



Making a Modern Heavy Vehicle National Law

Paper prepared for the Transport and Infrastructure Senior Officials'
Committee (TISOC)

October 2019

Making a Modern Heavy Vehicle National Law

The Australian Logistics Council (**ALC**) welcomes the opportunity to help TISOC develop a contemporary Heavy Vehicle National Law (**HVNL**) that delivers enhanced safety and productivity outcomes for the freight logistics industry.

ALC is the peak national body representing major companies participating in the freight logistics industry. ALC's policy focus is on delivering enhanced supply chain efficiency and safety.

Freight does not stop at state borders, which means that ALC's members bring a national perspective to the review and design of legislation and regulation.

In many respects, the current HVNL reflects the compromises that were considered necessary to convince most (but not all) jurisdictions to sign up to the 2011 Intergovernmental Agreement on Heavy Vehicle Regulatory Reform.

However, the law clearly needs reform to be fit for purpose for the 2020's and beyond.

In particular, ALC submits that the modern HVNL should:

- Encourage and embrace the use of technology for safety and access purposes;
- Ensure operators have suitable safety management systems in place and have the capital necessary to ensure the safe operation of heavy vehicles; and
- Have the flexibility to recognise the differences in capabilities between larger and smaller operators to comply with complex legislation.

In this paper, ALC puts forward a number of ideas that it believes TISOC should endorse to ensure the HVNL achieves these ends.

A full list of recommendations may be found at the end of this paper.

One Country, One Rule Book Uniformly Enforced

ALC's long-standing position has been that there should be a single Heavy Vehicle National Law (HVNL) administered by a single national regulator.

There has been some significant progress towards this outcome. The National Heavy Vehicle Regulator (**NHVR**) has generally operated satisfactorily, and there are no calls from participating states for the return of jurisdictionally based regulation or legislation.

However, the continued reluctance of Western Australia and the Northern Territory to agree to the HVNL limits its effectiveness.

Further, some of the derogations from the law by participating jurisdictions are creating needless confusion and administrative burdens for logistics operators.

The question needs to be asked: why are these derogations there?

With regard to participating jurisdictions, ALC asks that the next Transport and Infrastructure Council (TIC) meeting request each jurisdiction to review each identified derogation¹ from the HVNL to determine whether they remain a cost effective way to deliver intended productivity or safety outcomes.

The preliminary findings of this review should then be provided to industry to allow comment, with any derogation found to be of no material benefit removed.

ALC remains of the view that that Western Australia and the Northern Territory should join the national scheme. Several of the recommendations contained in this paper suggest incorporating elements of Western Australia's present approach within the HVNL.

We believe that such changes will help make this law more acceptable to WA and the NT – and finally help deliver the single national law that was always envisaged.

A Single National Operating Standard

The *Analysis of Heavy Vehicle Safety Accreditation Schemes in Australia* undertaken for the National Heavy Vehicle NHVR (**NHVR**), commonly known as the **Medlock report**, found that based on the 2014 *Survey of Motor Vehicle Use* by the Australian Bureau of Statistics, 466,545 vehicles were rigid trucks whilst 96,226 vehicles were articulated vehicles.²

Medlock also found there is limited take-up of accreditation schemes. As at October 2017, there were 212 members of TruckSafe and 6607 NHVAS accredited operators

Moreover, there are a number of concerns that have been expressed about 'accreditation' within the HVNL context, which have been well-aired as part of the review process. They include:

- The cost of accreditation;
- The fact that accreditation doesn't appear to reduce the level of enforcement activity on accredited operators;
- The poor quality of auditors; and
- A multiplicity of audits that must be undertaken, particularly for operators who are members of both the NHVAS, TruckSafe and/or ALC Master Code Auditing Service and who also work for prime contractors are having the same management systems audited. There is a wish for 'mutual recognition' of audits conducted, particularly in relation to management systems designed to manage risks to satisfy the HVNL Chain of Responsibility.

Finally, NHVAS was included into the HVNL well before the current Chain of Responsibility provisions were added.

Accreditation is used for two purposes in the HVNL.

¹ Derogations are identified on page 31 and Appendix B of the NTC *Risk Based Approach to Regulating Heavy Vehicles* Discussion Paper

² Medlock Report - <https://www.nhvr.gov.au/files/201812-0966-analysis-of-hv-safety-accreditation-schemes-in-aus.pdf> : 8

The first is to ensure safety outcomes.

The second is to gather information to permit access to road networks.

However, the low uptake of the current accreditation schemes suggests the market place has decided the schemes aren't fit for purpose.

Yet, there is plainly a need to ensure that the nation's heavy vehicle fleet is being operated by those capable of meeting an agreed set of standards. Recent figures also reveal that:

- During the 12 months to the end of June 2019, 183 people died from 162 fatal crashes involving heavy trucks. These included 95 deaths from 85 crashes involving articulated trucks, 94 deaths from 82 crashes involving heavy rigid trucks and 6 deaths from 5 crashes involving both a heavy rigid truck and an articulated truck; and
- Those fatal crashes involving heavy trucks increased by 2.5 per cent compared with the corresponding period one year earlier (from 158 to 162 crashes) and decreased by an average of 0.7 per cent per year over the three years to June 2019.³

This constitutes far too many deaths.

ALC believes a practical solution is the development and implementation of a **National Operating Standard** with the following elements:

Creating a list of operators

The first requirement would be for an operator to identify the entity operating a heavy vehicle(s) and the place(s) heavy vehicles are garaged. This provides a list of operators and thus the size of the regulated cohort.

Making safety management systems mandatory

The second is to require operators to maintain an audited safety management system (**SMS**) meeting specified standards made by either the NHVR, or alternatively a specialist safety body.

Safety management systems are a well-known tool designed to manage workplace safety. These are used in a number of industries with significant safety risks, including the aviation, petroleum, chemical, railway and electricity sectors.

Moreover, an abstract from a paper published by Mooren et al in 2017 said that independent research into safety management features that distinguish between lower insurance claimers and higher insurance claimers identified characteristics that show clear evidence of efficacy in safety management in trucking operations.⁴

ALC suggests the desirability of requiring heavy vehicle operators to maintain an SMS should be tested in any consultation regulatory impact statement (RIS) produced as part of the HVNL review.

The SMS would be required to meet specific standards.

³ https://www.bitre.gov.au/publications/ongoing/fatal_heavy_vehicle_crashes_quarterly.aspx

⁴ Mooren et al Comparison of Experience-Based and Evidence-Based Safety Risk Management Features for Heavy Vehicle Transport Operations (2017): 1
http://www.tars.unsw.edu.au/news/2017/Mooren_00045_FP.pdf

The enabling legislation could be modelled on Section 9D of the *Passenger Transport Act 1990* (NSW), which establishes a requirement for accredited bus and coach operators to have a safety management system which complies with guidelines made for the purposes of the legislation. These guidelines specially detail what constitutes a compliant SMS.⁵

For the purposes of the HVNL, one of the SMS standards should be a requirement that the SMS must require an operator to maintain a system complying with the registered industry code of practice made under Part 13.2 of the HVNL (commonly known as the Master Code).

This would provide both:

- the greatest source of assurance that an operator has in place systems that should lead to a business that is operating safely; and
- A common basis for the conduct of safety audits.

Ensuring an operator has the capital to maintain a heavy vehicle

The third important element is that the operator can prove to the satisfaction of the NHVR that a nominated amount of capital is available to the business.

Any financially troubled or under-capitalised business is tempted to cut corners. In the search for cost reductions, vehicle maintenance may be neglected, which in turn increases the chance of an accident related to mechanical problems.

Maintenance is classically one of the discretionary expenses cut by an operator to make ends meet. This is what motivated the inclusion of Part 11 of the Code of Practice made under the Victorian *Owner Driver and Forestry Contractors Act 2005*, which suggests hirers ensure an operator has the financial capacity to operate their business.

The community must have confidence that heavy operators have available the funds to undertake regular and appropriate vehicle maintenance.

ALC believes that provisions similar to Section 10 of the Passenger Transport (General) Regulation 2017 (NSW) should be developed and inserted into the HVNL. This is another area that should be tested in any consultation RIS.

That said, the different needs and abilities of an atomised industry such as the heavy vehicle sector may make a 'layered approach' desirable. This could be modelled on Part 48 of the *Civil Aviation Orders* and would mean:

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

⁵ Found at: <https://www.rms.nsw.gov.au/documents/business-industry/buses/boas-safety-management-system-guidelines.pdf>

Mandatory collection of data

The fourth important element is to require the mandatory collection of data by heavy vehicles, through the use of equipment that is compatible with standards made under the National Telematics Framework.

The use of data will be discussed shortly.

Auditors

There have been some criticisms about both the quality of audits and auditors in the heavy vehicle safety context.

ALC submits that the HVNL should be amended so that only auditors possessing auditing qualifications determined by the NHVR are able to certify an SMS for HVNL purposes.

Auditors currently have qualifications that are at the Certificate IV level within the Australian Qualifications Framework.

The experience of many in the industry suggests that this threshold is too low.

To improve auditor quality, TISOC should recommend the next TIC meeting encourages the NHVR, in partnership with industry, to develop a course falling within the national Transport and Logistics Training Package⁶ at Diploma (AQF Certificate V) level.

This course would ensure auditors were capable of auditing the compliance of operators with the HVNL. Ultimately, the qualification should be formally recognised within the HVNL.

Finally, it would be appropriate for either the NHVR (or the body discussed below) to register auditors possessing the required qualifications.

Further, if there are reasonable grounds to believe that a registered auditor is guilty of either professional misconduct or professional negligence, they should be required to show cause why they should not be removed from the register.

An auditor who had registration removed would be permitted access to administrative review in the relevant civil and administrative tribunal of the participating jurisdiction in which the person is resident.

Who makes the relevant standards?

The NHVR could make the standards discussed above by way of legislative instrument.

However, it may equally be desirable to establish a specialist body to develop all forms of standards for the heavy vehicle industry, if not all the functions relating to the administration of the National Operating Standard. This would allow the NHVR to focus on access and enforcement decisions.

Similar models include that used by the Rail Industry Safety and Standards Board.

⁶ <https://training.gov.au/Training/Details/TLI?releaseId=66135e54-22b8-46d8-8799-ac2d9cdf73f3>

The *Australian Securities and Investments Commission Act 2001* establishes:

- the Australian Accounting Standards Board⁷ which is responsible for developing and issuing Accounting Standards applicable to Australian entities and the 'care and maintenance' of the body of standards (generally); and
- the Office of the Auditing and Assurance Standards Board⁸ which have functions including the making auditing standards under section 336 of the *Corporations Act 2001*. It also provides guidance on auditing and assurance matters.

A specialist body, which could notionally be called the Heavy Vehicle Safety Standards Board could be established, for the purposes of:

- making the standards discussed earlier in this submission;
- maintaining the list of operators;
- acting as a registrar of heavy vehicle auditors;
- making auditing standards; and
- accrediting relevant Registered Training Organisations (RTOs) (assuming that auditor education will be provided by RTOs)

There is no reason why the National Operating Standard (which would in a practical sense operate in the same way as the WA Heavy Vehicle Accreditation (WAHVA) scheme does) cannot commence operating at the time amendments to the HVNL flowing from this review commence operation.

Finally, as an interim measure, ALC supports the current work of the NHVR in attempting to develop a common auditing standard that can be used universally across the heavy vehicle to assess operator safety systems.

This work should be brought in-house and expedited.

Mandatory Collection of Data

ALC believes data is the 'new oil' for the freight transport industry. ALC has therefore traditionally supported any amendments to the HVNL that facilitate the use of data to discharge statutory obligations.

⁷ Established by Subdivision B of Division 1 of Part 12 of the Act

⁸ Established by Subdivision C of Division 1 of Part 12 of the Act

Historically, one of the perceived barriers to mandatory collection of data has been the cost of the /equipment required. However, there is little doubt that it has become eminently more affordable since the HVNL was first drafted.

ALC members advise that for \$1900-\$2000, a compliant unit can be obtained that provides:

- CoR compliance for mass, maintenance and fatigue modules;
- integrates with on board weighing systems (GPS IVU), electronic braking systems, transport/freight management systems, distraction monitoring services and cameras, a vehicle's CAN-BUS to access engine information; and
- applications to calculate Fuel Tax credits, location and speed monitoring services, trailer tracking and driver navigation services.

On this basis, it is no longer feasible to argue that compliance costs outweigh the benefits of mandatory recording of data, which include:

- allowing road owners to fully understand the volumes of heavy vehicle traffic on their network;
- providing NHVR with information on speed and fatigue, where there is cause to investigate;
- providing operators with data that can help them develop their business;
- giving road owners the best data to make decisions as to whether a particular vehicle should access a road; and
- providing data that can be used in a National Freight Data Hub, improving freight data collection, sharing and analysis practices to enable industry and government freight sector participants make better informed operational, planning and investment decisions.⁹

However, there are legitimate issues relating to data ownership and privacy that require consideration. These will need to be developed as the consultation RIS/legislation drafting process gets underway.

Any data collection standards must comply with international norms. The NHVR should not be allowed to make bespoke standards, as is the case now.

As ALC recommended in its 2018 document *A Common Data Set for our Supply Chain*:

Due to the international nature of trade, the Australian Government should encourage the development of a multilateral agreement (either through the development of a joint ISO/IEC standard or refinement of model laws facilitating the

⁹ See Transport and Infrastructure Council (2019) *National Freight and Supply Chain Strategy National Action Plan: 22* - <https://www.freightaustralia.gov.au/sites/default/files/documents/national-action-plan-august-2019.pdf>

use of electronic communications managed by the United Nations body UNCITRAL) to identify a common data set that could be developed for global trade.¹⁰

The same document noted that the TCA Telematics Data Dictionary is aligned to ISO 15638, which establishes the Framework for Collaborative Telematics Applications for Regulated Commercial Vehicles (also known as the **TARV**).¹¹

ALC finally notes that data falling within this set 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 Framework¹² 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 begin using the application in the near future.¹³

In the HVNL context, if decision makers have access to data about heavy vehicle usage on routes, appropriate access decisions can be made in a more timely nature and on the basis of the best information possible. This could mean the current concept of mass management accreditation (for one thing) is unnecessary.

The time to use quality data to more effectively manage Australia's heavy vehicle fleet has arrived. As with the National Operating Standard, the amendments to facilitate the use of data should commence at the same time as other amendments to the HVNL arising from this review.

Access

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

Although the NHVR has undertaken a number of reforms to improve heavy vehicle access processes, including education and training for road managers, implementing the NHVR Portal and developing national notices, access to routes through the permit system remains a challenge for many operators.

There are 537 local governments in Australia that own and manage approximately 80 per cent of Australia's road network in length.

¹⁰ <http://www.austlogistics.com.au/wp-content/uploads/2018/10/A-Common-Data-Set-for-our-Supply-Chain.pdf>: 12

¹¹ *Ibid*

¹² 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>.

¹³ https://tca.gov.au/documents/TCA_RIM_Flyer_eBook.pdf

The HVNL vests in the managers of these roads responsibility for access decisions, while the NHVR has a coordinating role.

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

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.

Road managers often struggle to assess heavy vehicle access requests that are technically complex, including conducting bridge assessments. This results in decisions based on risk appetite rather than measurable criteria.

These concerns may be partly addressed 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.¹⁴

The NHVR notes in its response to the National Transport Commission's *Easy Access to Suitable Routes Issues Paper*¹⁵ that it cannot develop integrated heavy vehicle networks under the current legislative system that requires consent for access on a road-by-road basis.

The ALC supports the proposals of the NHVR to deliver a modern access regime that moves away from requiring multiple individual approvals based on vehicle type (from more than 450 road managers), to providing approval based on nationally set infrastructure parameters. This approach requires a greater understanding of infrastructure capabilities and limitations. *Transparency in decision making*

There is a need to ensure there is transparency and accountability in decision making around access decisions.

At present, only the NHVR's access decisions are subject to external review.

ALC supports the desire of operators to have the same sort of administrative review as any other person or company aggrieved by a decision made by a government official where an adverse access decision is made.

Managing Fatigue

ALC believes that the requirement to maintain paper diaries is outdated - and that the Advanced Fatigue Management/Basic Fatigue Management approach contained in the HVNL is not operating well.

ALC believes it is more appropriate to adopt of the Western Australian model of managing fatigue found in the state's OHS legislation.

¹⁴ *NSW Election: Will big spending promises bring Baliaro home in Monaro* 9 March 2019 <https://the-riotact.com/nsw-election-will-big-spending-promises-bring-barilaro-home-in-monaro/289756>

¹⁵ <https://www.nhvr.gov.au/files/201908-1095-nhvr-submission-ntc-easy-access-to-suitable-routes-paper-hvnl-review.pdf>

Where driving time still needs to be recorded, electronic work diaries compliant with the Telematics Data Dictionary made for the purposes of the National Telematics Framework (and **not** bespoke standards made by the NHVR) should be adopted.

If this is done, then 'misdemeanour' type offences designed to penalise minor infractions of rules can be removed from the Law.

There may also be grounds to permit 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 could include technology capable of ensuring drivers are operating heavy vehicles whilst not fatigued.

These provisions should commence operation at the same time as the amendments to the HVNL flowing from this review.

Enforcement

There are several heavy vehicle enforcement bodies, including the NHVR, authorised officers, state and territory road authorities and police.

Each of these bodies have differing enforcement approaches and powers. The NHVR's 'compliance by education' philosophy can often be undermined if police and state and territory road authorities don't share the same viewpoint.

This is particularly the case with police, with many operators citing examples where minor infractions of the law (such as misspelling place names in work diaries) are seized upon by over-zealous enforcement personnel. This is despite the fact that there is plainly no relationship between a minor spelling error and safety outcomes.

The independence and professionalism of the police must always be respected. However, powers should be only exercised on the basis of knowledge.

ALC believes that state police forces should only be eligible to enforce HVNL provisions if they had undergone suitable training provided by the NHVR.

ALC also believes the NHVR and state police forces should enter into a memorandum of understanding (MOU) to establish how and when police officers should exercise the powers vested in them by the HVNL.

It follows ALC supports the continued transfer of inspectors from jurisdictions to the NHVR, as it is more likely that consistent decision making will occur if inspectors are in an employer-employee relationship with the regulator, working to one set of working instructions. The transfer of inspectors should therefore be completed as soon as possible.

WHS

At the September 2019 ALC & ATA Supply Chain Safety Summit, some confusion was expressed by industry participants regarding where WorkSafe authorities (and standard WHS law) have jurisdiction, and where the HVNL applied.

The inelegant rule of thumb suggested was that ‘if the wheels were spinning’, the HVNL was relevant; otherwise it was standard WHS legislation.

It may also be appropriate for a publicly available MOU between the NHVR and workplace safety regulators setting out the general areas over which the respective agencies will be responsible for enforcement.

Enforcement provisions

There have been some calls to further increase the number of enforcement tools contained in the HVNL.

Many of the enforcement tools contained in the HVNL, such as enforceable undertakings and injunctions have been added over the last few years.

As the NHVR told the September 2019 ALC & ATA Supply Chain Safety Summit 9, proactive enforcement through the judicial system takes a long time because of complexities in getting the evidence together, particularly in relation to principal offences displaying systemic breaches of the HVNL.

This means there is limited evidence to indicate one way or the other as to whether current powers are sufficient.

Until there is evidence that even more statutory tools are required to adequately enforce the HVNL, there should be no further changes in this area.

Design of the Law

One of the chief purposes of the review of the current law is an intention to create a more performance based HVNL.

As a general proposition, ALC supports this proposal, as it will allow ALC members to design and implement systems that ensure safety obligations are satisfied whilst maintaining productivity.

The model WHS laws specify, at a very high level, the obligations of a person conducting a business or undertaking (**PCBU**). The principal legislation otherwise deals with issues relating to consultation and enforcement.¹⁶

However, the model WHS regulations run to some 429 pages plus 67 pages of schedules¹⁷ which deal with increasing specificity as to how risks should be controlled in well over a dozen areas of dangerous work.¹⁸

Should a decision be made to only have high level duties in the principal legislation, as well as enforcement provisions¹⁹ it would be possible to have more granular provisions contained

¹⁶ <https://www.safeworkaustralia.gov.au/system/files/documents/1702/model-whs-act-21march2016.pdf>

¹⁷ Excluding what are called jurisdictional notes, given WHS legislation is a model law and not an applied law

¹⁸ <https://www.safeworkaustralia.gov.au/system/files/documents/1902/model-whs-regulations-15-january-2019.pdf>

¹⁹ Enforcement provisions would need to be included in primary legislation so the Parliaments of the ‘human rights jurisdictions’ of the ACT, Victoria and Queensland can positively tested provisions that may would require a decision to be made as to whether the provisions of a particular an enforcement provision is

in some form of subordinate instrument, however described (regulations, standard, guideline) by whichever repository of power to make the relevant subordinate instrument (either the Transport and Infrastructure Council (**TIC**) or the Regulator) to manage any identified risks.

This would facilitate the implementation of legislation that is more performance based.

However, noting the atomised nature of the industry, a dual regulatory approach similar to the National Construction Code (which creates 'deemed to comply' provisions to facilitate compliance by smaller operators) would seem to be desirable.

One area that may require review is the relationship between general WHS legislation and the HVNL.

ALC members have 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*.

Given that most duty holders identified in the Law would be a 'person conducting a business or undertaking' (PCBU) for the purposes of WHS law, there may be scope to rely on the health and safety duties in WHS law to require a PCBU to ensure as far as is reasonably practicable the health and safety of workers and other persons.

This would leave within the scope of the primary duty contained in the HVNL the heavy vehicle specific matters, such as the ensuring maintenance of a heavy vehicle or risk of damage to road infrastructure is prevented.

All that said, if more rules are placed in subordinate legislation, there must be complete transparency in the way instruments are developed and a full and clear capacity to seek parliamentary disallowance of misguided or poorly drafted rules.

Recommendations on this point are set out in the attachment.

Finally, ALC notes one of the drivers that led to the original development of the HVNL is to improve the productivity of the Australian heavy vehicle sector.

This means that enhancing the productivity of the sector should be explicitly stated as one of the objectives of the HVNL.

Australian Logistics Council

October 2019

Summary of Recommendations

Legislation design generally

1. **ALC reconfirms that any new Heavy Vehicle National Law should have explicitly include improving productivity as an objective, given that it was one of the driving forces for the original introduction of the HVNL.**
2. **Due to the atomised nature of the heavy vehicle industry, a dual regulatory approach similar to the National Construction Code would be advisable.**
3. **This means that in the fatigue management context, the 'layered approach' adopted by Part 48 of the *Civil Aviation Orders* may be appropriate, so that:**
 - (a) **Smaller operators may adopt a prescriptive approach as to what should be in a fatigue management scheme by following specific requirements; and**
 - (b) **More sophisticated operators may design their own scheme capable of being certified as satisfying the requirements of safety regulations.**
4. **Given that most duty holders identified in the HVNL would be a PCBU for the purposes of WHS law, there may be scope to rely on the health and safety duties in WHS law to require a PCBU to ensure as far as is reasonably practicable the health and safety of workers and other persons. This will help extend the coverage of the Chain of Responsibility provisions beyond the specified list in the current HVNL, so that all persons who influence or control transport activities are captured in the duty.**

The scope of the HVNL could then be limited to heavy vehicle specifics such as the ensuring maintenance of a heavy vehicle or preventing risk of damage to road infrastructure.
5. **Where the Law permits subject matter to be made either by a regulation endorsed by TIC, or by the Regulator, the Law must contain a provision that requires the rule-maker to publish:**
 - (a) **a notice of making a rule (however described), which contains:**
 - (i) **a statement for the reason of the rule;**
 - (ii) **a draft of the rule for comment;**
 - (iii) **a discussion regulatory impact statement; and**
 - (iv) **an invitation for submissions;**
 - (b) **a notice of the making of a final rule, which sets out:**
 - (i) **the reasons for making the rule as finally presented;**
 - (ii) **a summary of responses from submission makers;**

- (iii) any variations to the draft rule to be made; and
 - (iv) Implementation information; and
 - (c) a requirement for any rule (however described) to be tabled in a parliament of a participating jurisdiction, and to permit any such rule to be disallowed in a manner similar to Division 4 of Part 11 of the Health Practitioner Regulation National Law (Queensland).
6. If both the National Operating Standard concept and ALC's recommendation that fatigue should be managed using the fatigue management plan system in place in Western Australia are agreed to, consideration should be given as to whether:
- (a) the NHVAS; and
 - (b) the intelligent access program concept
- need to remain in the HVNL.

National Operating Standard

1. There should be a National Operating Standard established, which requires heavy vehicle operators to:
 - (a) identify the name of the entity operating a heavy vehicle (or vehicles) and the place(s) heavy vehicle are garaged;
 - (b) prove to the satisfaction of the NHVR that a nominated amount of capital is available to the business so as to ensure it has sufficient capital to undertake appropriate and regular vehicle maintenance;
 - (c) maintain an audited safety management system meeting specified standards; and
 - (d) collect data, through the use of equipment compatible with standards made under the National Telematics Framework. The use of data for statutory purposes may only be used in circumstances set out in the law. The operator will retain the ownership and control of any data, with use also subject to the operation of Australian Privacy Principles.
2. One of the SMS standards would be a requirement that the SMS must require an operator to maintain a system complying with the Registered Industry Code of Practice made under Part 13.2 of the HVNL (commonly referred to as the Master Code).
3. Auditors providing services for the purposes of the HVNL should possess education at the Australian Qualifications Framework Certificate V (diploma) level, as well as satisfying any auditing standards that may be made. The NHVR, in partnership with industry, should develop a course falling within the

national Transport and Logistics Training Package²⁰ at Diploma (AQF Certificate V) level. Ultimately, the qualification should be formally recognised within the HVNL.

4. The registration of auditors should be considered.
5. Consideration could be given whether it would be desirable to establish such a specialist body to administer functions relevant to the National Operating Standard and thus allow the NHVR to focus on access and enforcement decisions.

Access

1. ALC supports proposals of the NHVR that involve:
 - a) A risk-based framework for heavy vehicle access which compares vehicle performance and the transport task with the road infrastructure characteristics.
 - b) Dynamic national networks maps that understand the suitability of heavy vehicle travel on the most suitable route enabled through up-to-date asset data.
 - c) Shared movement data exchanged by industry for increased network access availability, made available through an appropriate assurance framework.
 - d) Targeted infrastructure funding based on a strong understanding of the use and increasing demand for networks which informs maintenance and upgrade programs.

Managing fatigue

1. ALC recommends that the Western Australian model of managing fatigue be adopted, prepared on the basis of the principles set out on page 44 of the fatigue management discussion paper.
2. If diaries must be used as the manner 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 adopted.
3. Misdemeanour type offences designed to penalise minor infractions of rules should be removed from the Law.

²⁰ <https://training.gov.au/Training/Details/TLI?releaseId=66135e54-22b8-46d8-8799-ac2d9cdf73f3>

Other matters

- 1. The next Transport and Infrastructure Council meeting should request each jurisdiction to review each derogation from the HVNL to determine whether they remain a cost effective way to deliver intended productivity or safety outcomes. The preliminary findings should then be provided to industry to allow comment, with any derogations found to be of no material benefit removed.**
- 2. The current work of the NHVR in attempting to develop a common auditing standard to assess operator safety systems should be brought in-house and expedited.**
- 3. As many of the enforcement tools contained in the HVNL, such as enforceable undertakings and injunctions have only recently been added to the Law, there should be no change to enforcement tools contained in the Law until there is evidence of need.**
- 4. Memoranda of understanding should be entered into between the NHVR and state/territory police forces and workplace safety authorities establishing how and when enforcement powers will be exercised and advice provided.**
- 5. SMS audited against approved statutory standards should be used by the NHVR as part of a risk based approach to enforcement, so that the focus of enforcement activities is targeted at those who choose to actively disregard their safety obligations.**
- 6. Consideration should be given to permitting the Regulator to prescribe a requirement to carry specific pieces of equipment that are proven to be a cost efficient way to enhance safety.**