

The National Operator Standard concept will be discussed in greater detail in ALC's submission on the proposed 'accrediting operators' paper to be published as part of the NTC's discussion paper series.

Managing Fatigue

ALC's position is that the current reliance on work diaries is unsatisfactory.

The requirement to keep records for work and rest times for local trips is not enforced.³

Moreover, it is well documented that police penalise minor infractions of the law that have little overall bearing on safety.

The rules for work diaries are far too prescriptive. The presence of numerous provisions in the Law and regulations prescribing what needs to be recorded and how it needs to be recorded⁴ creates complexity and unintentional administrative errors.

As the example contained on page 38 of the fatigue management discussion paper illustrates, the rules for counting time in the HVNL are too prescriptive and complex – something that becomes more complex if travelling between participating and non-participating jurisdictions or when undertaking two-up driving.

Finally, the rules for work and rest hours are too prescriptive. They prevent duty holders from adjusting work rest hours to take into account the wide range of fatigue risk factors that will vary depending on the circumstances (fitness for duty, driving at night, driving in hot conditions, on dirt roads, etc.) and the tasks (e.g. livestock transport).

The discussion papers canvass a number of different ways to manage fatigue.

ALC recommends that the Western Australian model of managing fatigue be adopted⁵, prepared on the basis of the principles set out on page 44 of the fatigue management discussion paper.

¹ <http://www.austlogistics.com.au/wp-content/uploads/2018/04/Improving-Heavy-Vehicle-Safety-the-Australian-Way.pdf> : pp.13-14

² As proposed in the 2019 ALC election document *Freight: Delivering Opportunity in Australia*: <http://www.austlogistics.com.au/wp-content/uploads/2019/04/Election-Priorities-Documents-Final-compressed.pdf>: 14

³ Fatigue management paper:30

⁴ See for instance sections 294-303 of the HVNL

⁵ As set out in Part 2.3 of the fatigue management discussion paper

For the purposes of managing fatigue this will mean:

1. The general duties contained in the Law to take all reasonably practicable steps to eliminate (fatigue) risk will need to be complied with;
2. A subordinate legislative instrument will merely prescribe a maximum number of hours a person can drive per day and per week; and
3. The Law will require heavy vehicle operators to develop a fatigue management plan that will form part of a mandatory safety management system (**SMS**), so as to comply with national operator standards.

As discussed above, the reliance in the HVNL on prescriptive work-rest hours and keeping work diaries for managing fatigue is flawed because it is targeted at the driver and does not take into account the range of fatigue risk factors. It is also flawed because the rules only apply to 'fatigue-regulated' heavy vehicles and then work diaries only apply to drivers driving 100+ km from their base.

The effective management of fatigue relies upon more than a mere counting of hours.

A fatigue management system would cover **all** matters considered necessary to manage fatigue risk, such as:

- (a) Scheduling trips;
- (b) Rostering drivers;
- (c) Training drivers in fatigue management;
- (d) Establishing driver fitness for work, with regular health assessments;
- (e) Providing a work environment that supports effective fatigue management (e.g. use of fatigue monitoring devices, proper sleeper berths or rest facilities, etc.); and
- (f) Such other requirements considered necessary to manage fatigue as determined by the Regulator by way of statutory instrument.

As this would form part of a national operator standard, all operators (and not just the current 'fatigue regulated' heavy vehicles) would need to prepare such a plan.

It is also important to recognise the differing capacities that operators of different sizes have to implement a fatigue management plan.

ALC believes that due to the atomised nature of the heavy vehicle industry, a dual regulatory approach designed in a way so as to not risk internal inconsistency, a model of legislation similar to the National Construction Code would be advisable.

In the fatigue management context, the 'layered approach' adopted by Part 48 of the *Civil Aviation Orders*⁶ may be appropriate, so that:

- Smaller operators may adopt a prescriptive approach as to what should be in a fatigue management scheme by following specific requirements; and
- More sophisticated operators may design their own scheme capable of being certified as satisfying the requirements of safety regulations.

This will provide the need for flexibility in the development of SMS' generally, discussed in Part 4.9 of the safe people and practices discussion paper.⁷ The issue of how schemes should be certified will be discussed in ALC's response to the next discussion paper on accrediting operators.

Access to Routes

Restricted access vehicles require a variety of authorisations to gain access to the road network.

ALC notes that work is being done by the NHVR to increase the use of notices to authorise classes of heavy vehicles to use particular routes, and encourages its continuation.

That said, access to routes through the permit system can remain a challenge for operators.

As indicated on page 11 of the access to routes discussion paper, there are 537 local governments in Australia that own and manage approximately 80 per cent of Australia's road network in length.

The HVNL vests in the managers of these roads responsibility for access decisions.

It is well known some managers try to protect the road infrastructure through denying access. This is because pavement and road surface degradation is very sensitive to the number of vehicles travelling on a road, and the mass of those vehicles.⁸

That said, concerns have been expressed over the years as to whether local government in particular has the resources, access to data and expertise needed to process access applications efficiently, evaluate the impact of road access decisions on the supply chain, or to take into account broader demographic and technological shifts.⁹

⁶ Discussed in Part 2.6.1 of the fatigue management discussion paper

⁷ Which has the heading **Balancing safety management schemes with certainty**

⁸ Access to routes discussion paper:17

⁹ Accordingly, the Productivity Commission has asked for information on this issue for the purposes of its review of the COAG transport regulatory reform agenda. See Productivity Commission (2019) *National Transport Regulatory Reform Issues Paper:24*
<https://www.pc.gov.au/inquiries/current/transport/issues>

This issue may not be so prominent in NSW should a proposal mooted during the 2019 election campaign for the State Government to reclaim 15,000 kilometres of council owned roads for state government maintenance come to fruition.¹⁰

That said, until state level governments assume responsibility for local roads it must be hoped that the steps being taken to improve local government officer capacity are successful.

Transparency in Decision Making

There is a need to ensure there is transparency in decision making around route access.

As indicated on page 47 of the access to routes discussion paper, at present only the NHVR's access decisions are subject to external review. Understandably, operators want the same sort of administrative review as any other person or company aggrieved by a decision made by a government officer where an adverse access decision is made.

ALC therefore suggests a system in which:

- Decision makers are required to have regard to the NHVR's *Approved Guidelines for Granting Access*;¹¹
- Road managers are required to continue publishing statement of reasons for the making of decisions;
- Time limits are placed on the amount of time road managers and third parties who must be consulted, with a failure to make a decision within time deemed to be consent;
- Decision makers are required to consider both the benefits and costs in giving consent¹²;
- Access administrative review of decisions in the civil and administrative tribunal of the relevant jurisdiction is provided; and
- Road managers are permitted to delegate road power decisions to third parties possessing skills contained in a subordinate legislative instrument made by the Regulator.

¹⁰ NSW Election: Will big spending promises bring Bialiario home in Monaro 9 March 2019 <https://the-riotact.com/nsw-election-will-big-spending-promises-bring-barilaro-home-in-monaro/289756>

¹¹ Noting that the Restricted Access Vehicle Route Assessment Tool (RAVRAT), whilst useful, has its limitations: see Austroads Report AP-R559-18 *Local Road Access for High Productivity Freight Vehicles* (2018): pp.39-40

¹² As recommended in Deloitte Access Economics *Economic Benefits of Improved Regulation in the Australian Trucking Industry* (2019): 35: <https://www2.deloitte.com/au/en/pages/economics/articles/economic-benefit-improved-regulation-australian-trucking-industry.html>

Use of Technology

Technology and Access

Page 59 of the access to routes discussion paper stated that the new HVNL should provide for public asset use at safe and reasonable levels of wear and tear, and that it shouldn't support asset protection at all costs. It further moots modifying the HVNL to allow operators to trade non-financial value for access, such as data using telematics.

The Deloitte Access Economics *Economic Benefits of Improved Regulation in the Australian Trucking Industry* (2019) said:

There are a number of reforms that industry and government could pursue to address the challenges and realise the benefits of increased heavy vehicle access. An ambitious approach could take advantage of new and emerging digital technologies to transform the current access application process.

This would involve streamlining logistics and route planning to integrate existing vehicle technology and datasets on the road network to allow access determinations to be made in close to real time. The approach would involve road managers and road users (i.e. operators and drivers) all contributing road management and vehicle data and the National Heavy Vehicle Regulator (NHVR) collating and centrally processing that data in a single system.¹³

Data collected from vehicles is already being used for asset maintenance purposes. In November 2018 the Transport and Infrastructure Council of COAG approved the commencement of new application available within telemetric equipment compatible with standards recognised by the National Telematics Framework¹⁴ called the Road Infrastructure Management application (**RIM**).

The RIM application aggregates and anonymises data from heavy vehicles, which can be then used by road managers make better investment decisions (such as road maintenance, upgrades, productivity and safety initiatives). State Governments will be commencing to use the application in the near future.¹⁵

ALC has recommended that heavy vehicles must carry telematic equipment in its response to the *Risk Based Approach to Regulating Heavy Vehicles* discussion paper. One reason is to allow decision makers to have access about heavy vehicle usage on routes, so that appropriate access decisions can be made in a more timely nature and on the basis of accurate information. . This means the current system of mass management accreditation is unnecessary.

¹³ iii.

¹⁴ A digital business platform consisting of infrastructure and rules that support an open marketplace of telematics and related intelligent technology providers. For further information see: <https://www.tca.gov.au/ntf/national-telematics-framework>.

¹⁵ https://tca.gov.au/documents/TCA_RIM_Flyer_eBook.pdf

General Application of Technology

Page 46 of the fatigue management discussion paper states that fatigue monitoring and detection technology was in its infancy when the current HVNL was written. Given the intervening years have witnessed the advent of more sophisticated technology; the paper suggests that the new HVNL should acknowledge the significant role technology can play in effective fatigue management.

Part 3.2.2 of the vehicle standards and safety discussion paper outlines how advanced safety technology can reduce the risk and severity of crashes and injuries. This technology includes mechanisms to prevent crashes, such as electronic stability control, advanced braking systems and blind-spot monitoring devices. That said, the HVNL does not encourage, or even recognise, the uptake of some safety technologies, limiting recognition and uptake by heavy vehicle operators.

The general duty to ensure the safety of the party's transport activities relating to the vehicle¹⁶ will mean that some safety equipment will be required to be installed by operators not carrying the equipment either because:

- A court decision may mean that carriage of such equipment will be necessary to discharge an operator's primary duty; or
- Insurance providers will require it.

That said, there may be grounds to permit the Regulator to prescribe a requirement to carry specific pieces of equipment that are proven to be a cost efficient way to enhance safety.

Technology Fatigue Management

Should such a capacity be developed, technology capable of ensuring that drivers are not fatigued when operating heavy vehicles should be included in such a statutory instrument.

The maintenance of a certified fatigue management plan forming part of an SMS (as well as carrying any prescribed equipment) could mean work diaries and AFM/BFM accreditation become obsolete.

However, if diaries must be used as the manner to control hours, electronic work diaries that compliant with the Telematics Data Dictionary made for the purposes of the National Telematics Framework¹⁷ should be used, with the 'misdemeanour' type offences designed to penalise minor infraction of rules removed from the Law.¹⁸

¹⁶ Section 26C of the HVNL

¹⁷ As recommended by ALC in its response to the NTC's *A Risk Approach to Regulating Heavy Vehicles* discussion paper

¹⁸ An exception to this suggestion could be operators of Class 3 OSOM vehicles that breach the Law

Again, ALC is pleased to be given the opportunity to provide a submission to the National Transport Commission Review of the Heavy Vehicle National Law.

Should you wish to discuss this submission further, I can be contacted at Kirk.Coningham@austlogistics.com.au or on 0417 142 467.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Coningham', with a long horizontal flourish extending to the right.

Kirk Coningham OAM

Chief Executive Officer